



Towards understanding constitutional court resilience vis-à-vis autocratization: An institutionalist approach

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Abstract

Attitudinal and strategic models prevail in studying the capacities of centralized constitutional courts (CCs) to withstand autocratization. Yet, these models rarely scrutinize CCs' interpretations of political concepts. This article aims to remedy the gap via an institutionalist approach to the significance of conceptualizations of democracy by CCs. It invokes a maximalist reading of democracy to accommodate a wide range of conceptions, is diachronic, squarable with comparative case studies and sensitive to political regime types, using an ideal-typical distinction between semi-authoritarian, illiberal and democratic regimes. The article illustrates the potential of this approach by presenting a dataset on CCs in Hungary and Slovakia. Both regimes have formally powerful CCs with a non-democratic experience. Yet, they seem to have taken a different trajectory since 2010. The article suggests that analysing these two CCs' conceptions of democracy can advance our understanding of their role in preventing (or failing to prevent) autocratization in Hungary and Slovakia.

Key words

Constitutional courts; democracy; paired comparison; Visegrád Four

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Resumen

Los modelos actitudinales y estratégicos prevalecen en el estudio de las capacidades de los tribunales constitucionales centralizados (TCC) para resistir la autocratización. Sin embargo, rara vez analizan las interpretaciones de los conceptos políticos por parte de los tribunales constitucionales. Este artículo pretende remediar esta laguna mediante un enfoque institucionalista de la importancia de las conceptualizaciones de la democracia por parte de los tribunales constitucionales. Invoca una lectura maximalista de la democracia para dar cabida a una amplia gama de concepciones, es diacrónica, cuadra con estudios de casos comparativos y es sensible a los tipos de régimen político, utilizando una distinción ideal-típica entre regímenes semiautoritarios, iliberales y democráticos. El artículo ilustra el potencial de este enfoque presentando un conjunto de datos sobre los TCC en Hungría y Eslovaquia. Ambos regímenes tienen TCC formalmente poderosos con una experiencia no democrática. Sin embargo, parecen haber seguido una trayectoria diferente desde 2010. El artículo sugiere que el análisis de las concepciones de la democracia de estos dos TCC puede ayudarnos a comprender mejor su papel en la prevención (o el fracaso en la prevención) de la autocratización en Hungría y Eslovaquia.

Palabras clave

Tribunales constitucionales; democracia; comparación por pares; Grupo de Visegrado

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1. Introduction

Constitutional courts (CCs) of the “Kelsenian type” (Ginsburg 2010; also Cappelletti 1971) were celebrated for their capacity to contribute to democratization, particularly after 1989 (Schwartz 2002, Robertson 2010). 35 years later, this perspective has largely given way to voices cautioning against trust invested into the capacity of these institutions to prevent or resist autocratization. Rationalist political science approaches (Pritchett 1968, Segal and Spaeth 2002), mirroring legal realist perspectives on judicial decision making (O.W. Holmes 1997; see also Leiter 2001) gain more traction, as they tend to emphasize courts as *being influenced*, rather than with a capacity to influence, (non-judicial) political context (Vanberg 1998, 2015, Ginsburg 2010). Even voices more enthusiastic towards judicial capacities, while not endorsing the attitudinal model, have a tendency to embrace a *strategic* approach, where CCs and their judges need to beware of authoritarian surges, and engage in strategic retreats to “live to fight another day” (Dixon and Issacharoff 2016; see also Daly 2017, Dixon 2021, Roznai 2020, Verdugo 2021). One volume concludes that CCs may protect democracy in so far as they prompt partisan actors to be more prudent in their conduct, but hastens to add that this is only possible when fundamental conditions of democracy are already met (Staton *et al.* 2022). In this sense, democracy is understood as existing *prior to* CCs.

This article follows a different path, by considering democracy as *co-created* by the CCs. It chiefly presents a framework to examine how shifting conceptions of democracy that include or exclude different elements of an ideal-typical democratic regime (cf. Dworkin 2011) determine particular CCs’ impact potential on safeguarding and developing democratic values. The framework is inspired by new institutionalist scholarship (March and Olsen 1983) that investigates the impact of ideas emerging within institutions on change. The historical variant of new insitutionalism underscores the significance of “path dependencies” preventing the solidifying of judicial independence and accountability (Graver 2018, Graver and Čuroš 2021), and it is capable to “identify actual patterns in legal and political discourse and their consequences, testing their significance versus that of other structural contexts” (Smith 1988, 106). Specifically, the framework is based on the logic of the CC more or less implicitly embracing a certain conception of democracy as basis for the kind and direction of its impact on democracy in combination with the surrounding political regime context. Specifically acknowledging the impact of political context on institutional action (Clayton and May 1999), the article studies how a pure majoritarian conception of democracy prompts the CC under most circumstances to be doomed to fail in performing of a role of a guardian of democracy.

Section 2 discusses the relevance of the political regime context in exploring the impact potential of various conceptions of political concepts as illustrated via the concept of democracy, and calls for adopting a *circular model of influence of the CCs* in which their impact potential and their position in the political regime are mutually constitutive. Section 3 makes the case for studying the Slovak (SCC) and the Hungarian Constitutional Court (HCC) to clarify the value of this analytical approach as a starting point for understanding the impact of two CCs operating in contexts of autocratization. The Conclusion (Section 4) summarizes the contribution of this approach and calls for further empirical research.

