CORE PROJECT GUIDE

CONSTITUTIONAL REASONING IN LATIN AMERICA

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The project uses a mixed (qualitative and quantitative) methodology, similarly to the volume on Comparative Constitutional Reasoning by Jakab-Dyevre-Itzkovich (CUP 2017). The qualitative and the quantitative pillars of the research rely on each other – they have a complementary role in explaining the fullest possible the different traits and trends of constitutional reasoning in Latin America (Creswell 2014; Jakab-Dyevre-Itzkovich 2015). The following Project Guide seeks to assure the comparability and coherence of Country Reports by facilitating a common

understanding of the basic concepts used in this research. Thus, in order for this research to be coherent and to rely on a valid dataset, all Authors shall read the Project Guide carefully and follow it strictly when writing the Country Report.

The *qualitative pillar* of the research consists of the doctrinal analysis that the Author(s) of each Country Report will provide about the legal, political and institutional context of their jurisdiction. This analysis shall be guided by the following detailed Project Guide which covers questions on the history, the legal and political culture behind the Court (see the following chapters for more detail). It is important that this analysis is not about evaluating the legal correctness of the decisions – its aim is strictly to explain and evaluate the style and quality of the reasoning of the decisions. Therefore, this analysis has the following functions: 1) to place the empirical data – based on the 40 landmark cases – in a specific, explanatory framework which helps its comprehension; 2) to secure a place where authors could explain those characteristics of their Courts' reasoning that need further explanation or that could not at all be fitted to the empirical table; 3) to add additional explanation on the specific meaning or the unique scope of the indicators of the empirical table; 4) furthermore, to guarantee a homogenous structure for the Country Reports which allows the readers to compare and analyze easier the different countries' experiences.

The *quantitative pillar* consists of the selection and analysis of the 40 landmark cases following the set of indicators and the related codebook. The procedure with regard to the selection, verification and analysis of the relevant landmark cases shall be carried out by the authors of the Country Reports in line with this Project Guide (updated after our meeting of July 4th) and the Code Book (also updated) attached to it.

In the following pages I will provide some of the most fundamental characteristics of constitutional reasoning specifically in order to serve as an instruction in this project. It needs to be stressed out that the following analysis obviously cannot be a comprehensive doctrinal and conceptual study of constitutional reasoning. Instead, it is going to focus on giving some very concrete guidance about how to analyze the reasoning of constitutional courts in Latin America. Later however, when we have the results of all the Country Reports, it will allow us to make specific aggregations dedicated to identify and explain the specific characteristics of the Latin American constitutional reasoning culture. At this point however, I will only draw attention to the differences compared to the design that was laid down by the CONREASON Project.[1] Everything that is not mentioned in this Project Guide, or in the attached Code Book, the design of the CONREASON project is applicable.

A. Constitutional Reasoning

The concept of constitutional reasoning is a multifaceted phenomenon, it could be analyzed from various points of view (Jakab-Dyevre 2013), which means that it requires the analysis of various factors of the reason-giving activity to declare it wrong or incorrect. There are several factors, both inherent to law, such as its open texture (Hart 1961), as well as external factors, such as the

[1] See, András JAKAB-Arthur DYEVRE-Giulio ITZCOVICH, Comparative Constitutional Reasoning (CUP 2017); András JAKAB, Judicial Reasoning in Constitutional Courts: A European Perspective. 14 German Law Journal 8 (2013); András Jakab – Arthur Dyevre, Foreword: Understanding Constitutional Reasoning. 14 German Law Journal 08. (2013); András JAKAB-Arthur DYEVRE-Giulio ITZCOVICH, CONREASON – The Comparative Constitutional reasoning Project. Methodological Dilemmas and Project Design. MTA Law Working Papers 2015/9.

convictions and ideologies of both the judges and those who supposed to evaluate their decisions (Bencze-Ng 2018, 2). In order to guarantee the relative objectivity, comparability and applicability of the research, and at the same time to come up with relevant results, we shall use sophisticated concepts that are well-defined and used in the same way and are suitable to grab very similar conceptual content in different realities. In other words, we need to code the decisions (to analyze them) as homogenously as possible, led by a relatively common understanding of the methods of interpretation and concepts applied in this research.