2. From conceptions of democracy toward constitutional courts' political regime impact potential

CCs are foundationally political institutions (Rothstein 1998), but, unlike the executive and the legislature, they are not supposed to be *partisan* institutions. CCs are political because they carry the promise to help facilitate and advance freedom, a condition at the core of what *politics* means (Arendt 2016). Such a fusion of politics and law appears to be of concern, for instance, for the doyen of new institutionalism, Johan Olsen (2017, 535). Yet, it need not be, since, in the Arendtian reading of politics, the fusion merely signifies that CCs and judges possess authority beyond brute power (Bassok 2017)¹ which carries genuine choices and the potential for the judges to advance justice (Mańko 2023, 333–36). Some critical legal scholars go further and consider politics as an opening for pursuing particular ideological beliefs (Kennedy 1997, Chapter 6). Yet, such a reading, albeit provocative, stretches the concept of ideology far from its conventional understanding in the social sciences (see Sartori 1969) and thereby risks antagonizing judges themselves alongside broader constituencies for whom associating ideology with a chance for progress, especially in legal reasoning, would be implausible.

The consideration of CCs as political albeit not necessarily partisan or ideological underscores the key role they may play in resisting autocratization, depending on the meaning they provide to *political concepts* that are subject of contestation (e.g. Urbinati 2019, Osterberg-Kaufmann *et al.* 2020). The conceptions of political concepts developed by CCs matter because CCs are the authoritative interpreters of constitutions that are unimaginable without referring to at least some political concepts. Among these, democracy is the key “essentially contested concept” (Crick 2003). While there are others, such as the rule of law (Waldron 2021), democracy “carefully understood, remains the most potent weapon yet invented by humans for preventing the malicious abuse of power” (Keane 2022, Introduction). In relation to CCs, democracy has been identified to be the second most-frequently used constitutional concept after the rule of law from among several ones studied in a (selective) global comparison (Jakab *et al.* 2017, 764–65).

Conceptualizations of democracy launch a monumental “adjective game”, finding associations with democracy on both expected and unexpected places (Gagnon 2018). One way to distinguish between conceptualizations of democracy is the range between minimalist ones, focusing on free and fair political competition only, to maximalist ones, incorporating output-based standards, such as social justice (Bühlmann *et al.* 2012; for more details on conceptions of democracy in relation to CC operation, see Steuer 2022, 1209–11). This distinction incorporates, *inter alia*, individual rights as inherently linked to conditions of democratic government (Besson 2011). It also retains the possibility for the interpreters of democracy to include among its features some form of social justice (Baviskar and Malone 2004, 10; Merkel 2014, 13–14) but its specific components vary. Furthermore, it leaves open the possibility for the CCs to defend democracy at or in

¹ Space constraints do not permit discussing Arendt’s perspective on courts and the extent to which it (following Bassok’s interpretation thereof) might be out of sync with Arendt’s own reading of politics as formulated in her other works. Briefly, these contradictions might reduce with a reading of expert authority in Arendt not as altogether administrative or technical but as necessarily in need of embracing democracy and its associated values in order to preserve politics *as* freedom.

relation to the supranational level (e.g., in the European Union context, the necessity of fundamental rights guarantees in the conduct of EU institutions or mechanisms that give the citizens voice in affecting EU politics).

A maximalist conception could connect democracy and justice; for example, in Shapiro's (1999) account, "achieving justice democratically" (in a procedural sense) and the concern of democracy for justice are the core meeting points between democracy and justice. The democratic procedure (a middle-ranged definition in Shapiro as it incorporates the politics against domination) paves the way towards a more maximalist, output-oriented one ("delivering" justice). Here, democracy can be connected to extending the scope of political equality through social rights (King 2012, Daly 2017, 48–50). This is particularly important to avoid becoming distant from the publics in contexts in which social inequalities and insufficiency are major concerns, often recognized by constitutional texts as well (cf. Sulikowski and Mańko 2023, 257; Steuer 2023).

Empirical studies of the nexus between democracy and CCs, unlike vast *conceptual scholarship* (not detailed here due to space reasons) tend to adopt a "minimalist" conception of democracy where majority rule and political competition are sufficient conditions for democracy to be in place. This prevalence of a minimalist approach may stem from the prominence of Dahl's framework of the US Supreme Court supporting the winning coalition, which was applied in studies asserting the possibility of CCs to enhance majoritarianism through endorsing policies that are supported by most citizens, or to block policies approved in opposition to the majority in the public (Bricker 2015; see also Keck 2014). Bricker's (2015, 126–27) analysis of the Polish, Czech and Slovenian CC asserts that the possibility of the CC judges to be reappointed may encourage them to support the preferences of the dominant majorities (e.g. political parties) if these decide on their reappointment. However, it puts less emphasis on evaluating the effects of supporting the majority preferences by the CCs on the democratic regime itself.

Sascha Kneip's (2011) research on "functional and dysfunctional decisions" of the German Federal Constitutional Court evaluates the contribution of CCs to democracy with the help of a two-dimensional typology that is more open towards a middle-ranged conceptualization. In each particular case submitted to it, the CC may decide to intervene (review the norm or declare a rights violation) in a matter that may or may not fall "within the sphere of core competence of constitutional courts" (Kneip 2011, 138). On the other hand, Kneip focuses more narrowly on the (ab)use of CCs' competences which would reduce the need for responses to instances based on curtailing *formal powers* of the Court.

This article, while inviting empirical research, calls for not limiting it to particular conceptions of democracy. To analyze conceptions of democracy in CC decision making, the *concept* of democracy, instead of following particular democratic theories (Sartori 1987), needs to be kept open, and even then the CCs might come up with surprising associations that might require further amendments. This openness aligns particularly well with the interpretive institutionalist perspective (Gillman 1999), that, by focusing on the centrality of ideas for political change, helps establish the link between conceptions of democracy and the CCs' impact potential on the surrounding political regime.

The following model accounts for some of the key different political regime contexts. As an important clarification, the model is diachronic, accounting for the unfolding of time. Time enables the creation of path-dependence where earlier decisions constrain or enable later ones (Pierson 2011). It is the fuel through which new ideas may become entrenched in the self-understanding of institutions and limit their transformation. The process of idea-generation and idea-transformation is ongoing constantly once the institution is in place as new ideas may emerge in reaction to established, previously dominant ones. These ideas may range from those speaking to the fundamental principles of the political community to those that determine a narrow range of questions of legal interpretation. Some of these ideas may get diminished in significance because of the changing political context that shifts public and expert attention away from the type of questions that the idea speaks to. Other reasons for the sidelining of some ideas in CCs' decision making may have to do with the change of the formal rules or the decrease of the salience of the dispute that had given rise to those ideas.

The cyclical model (Figure 1) accounts for time by recognizing that ideas, once articulated, may guide or complicate the expression of contrasting ideas later on. For instance, if a robust conception of democracy in relation to a specific fundamental right (such as freedom of expression) is pronounced by the CC shortly after its establishment, it will be more difficult to articulate a more restrictive conception by a future Court as that would require overruling its previous case law, making it more vulnerable to criticisms of inconsistency. Time matters as it witnesses shifting regimes as well as "generations" of the CCs. Furthermore, it helps trace ideas as they emerge in a particular moment of time, and then transform, become entrenched or are replaced by others.

The circle is by no means limited to the conceptions of democracy; however, for examining the impact on democracy rather than on social change more broadly (cf. Rosenberg 1991), the comprehension of how (not only) CCs and other political actors think about it is a necessary condition. Thinking about democracy in a certain way does not alone *suffice* for influence; an effect may be missing or run contrary to the conception either due to the political context surrounding the institution that engages in conscious or unconscious "democracy reflections", or due to this conception not being coherently reflected in the *output* of the decision making of that institution. The latter is likely to manifest in misunderstanding the interpretation of particular decisions or even entire segments of CC jurisprudence.

Despite all these uncertainties, this article argues for CCs' case law as the key source for their conceptions of democracy (box on the left in Figure 1), and a suitable entry point for study, for three reasons. Firstly, judicial decisions, especially in the prevailing absence of public statements of CC judges, are key for assessing the CCs' image. Secondly, the dataset of decisions can be juxtaposed with the public reflections of the CCs, unlike vice versa (without subscribing to claims that the CCs are *only* motivated by the public opinion). This sequence can identify decisions that are *not* taken up by constituencies surrounding the CCs. Thirdly, measurements of the state of the political regime (box on the right in Figure 1) are useful to get a rough picture of the context of the CCs' operation but imperfect to determine the CCs' influence. Indeed, some regime shifts might *not* be influential for the CCs' decision making including their conceptions of democracy.

FIGURE 1

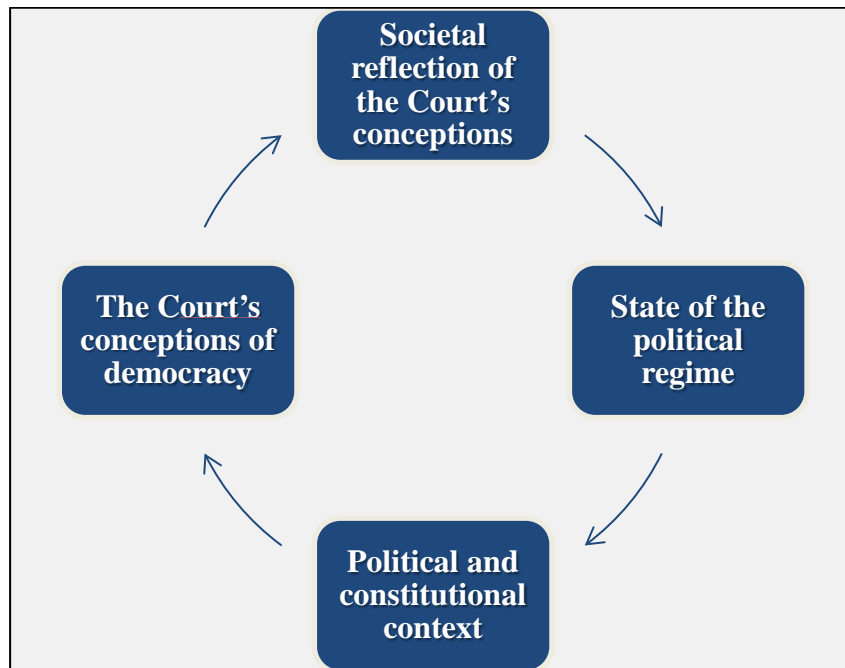


Figure 1. Typology of the expected consequences of different conceptions of democracy by the CCs operating in different regime types. (Source: Author.)