1. The analysis of the decision or its reasoning?

First of all, we need to differentiate between evaluating the decision and its reasoning (Bencze-Ng 2018). A judicial decision can be good, efficient, or even just, but it doesn't necessarily mean that its reasoning is sufficient or persuasive. It holds the other way around as well – a judicial decision can consist of logically coherent arguments and correctly applied interpretive methods, but it can still result a wrong, inefficient or unjust decision. The main purpose of this project is to analyze the judicial reasoning of the Inter-American Court, and of constitutional courts and supreme courts that perform constitutional review in Latin America (as follows Courts). The research design was elaborated in order to be able to identify and explain the most important features of the constitutional reasoning culture in Latin America, and also to measure the weight of the different reasons to draw some conclusions on the leading arguments that decide constitutional law cases in Latin America. The analysis of the reasoning instead of the decision requires the application of widely-accepted rules about the meaning and scope of the related concepts, interpretive and argumentative methods and the motivations behind including them in the research (Chan 2016). The activity to analyze the constitutional/judicial reasoning instead of the decision, implies a more analytical and less prescriptive approach: the objective of this project is not to evaluate the legal correctness of the decisions, but to identify and explain features and trends of constitutional reasoning in the region. Our task is not to assess whether the Court in question arrived to the correct/just/effective decision, but rather to identify and explain the reason-giving process by which they reach decisions in general. This analysis, of course, allows us, Authors to draw conclusions about the reason-giving practices of the Courts (as it will be indicated later), but all these conclusions shall be based on the empirical analysis. This way the doctrinal and the empirical components complete each other.

There are some changes though compared to the design of the CONREASON project – as a result of the diagnostical research on fifteen cases from four pre-selected countries, we have added additional indicators. One of the challenges has been to include an indicator that is able to contrast those arguments and concepts that are merely mentioned throughout the decision and those that are truly taken into consideration in order to arrive to the conclusion. Based on preliminary research mentioned above, one of the characteristic features of the decisions is the sharp variation between the argumentative use of concepts and interpretive methods, and their use only for rhetorical purposes. First, this issue was framed expressively as a quality-issue. The reason for this was that the different strategies of deceptive use of arguments clearly takes us to question the coherence, and in the end, the quality of the reasoning. To frame the incoherence between argumentative use and the rhetoric or deceptive use of arguments as a quality issue would probably be misleading and would offer a confusing reading of the objectives of this indicator: it is not to make a judgement over the quality of the decision, but to describe the relation between the different arguments and the conclusion. Therefore, the new indicator on this matter is formulated as an issue on the weight of the arguments. In order to help you identifying which argument or concept is

decisive, supporting, rhetorical or deceptive, I have included a relatively long explanation on this matter in the Code Book. Once we can contrast the use of pseudo-, or deceptive arguments (Bencze-Ng 2018) and the decisive and supporting arguments (the ratio decidendi and obiter dictum arguments), it will allow us to draw conclusions on decisions with more and less argumentative character.

Other indicators designed for the Latin American context are the ones on the bottom-up (by the citizens) or top-down (by the government) involvements in the cases, mechanisms of control, economic, social, cultural and environmental rights, pro homine principle, activism, transition, or post-material values, for instance. Another new tool that was included in the Code Book, is the one, which allows for more sophistication in the case of certain indicators, and instead of marking only 'YES', there will be the possibility to differentiate different scenarios of the same affirmative answer indicated by numbers. Depending on the nature of the These indicators will be suitable in order to identify features specific to this region and make visible previous changes and current trends that mark the profiles of the region's constitutional courts on a national and on a regional level as well.

2. What do we mean by "constitutional" "reasoning"?

Constitutional reasoning refers to the reason-giving activity based on the constitution. There are however several approaches to define and explain the nature of constitutional reasoning, but in order to guarantee easily applicable concepts and comparable results, we will use constitutional reasoning in a strict sense.

Following this, reasoning means the activity through which judges of the Courts provide justificatory reasons for their decisions. The literature differentiates between several types of reasons[2], such as justifications, motivations or explanations, but only the justificatory reasons have the capacity to support decisions in a normative way, i.e. by referring to established norms or universally-accepted values and principles. By reasoning we mean those activities of judges where they offer answers to the question "why?"[3] with the objective to present justification for their decisions. Therefore, simple affirmations, declarations or the recalling of factual circumstances, as well as mere citations of laws or the constitution, are not considered as reasoning without answering why that information or detail supports the opinion. In order to be able to call a set of propositions an argument, it needs to contain an inference, a sort of logical connection that binds the premise to the conclusion with a normative force.[4] For instance, pseudo arguments[5] are assertions that could appear as arguments at first sight, but after a more careful analysis, they do not contain the necessary normative connection between the mentioned assertions. Furthermore, there are deceptive arguments, that refers to the intentional use of fallacies, such as appeal to emotions, arguments ad hominem or distractions from the substance of the issue at hand. In order