This circle fits with the “regime politics” approach to judicial studies (Whittington 2014) embedded in the institutionalist perspective presented above. Here, courts are not insulated from non-judicial political developments, yet, they do not comprise merely judges and other actors swayed by such developments. Courts have a “relative autonomy” to decide (Clayton and May 1999). Juxtaposing the political regime context with the CCs’ conceptions of democracy prevents making acontextual simplifications, such as that a majoritarian conception of democracy is *always* detrimental to its protection or that if the respective CC associates separation of powers with democracy, it *always* prevents power concentration. The typology below (Table 1) accounts for the regime context in which the respective CC is located. In order to sharpen the ideal-typical categories, it reduces the conceptions of democracy to three broad categories which have been discussed in democracy studies and reviewed in previous works (see Steuer 2022 and references therein).

TABLE 1

Conception of democracy / political context	(Semi)-authoritarianism	Illiberalism	Democracy
Minimalist	Positive effect	Supports the ruling regime	Frequently feeds into illiberal rhetoric
Middle-ranged	May have positive effect	Positive effect	May have positive effect
Maximalist	May be counterproductive (trigger backlash against institution)	May have positive effect	Positive effect

Table 1. Typology of the expected consequences of different conceptions of democracy by the CCs operating in different regime types.
(Source: Author.)

Such a typology must be approached with caution because it is not feasible to reduce the complexities of the CCs' reasonings into statistics. In practice, the CCs' arguments may flow over from one type to another in particular types of cases. Separate opinions may challenge or buttress the persuasiveness of these arguments, and they are relevant not only in common law, but also in civil law systems, especially with specialized CCs (see Kelemen 2024, Sec. 4). As all models (Segal and Spaeth 2002, 45–46), this one also simplifies reality. Nevertheless, it delineates the conduciveness of different conceptions of democracy to its protection in different regime contexts. Here, even minimalist conceptions of democracy may be conducive to democracy in a particular context. However, certain conceptions are particularly suitable to maximize the potential democracy-conducive impact of the CCs. The closer the political regime stands towards the democratic ideal, the thicker conceptions of democracy are the most useful for maximizing the CCs' democracy-conducive impact.

Turning to elements in the model, there are many ways of classifying political regimes, with a basic distinction between democracy and autocracy (authoritarian regime), the latter as harbouring unchecked power (Sartori 1987). While autocracy remains an ideal type, this article employs a distinction between (semi-)authoritarian and illiberal regimes (Waller 2024), with the distinguishing element between the two being the presence or absence of violence. Violence shapes legal interpretation (Cover 1986) and affects the society at large, with CCs being no exception. For instance, Slovakia's regime between 1994–1998 (Malová and Rybář 2000) would qualify as semi-authoritarian due to sporadic invocation of violence which, however, did not attain systemic characteristics. The boundary between illiberal regime and democracy, while even more fluid than dependent on assessing the presence of violence, departs from Sartori's abovementioned distinction between democracy and autocracy: regimes which facilitate (albeit do not yet entrench) unchecked power qualify as illiberal, as Hungary after the adoption of the new Fundamental Law and the failed resistance thereto by the HCC (Halmai 2023, 223–31). Yet, these are broad models that require nuance in concrete cases, and they merely serve to enable studying at which point the distinction between the use of various conceptions of democracy by the CCs is still, or no longer, conducive to its protection.

Hence, in an autocracy (upper left quadrant) the minimalist reasoning, appealing to the fundamental principle of the “rule of the people” being able to select their representatives and decide by a majority can resonate with the citizenry who, due to e.g. governmental propaganda including in the educational system or past experience with democracy do not have a more concrete conception of how democracy would make a difference. Reasoning incorporating fundamental human rights and procedural justice may have similar effects.

In an illiberal regime, a minimalist conception of democracy, at best, does not bring notable effects. At worst, it directly feeds into the rhetoric of the ruling elite, strengthening it with the authority of the CC. The insistence on the integral link between democracy and the separation of powers and fundamental rights can be expected to become a key difference between a CC fading into irrelevance, and the CC serving as a bulwark against further autocratization (cf. Lührmann and Lindberg 2019). This is because illiberal practices instrumentalize courts to become merely tools in the hands of the partisan leaders who typically claim to possess the legitimacy to control all state bodies based on a sheer majoritarian reading of democracy (cf. Sajó 2021, 66–75, Granat 2022, 2023). A maximalist conception of democracy could also be successful, even though the emphasis on social rights is more resilient towards illiberal abuse when combined with highlighting the political inequalities in accessing them (S. Holmes 2021, 4–7).

Finally, even democracy in which fundamental rights and basic separation of powers are alive and well remain fallible and are imperfect (e.g. Chernilo 2023, 288). The CC may become a crucial actor encouraging improvements by constantly reminding of the high aspirations that the democratic ideal entails (see Visser 2022). This is the constellation in which moving beyond separation of powers and fundamental civil and political rights becomes necessary. The defense of equality receives, *ceteris paribus*, greater positive reception from the public which has the means to prevent illiberalization through elections and other forms of political activism. This approach also attributes value to the finding of *lack* of CC engagement with the concept of democracy. Indeed, missing references to democracy might indicate the lack of interest or consciousness of the CC in thinking about democracy.

All in all, the model can be scrutinized vis-à-vis the conceptions of democracy developed by CCs operating in different regime contexts, in light of the consequences of those regimes for the CCs’ operations. The next section provides a guide on how case selection and data collection for a comparative analysis that takes conceptions of democracy seriously may look like.