[2] Johanna Fröhlich: „*Law as Reason for Action*" in: Mortimer Sellers – Stephan Kirste (eds.), Encyclopedia of the Philosophy of Law and Social Philosophy. Springer, The Netherlands (2018/2019)

[3] Veronica Rodriguez-Blanco, Law and Authority under the Guise of Good. Hart publishing, Oxford and Portland, Oregon, 2014.; Grégoire Webber, Asking why in the study of human affairs. Queen's University Faculty of Law Research Paper Series (May 2015)

[4] Irving M. Copi – Carl Cohen, Introducción a la Lógica. 2nd edition, Limusa, México, 2013. 7.; Mátyás Bencze – Gar Yein Ng (eds.), How to Measure the Quality of Judicial Reasoning. Springer, 2019. 91-96, 97.

[5] The conceptualization of Mátyás Bencze. You can find his ppt presentation on the webpage of CORE, under Events. www.corelatam.com

to be able to decide if in the concrete case it is or it isn't an argument, and differentiate between loosely conveyed arguments and deceptive arguments, one should always need a sound expert judgement on a case by case basis.

This issue will be relevant for the indicator on the overall weight of the arguments as well. The weight of an argument depends on how much it contributed to the legal conclusion of the concrete case ta hand. The overall weight of the arguments refers to the ratio between those arguments that were mentioned but not taken into consideration (meaning they had very little or no weight on the legal outcome of the case), and those that in fact contributed to conclusion of the case (on "conclusion" we mean the Case Disposition in Q4).

Arguments could be categorized based on their weight as follows: *ratio decidendi arguments* are the ones that determine the conclusion. Arguments of *obiter dictum* are those that are not conclusive, but they support the conclusion. Finally, *decorative or rhetorical arguments* are those that do not have any persuasive effect from a conceptual/legal point of view, but only from a political-communication point of view. Also, you might find *pseudo arguments or deceptive/inappropriate arguments* that only seem to be arguments, but in fact they are not, as the Court does not express the logical connection between its assertions and the conclusion. In order to be able to find these, first you need to identify the arguments mentioned by the Court (this is what you have been doing already by filling out the previous rubrics of the excel) and then experiment by imagining to delete them one by one. If by deleting an argument, the conclusion would be different, you have found the ratio decidendi argument. If by deleting an argument, the final decision would still be the same, but less persuasive, you have found the obiter dictum. If the deleted argument does not affect at all the conclusion, you might have found a decorative or rhetorical argument or it could also be a pseudo argument or deceptive argument.[6]

Furthermore, constitutional reasoning refers to the justificatory reasons related to the constitution, and not to ordinary laws. The objective of this research project is to analyze and explain the characteristics of the constitutional reasoning culture, meaning how Courts construct and apply reasons about the highest legal norm of the legal system. The presumption behind this differentiation is that constitutional interpretation has distinctive features compared to plain legal interpretation. The preliminary research nevertheless, showed that several Courts use ordinary legal sources to justify their decisions. Following the conventional rules of constitutional reasoning, this is a fallacy, as it weakens the supremacy of the constitution and "fills it up" with inferior legal sources, while the ideal case would be to correct the legal system by applying the constitution to the laws, and not the other way around. If you find that the analyzed decision contains arguments based on ordinary laws to interpret the constitution, you shall check the "Q25-Other types of argument or method" and make note about how often you encounter similar examples, so that you can give a detailed account of this feature in your chapter.

B. Questionnaire for the Country Reports

[6] The method of measuring the weight of the arguments, i.e. the design for identifying the conclusive, supporting and decorative or deceptive arguments were inspired greatly by the ideas of Mátyás Bencze.

I. Legal, Political, Institutional and Academic Context

I.1. Legal and Political Culture as Context for the Constitutional Reasoning

The prevailing legal and political culture, including traditional conceptions of the nature of law, the constitution and the proper role of courts; attitudes and reactions of the other branches of government towards perceived judicial 'activism'; and the extent to which judges have felt compelled to 'stretch' their constitutional authority in order to deal with problems such as corruption, oppression, injustice and abuse of power. What are the typical implied political philosophical presuppositions (the existence of a pre-legal state or human rights as natural rights) in general and related to the legitimacy of law? What are the usual spoken or unspoken premises about the purpose of the political community and of its constitution?

Are methods of legal reasoning different in ordinary courts? How far do the literature of your system and the judgments themselves consider the extent to which constitutions differ from statutes, and require different methods of interpretation? If there are such differences in practice and/or they are analyzed in the literature, how are these differences explained? By the intended longevity of constitutions, their inclusion of broad, abstract terms, or the difficulty of amending them? Are ordinary courts following the judgments of the constitutional court?

I.2. The Court and Constitutional Litigation

What are the relevant competences (e.g. abstract review, individual complaint etc.) of the court? Who has standing (MPs, ombudsman, ordinary courts, individuals...) to bring a case and under what circumstances can the court choose among the cases brought? Does the court have any discretionary power to refuse to review a case or to select a case for review? How responsive is the Court, how much is it responding to the arguments contained in the petition?

Do other courts have the competence to annul statutes?

Are cases (always, frequently, never) orally argued? Who are the parties to the procedure? Can the State (government organs, authorities, ministries, or the President) or state-owned companies bring a case to the Court? Under what conditions?

Are there any specific (constitutional/statutory) rules about the admissibility of proof/argument in the court? How often are they used? Please provide examples.

What is the workload of the Court (number of cases decided per year, incl. *a limine* rejections for formal reasons or for being obviously unfounded)? How has it varied throughout the years? Are all the decided cases published (what is the percentage of published vs. unpublished cases)?

What kind of judgments does the Court adopt as to their legal nature? Is there a commonly accepted typology of constitutional judgments? (e.g., judgments on admissibility / on the merits, „interpretative judgments", „warning decisions", etc.) What kind of remedies could the Court order as consequence for the unconstitutionality? Are they based on the constitution or on the laws or has the Court derived new means of remedies in its jurisdiction?

How could you characterize the efficiency of the Court's decisions in general terms? Are the decisions of the Court usually respected by other state branches? Have the decisions of the Court been overruled by the legislative or executive? How often has that happened? What is the perception of the academic and professional community on the level of compliance of the decisions of the Court?

I.3. The Judges

How many members does the Court have? How are the judges selected? Are they elected/appointed for life or for a shorter period? Is there any mechanism pertaining to the removal of individual judges? Has the Court throughout its history with constitutional review been dissolved, or has it gone through dictatorships? If yes, how was the Court affected by this, especially from the point of view of its competences, case load and efficiency?

Are the judges academics, politicians, judges or other practitioners? Has the ratio of these four groups changed significantly over time?

1.4. Legal Scholarship and Constitutional Reasoning

Is legal scholarship critical/deferential towards the court? Are the works of law professors (who are not sitting on the Court) perceived to have an impact on the way the Court argues or on the court's jurisprudence? How do you see the prestige of a constitutional court judge compared to that of a constitutional law professor or a litigating lawyer in your system? Can you compare the salaries?

Are there any generally (or at least widely) accepted theories about constitutional reasoning, constitutional interpretation or legal interpretation (including the ranking of interpretive methods) in general in the country under consideration? If yes, please outline them (2 pages max.). Are these theories explicitly mentioned in the judgments? What do you think are the main divisions among the existing theories?

II. Arguments in Constitutional Reasoning

For this part of the Country Report the Authors are required to base their analysis on the 40 most important judgments of the Court. Each Author should strive to identify the 40 judgments that are perceived, in the legal community broadly defined (i.e. encompassing judges, law professors and practitioners), as being the Court's most influential ever (both in the scholarly discourse and in legal practice). Authors should also include the separate (dissenting and concurring) opinions of the judgments in the analysis.

II.1. The Structure of Constitutional Arguments

What is the usual structure of arguments? What is your assessment of the frequency of use of the following argumentative structures in judicial opinions on constitutional matters:

- chain-structure: deploying one conclusive argument (or a chain of arguments following from one another)?
- "legs of a chair": cumulative-parallel arguments, i.e. the arguments support a certain legal interpretation independently; every argument would suffice on its own, but there are more of them; the reasoning thus resembles the legs of a chair?
- dialogic: the opinion presents a range of relevant considerations, none of which is really conclusive, yet taken together they indicate a certain way of solution (discursive or dialogic style; making use of topoi)?