3. Steps towards applying the conceptual framework: Zooming in on the Hungarian and the Slovak cases

It is relatively easier to study the details of voting behaviour and the variety of congressional committee life than to investigate the *arcana imperii* of the less open forms of the political. Sometimes, the methodological hypersophistication of the trivial offers better career opportunities. These biases are understandable (...) but they are unhealthy. (Bartolini 2018, xiii)

With his disciplinary anchoring in political science, Bartolini reminds of the importance of interpreting empirical data beyond quantifying them, as well as of studying a range

of phenomena as “political”, which include CCs. Yet, in studying CCs, there is a lack of inductive (theory-building) approaches examining the capacity of ideas emerging at the CCs to act as constraints on their influence. This section aims to enhance these, via a framework with the ambition to enable limited generalizations on (1) the changing constraining effect of diverse conceptions of democracy depending on the regime the CC is located in, and (2) the limitations posed by either the lack of engagement with the concept of democracy by the CC or the adoption of a majoritarian conception of democracy. The dataset of cases from the Slovak and Hungarian CCs from their establishment until (September) 2017 is presented via descriptive statistics, as a starting point for contextual case law analysis in further work (see also Steuer 2024).

The presented conceptualization of the CCs’ resilience to de-democratization can be applied for studying the conception(s) of democracy by any CC. *Formal powers* of the CC are not decisive, though more significant competences (such as abstract constitutional interpretation) may be conducive for the CC to engage more openly with core (and complex) constitutional principles. The interaction between the reasoning and the political regime context as presented in the typology distinguishing between democracy, illiberalism and authoritarianism is difficult to study if the particular court under study has not existed through periods which cross the (even if porous) boundaries between the regime types. To be sure, political change occurs in all, even long-lasting democracies (cf. Orren and Skowronek 2004, 1–32), with rules and practices being transformed due to more radical ruptures or incremental steps taken by various political actors. However, central for the analysis are periods of “backsliding” (Jenne and Mudde 2012, Greskovits 2015) or “deconsolidating” (Foa and Mounk 2017) in democracies.

The countries in the Visegrád Four region qualify for these standards. Hungary and Slovakia in particular offer variance for comparison under different regime conditions. This regime variability is enriched by the difficulties with a democratic transformation and the return of non-democratic tendencies in Hungary after 2010 (e.g. Bugarič 2019, Krygier 2019) and Slovakia after 2023. Data from the Bertelsmann Transformation Index (BTI) provide an authoritative measure of the quality of democracy. Available from 2003 onwards, BTI data can indicate the changes between different political regimes through the scores they assign to elements such as the rule of law—used as a proxy for this measure given the centrality of the CCs’ position for determining its score in BTI. Furthermore, references to the respective CCs are counted in the narrative BTI reports that, while not conclusive on the perceived significance of CCs by the report authors, hint at the extent for the CC to appear as a concern for evaluating the state of democracy. These statistics are also useful to highlight significant changes in the perceived role of the CCs, because expert reports discuss key changes compared to the previous reporting period.

Figure 2 shows the deterioration of the rule of law in Hungary, with a four-point drop between 2006² and 2024 on a ten-point scale (Bertelsmann Stiftung 2024). This is in line with the thesis about Hungary’s transformation to an illiberal regime coinciding with the rise of Viktor Orbán as PM in 2010. A similar decrease had occurred in Poland after the 2015 parliamentary elections which (until September 2017) would give only a very

² In 2003 (first year of BTI reporting), there was a slightly different methodology, causing no result to be provided on the Rule of Law Index.

brief “illiberal experience” to cover for the Polish Constitutional Tribunal. The Czech Republic becomes the “winner” of this comparison with high scores over the whole reporting period, despite concerns over signs of “backsliding”, especially before the 2021 elections (Hanley and Vachudova 2018).³

FIGURE 2

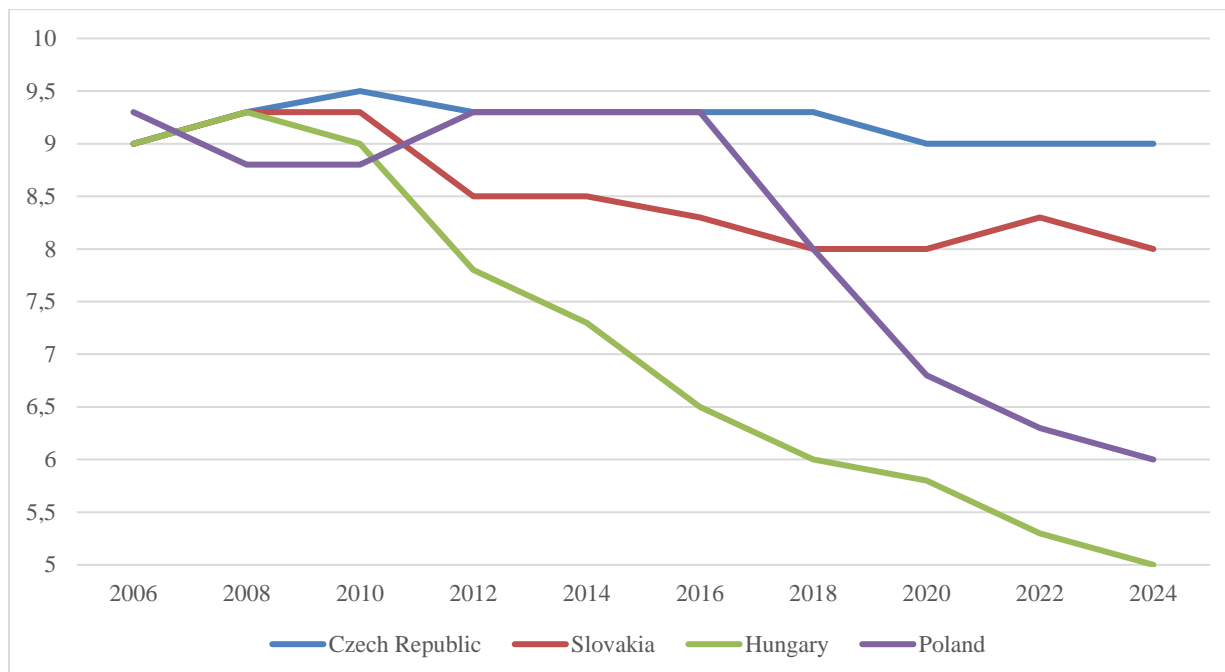


Figure 2. Rule of law 2006–2024.
(Source: BTI; see Appendix.)

Regarding references to CCs in the BTI country reports (Figure 3), there is a slight increase (as depicted with linear trendlines) over time. While the report on Poland in 2018 is an outlier in its steep increase of attention to the Constitutional Tribunal⁴, paradoxically, the Hungarian 2018 report does not demonstrate a significant engagement with the status quo of the CC. The Hungarian CC of the 1990s is generally praised for its decisive contribution to democracy (for one exception based in critical legal studies, see Bencze 2023, 173–83). Such praise is visible from the reports from early 2000s. The perception has changed in the 2014 reports, with an argument that “new rules concerning the nomination of constitutional judges were gradually turning, at the time of writing, the newly independent Constitutional Court into an assembly of Fidesz-loyal

³ Czechia (as Hungary but unlike Slovakia and Poland) was included in the “Comparative Constitutional Reasoning” project which engaged with the references to democracy as well. According to the analysis, ‘democracy or the sovereignty of the people is used [by the Court] rarely, usually in the most important cases (such as the systemic conflict of two political regimes)’ (Kühn 2017, 232). (Note how an equation is made here between “democracy” and “popular sovereignty” as if the latter exhausted the concept of democracy.) Other studies of the Czech case are in Kosař and Vyhnánek (2020) and Biagi (2019).

⁴ Additionally, references to the Czech, Hungarian and Slovak CCs in the now defunct East European Constitutional Review country reports from the 1990s to early 2000s demonstrate the *decrease* of attention to the CCs from the 1990s up until the EU accession (Franklin 1993). Indeed, in the early 2000s the CCs were not a major topic for discussions about democracy in these reports, which might have contributed to the lack of institutional development *within* the courts conducive to robust articulations of democracy.

affiliates” (Bertelsmann Stiftung 2014a, 2). According to one of the few references in the 2018 report,

(...) the Constitutional Court operates more as a body subservient to the government rather than its balance regardless of the fact that it criticized the government in some fundamental rights-related cases. In any case, these decisions did not affect the acquisition and maintenance of central power. (Bertelsmann Stiftung 2018a, 11)

In this form, the CC is “put into a box” of serving the autocratic executive and therefore the nuances of its work are not significant enough for the report.⁵ To be sure, not all these references are in the rule of law section of the reports. Furthermore, the sheer number of references does not indicate whether the CCs were perceived as positively or negatively influencing democratic transformation. At the same time, the number highlights that CCs have attracted more attention in the recent years, especially in Hungary and Slovakia.⁶

A closer look points to increased criticism of influences on their decision making in Slovakia and Hungary, as opposed to the Czech Republic. The 2014 and 2016 Czech reports praise the actions of President Zeman with regard to appointments of constitutional judges, and are more generous to evaluating the Court’s performance as well. In the Slovak case, the report from 2014 criticized the Slovak CC’s decision in the ‘appointment of attorney general’ case, although the main object of criticism were other political actors responsible for “overloading the Constitutional Court’s agenda with political issues” (Bertelsmann Stiftung 2014b, 12). 2016 has witnessed an overall decrease of this CC’s performance according to the respective report, and the 2018 report further argues along the lines of “evident political bias and a lower level of efficiency” demonstrated by the CC in some frequently discussed cases (Bertelsmann Stiftung 2018b, 10).

⁵ Such a perspective can be seen as detrimental for motivation to ‘break up’ with the executive for judges who have been nominated by its legislative majority. There is limited scholarly encouragement for these judges to realize both their powers and their responsibility towards protecting constitutional values (for an exception, see Jakab 2021). If the CC is portrayed as having been incapacitated and its judges just as servants of the executive, there is hardly motivation for those judges to act differently.

⁶ In Czechia, the attention to the CC in the reports was typically higher than in Slovakia but displayed less of an increase which, combined with the higher scores in the Index by Czechia supports the focus on the Slovak case.