II.2. Types of Arguments in Constitutional Reasoning

Which of the following arguments are used (or explicitly rejected) in the 40 opinions? Please do not consider those arguments which are used to interpret statutes or regulations (i.e. infra-constitutional norms), you can find a separate indicator for this pattern on "Deferential arguments". Please fill in the summary table of the 40 judgments in the attached Excel table on the use of the following arguments:

Identifying or explicitly discussing the text of the Constitution,
Applicability of constitutional law (e.g., political question doctrine, conventionality control, state-centered arguments in a state of emergency),
Analogies,
Ordinary meaning of the words of the Constitution or reference to the 'wording of the Constitution' in general,
Harmonizing arguments (separate domestic harmonizing and international/EU harmonizing arguments)
Precedents (former own cases),
Doctrinal analysis of legal concepts or principles,
Arguments from silence,
Teleological/purposive arguments referring to the purpose of the text,
Teleological/purposive arguments referring to the intention of the Constitution-maker (incl. travaux préparatoires),
Non-legal (moral, sociological, economic) arguments,
References to scholarly works,
References to foreign (national) law,
Pro homine/pro persona principles,
Other methods/arguments (explain in the text especially these arguments).

Please also mark those judgments with 'YES' where a certain argument was considered but eventually rejected (e.g. if the opinion distinguishes the case at hand from former precedents, it does count as an 'argument from precedent'). However, do NOT mark 'YES' if the argument was rejected altogether or marked as irrelevant or inappropriate (e.g. the argument "we do not consider here moral arguments because it is a court of law" does not count as a non-legal argument).

What are the typical situations in which these arguments are resorted to? Is there any self-reference in the Constitution about how to interpret its provisions?

II.3. The Overall Weight of the Arguments

What is the result of the analysis on the weight of the arguments? Does the Court usually consider the arguments that it mentions and does it connect them to the final conclusion of the case? Are there any specific doctrine in your country or in the jurisprudence of the Court on how to weight arguments (methods)? If yes, please give illustrations.

Can you identify any pattern with regard to the conclusive argument? Which type of argument is usually the ratio decidendi? Is it possible to categorize arguments as auxiliary/secondary (offering only a backup or additional argument for the result which has already been derived from another argument) as opposed to main or primary arguments? Does the weight of a specific argument (e.g., literal, purposive argument or reference to precedents) differ depending on the specific area of constitutional law (human rights vs. power allocation)?

II.4. Judicial Candor and Judicial Rhetoric

Judges make value judgments in the course of adjudicating cases, but to what extent are these value judgements acknowledged in their opinions? Do you see a correlation between opinion length and the judges' degree of candor?

Do the opinions deal with possible counter-arguments (and/or the arguments of the parties, if there are parties to the procedure; and/or from legal scholars, even if not referring to them explicitly)?

How technical is the language used by the opinion writers? Is it understandable for non-lawyers and/or for lawyers not specialized in constitutional law?

Who are the target audience of the reasoning of the judgment? Courts? Parties in the proceedings? Lawyers? Politicians? General public? Law students? Academic constitutional lawyers? Judges of the same court? Foreign or international courts (aiming at judicial dialogue)? Please weigh the relevance of the audiences.

What is the degree of generalization? Do judgments concentrate on the very specific issue to be decided or are they trying to develop a general conceptual frame and/or principle for future cases?

What is the degree of rhetoric? Do you find (legally irrelevant) political and/or emotional language in the text of judgments?

II.5. Length, dissenting and concurring opinions

Does the length of the opinions show any correlation with the topic? Has it been growing by time or not? Are there any other factors influencing it (e.g. changes in political power, changes in constitutional text, changes in the personnel of the court)?

Is it possible to submit dissenting or concurring opinions? If yes, then how often does it happen? On what does it depend, whether there are dissenting and concurring opinions to a judgment? Are there any factors (the nature of the topic, changes in political power, changes in constitutional text, changes in the personnel of the court) that make it more it likely?

II.6. Framing of Constitutional Issues

Can you see any typical ways of characterizing constitutional issues (e.g. as procedural/due process issue rather than as fundamental rights issue)?

Have there been changes over time in the way constitutional cases are conceptualized?