FIGURE 3

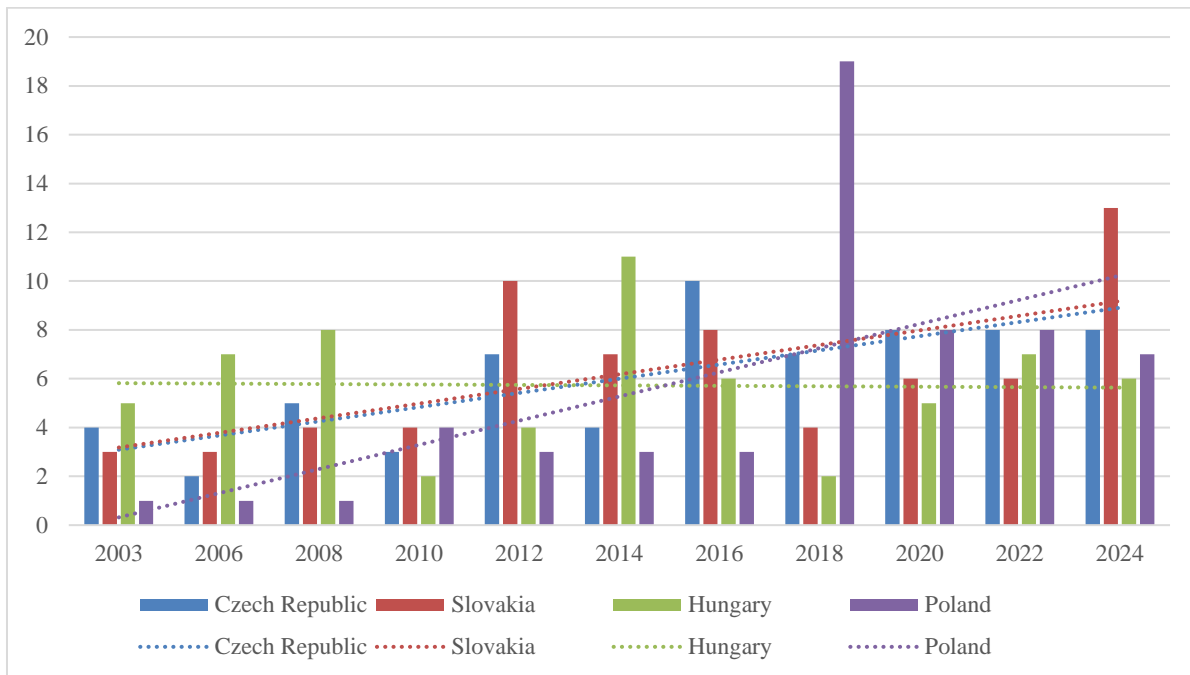


Figure 3. No of CC mentions in BTI country reports 2003—2024.
 (Source: Author, compiled from BTI data.)

The selection of CCs to study according to the regime conditions that surrounds them is based on the dependent variable, which in this case is the quality of democracy. Selection on the dependent variable is acceptable for comparisons of two cases (Tarrow 2010), such as two CCs, especially if the approach to comparison is more explorative and, in methodological terms, “disciplined configurative” (George and Bennett 2005, 75). Also, this “case-oriented” as opposed to “variable-oriented” approach (Della Porta 2008) allows to appreciate the complexity of the judicial decision making, whereby the conceptions of democracy serve only as the window into the self-understanding of the CCs in a given moment in time. Variance (in this case, different conceptions of democracy) might not be present and so the empirical proof goes only so far as to identifying a *necessary*, not a sufficient condition for the CCs’ democracy-protecting role. The lack of existing research on conceptions of democracy by the CCs creates a “low information setting (...) in which substantial research is needed to ascertain the values of independent variables and dependent variables [and which], present[s] special challenges for case selection” (Gisselquist 2014, 477–78).

As apparent from the typology of the varying consequences of conceptions of democracy under different political regimes, there are *three regime alternatives* (one moving towards authoritarianism, one illiberal, and one democratic) and *three major types of conceptions of democracy* (minimalist, middle-ranged and maximalist). These types, when considering the institutionalist perspective, give rise to the assumptions that (a) an equation of democracy with mere majority rule or the absence of engagement with the concept altogether in either (i) an illiberal regime or (ii) a consolidated/consolidating democracy, or (b) the absence of engagement with the concept of democracy in a semi-authoritarian regime marginalize the voice of the CC and hence constrain its *potential* to act as guardian of democracy. With the terminology of the necessary condition (Braumoeller and Goertz 2000, 846–47), this can be rephrased into engagement with democracy being a necessary

condition for the CC to act as guardian of democracy in all regime settings and a conception of democracy beyond majority rule⁷ a necessary condition for the CC to act as such a guardian in illiberal or consolidated regimes. Conversely, an absence of such an engagement under all regime settings or the equation of democracy with majority rule in illiberal regime or in a democratic regime is a *sufficient* condition for the *failure* of the CC to be the guardian of democracy due to the marginalization of its role at least in the substantial disputes that determine the future direction of the regime.

To sum up, the explorative framework enables the generation of hypotheses connecting the ideas of democracy to the (absence of) the democracy-guarding capacity of the CCs. Case selection-wise, unlike the Polish and the Czech case, the Slovak and Hungarian ones provide a variety of political regime contexts in which the CCs' conceptions of democracy can be studied. The next subsections present the proposed approach to studying the conceptions of democracy by the CCs and, by doing so, intend to further solidify the logic of inquiry that this endeavor subscribes to.

3.1. Research methods and their limitations

The present research design highlights the necessity of accounting for the unique political (including temporal) context surrounding each CC. The changes in the political regime characteristics as described above shape the context in which the particular decisions, even when on similar questions, are pronounced. Cases are categorized according to the links that are present in their *references to democracy*. Subcategories of cases are created depending on the subject area (e.g. particular fundamental right) or the type of question that the Court handles. The cases are juxtaposed with existing scholarship in the respective jurisdictions to prevent their presentation void of broader context.