II.7. Key Concepts

Taking a broader look at the Court's jurisprudence and argumentative practices, how frequently, if ever, does it make use of the following concepts (please give a definition only where a constitutional lawyer with a general basic knowledge of comparative law might be surprised: the purpose is not to analyze any concept, but only to avoid misunderstandings when comparing with other countries):

- 'the rule of law' (incl. 'separation of powers', 'primacy of the constitution', 'legaliyt', 'legal certainty'),
- 'judicial independence'

- ‘democracy’ (incl. sovereignty of the people),
- ‘sovereignty’ (‘international independence’, ‘state’ or ‘statehood’),
- ‘state form’ (‘monarchy’, ‘republic’)
- government system by procedural structure (focusing on the different aspects of presidentialism, but containing the parliamentary system as well)
- ‘government system by power structure’ (‘regionalism’, ‘autonomous regions’, ‘devolution’, ‘autonomy of local governments’, ‘subsidiarity),
- ‘secularism’ (or the separation of state and church),
- ‘nation’ (civic, ethnic or a mixture, plurinationalism),
- ‘proportionality’,
- ‘core of constitutional rights’ (*Wesensgehalt*, of competences or of fundamental rights),
- ‘human dignity’,
- ‘equality’ (or non-discrimination),
- ‘basic procedural rights (incl. ‘due process’ and ‘presumption of innocence’, but excl. procedure of law making),
- ‘freedom of expression’,
- ‘rights to privacy’ (right to privacy, data protection),
- ‘post-material values’ (quality of life over material and physical aspects, like happiness, trust, ecology, civic culture)
- ‘justice’ (both corrective and distributive)
- ‘custom’ (as constitutional culture, customs of law)
- ‘family’ (legal, cultural, economic or social aspects of family)
- ‘transition’ (democratic transition or structural transition of legal or cultural institutions)
- ‘economic, social, cultural and environmental rights’ (women, indigenous people, ethnic minorities, refugees, rights of nature)
- ‘mechanisms of political control’ (corruption, good government, efficiency)
- ‘judicial activism’

Are there any further key concepts widely used by the Court? If yes, which ones and how are they defined? Are there are other peculiarities in constitutional terminology which could be surprising to foreign constitutional lawyers (max. 1 page)?

Are the key constitutional concepts spelled out in the constitutional text(s) (respectively in the text of the founding treaty)? Are the key concepts somehow derived from higher ranked constitutional provisions (Infinity clauses or alike)?

Are they used in an operative manner in the sense of triggering specific legal consequences, or are they essentially deployed as rhetorical device? Has the frequency of use of any of these concepts changed throughout the years? If yes, what would be the most plausible explanation?

III. Comparative Perspective

(Authors should write this part after having read the first drafts of the other country reports, thus after our workshop next year, in June, 2020.)

Can you see any major differences in the applied key concepts, typical arguments etc. as compared to the other countries as seen in the country reports? How can this be explained?

Please also consider: (1) the possible correlation between procedural aspects of constitutional review and the style of reasoning, (2) differences in political theory in the countries (relative roles of courts and legislature), (3) differences in legal culture, including legal theory, (4) differences in personnel (including training and background) for explaining the differences in constitutional reasoning.

Hypotheses to be tested: (1) ‘Without a full posterior constitutional review and a great amount of cases, the conceptual sophistication in constitutional law remains underdeveloped’ (2) ‘The older the Constitution is and the more difficult it is to amend it, the more likely the judges are to use purposive arguments instead of literal arguments’ (3) ‘The more academics are sitting in a court, the longer and more detailed the judgments / the more abstract the judgments / the more references to academic literature’ (4) ‘The closer the case in time to the dictatorial past, the more likely for it to use creative means of interpretation and extend its powers.’ (6) ‘The closer to the contemporary times, the more likely that Courts would use foreign legal sources from Latin America’.

As a conclusion, list a handful of important general unwritten premises (implied presuppositions) that you think a foreign lawyer needs to know in order to understand a judgment of your constitutional court. E.g. ‘the Constitution says something about every single legal case’, ‘constitutional law should only be considered, if it is an important political issue’.

IV. Evaluation, Pathology and Criticism

What features of the argumentative practices of the Court in your country do you consider to be pathological? Highly subject to criticism? For example, do judges manipulate constitutional language? Do they make bad arguments of a given type? What else? Or the opposite: do you see any exemplary elements which other countries should consider to borrow? How common are these? How would you summarize and explain the results of the indicators on the impact and quality of the Court’s reasoning?

The authors are invited to conclude their chapters with some overall critical observations, on issues such as whether the courts have been either too legalistic or too creative, and the contribution they have made to their societies.