Decisions were identified via keyword search, based on the noun "democracy". This certainly omits some decisions which frequently refer to the adjective "democratic" but do not use the noun. Cappelen (2023, 75) has argued that the adjective is broader than the noun as "most of the things that are democratic are not democracies". Yet, the present framework is not primarily concerned with "anything democratic", but with the conceptions of democracy engaged with by the CCs. Surely, the choice might lean towards a "regime-centric" or "principle-centric" bias, whereby those references in which democracy appears as a regime or principle are captured, but those in which "democratic" appears as a qualifier are not. Yet, democracy as a noun is not limited to the state. The limitation might be more fundamental in jurisdictions where democracy as a noun is not mentioned in the Constitution. However, unlike an arbitrary selection of cases, it allows for qualitative conceptual analysis where the number of cases would not allow this with a less rigid selection criterion.

The keyword search may bring up decisions in which the CC does refer to both democracy and fundamental rights (hence the decision would be categorized as pertaining to fundamental rights) but it argues *against* an association between them. For

⁷ Meaning inclusion of fundamental rights and separation of powers to *at least* reach a middle-ranged conceptualization. Conceptions of 'democracy' as presented in various authoritarian settings (for instance, that if certain components of human well-being improve, the regime qualifies as democratic even without competitive elections) do not qualify in this framework (cf. Zhai 2019 on the case of China).

example, HCC judge Pokol produced many separate opinions on cases concerned with fundamental rights and separation of powers, arguing overwhelmingly that these principles are *not* included in the concept of democracy and therefore the HCC must exercise deference unless there is a blatant violation of the post-2011 Hungarian Fundamental Law. It is for these nuances that the analysis is *qualitative* and *contextual*, moving beyond mere counting of frequencies in words. This approach is suited for capturing, among others, “the point of view, presuppositions, and values that may come implicitly with the message and make certain categories or notions appear natural or absolute in meaning” (Pickering 2004, 889; for a more advanced treatment, see Schreier 2012). Legal texts tend to be exceptionally complex in comparison to standard political texts (such as speeches). They employ legal reasoning to interpret existing legal texts that are themselves nuanced. Consequently, even more sophisticated quantitative accounts trying to account for context in a computer-assisted analysis struggle on their own—a typical example is the model by McTavish and Pirro (1990), which relies only on a dictionary to conduct the initial coding into different contextual categories.

Given that the dimensions into which the decisions are categorized were pre-set through theoretical foundations, the analysis is “directed” (Hsieh and Shannon 2005) in that no coding frame was designed subsequently to the establishment of the dimensions. By emphasizing the changes in the conceptions in time, rather than different frames irrespective of time, the significance of ideas developed by different judicial majorities and separate opinion writers in different political context can be explored in a more systematic way. Such analyses pay attention to the nuances that a more firm determination of codes may require to sacrifice in the name of a more holistic presentation of the results (Drisko and Maschi 2015, Chapter 5). The individual items stipulated as conditions for trustworthiness of such qualitative analysis (Elo *et al.* 2014) can be incorporated directly, by each decision being at least anecdotally covered in the main corpus of the analysis, and clustered with decisions that reproduce or develop its message.

As the references to interpretive institutionalism above indicated, this research agenda follows an *interpretive* epistemology, whereby in order to understand how and why ideas matter (Rueschemeyer 2008), it is necessary to place them into the social context in which they emerge, develop and shade away. Social context is relevant at a higher level of abstraction as well as it shapes how one perceives the aim of science (Beardsley 1974). In the words of Colin Hay (2008, 84), “ontological considerations are both irreducible and logically prior to those of epistemology”. An analysis of such considerations in political science leads Hay (2008, 94) to conclude that all major thought on ontology in this discipline has led to “challeng[ing] the often parsimonious and self-confessedly unrealistic analytical assumptions which invariably make naturalist approaches to political science possible”.

This lens on science is exemplified by how the inclusion of the political regime as a contextual factor that may constrain the capacity of the CCs’ ideas about democracy to matter emerges from the background realities of the cases under study. Furthermore, moving from the *negative* question (why CCs fail to protect democracy) to the positive one (how CCs are conducive to protecting democracy) would require the completion of the causal circle (Figure 1 above) that accounts for the ideas (not) being “taken up” by

other political actors. The traditional belief about the role of the courts in society may matter—societies where CC judges were traditionally considered to be under the duty of restraining themselves to the “mouths of the constitution” (Stone Sweet 2000, 148) may be less inspired by its CCs’ ideas about democracy, however innovative those may be.

Identifying to what extent conceptions of democracy were affected by the judges’ differing legal philosophies and even personal traits poses challenges. The analysis of separate opinions provides some insights into the subject but (aside from participant observation of internal deliberations) interviews help uncover some of these inner ways of thinking of the judges (Nir 2018, 77, Mark 2023, 181–83; see also Steuer 2024). This is the case despite that, given the unique personality of each judge, it is questionable that any number of interviews short of interviewing each former judge would enable complete “saturation” of the interview data, and doing so might be impossible if some former judges passed away. Jurisdiction-specific restrictions on judges preventing them to be interviewed may also occur. If interviewing is not feasible, the case law data can show the patterns of reasoning with democracy and may be corroborated with analysis of the sections on the democracy principle in selected additional materials (such as constitutional commentaries, collections of judgments or textbooks). The CC decisions invoked under the democracy principle are the ones the authors consider essential for the conception of democracy. Here, democracy is presented in tension with the rule of law or fundamental rights, at times even where the constitutional text ties together democracy and the rule of law in the same article.

Summarizing, the qualitative study of the conceptions of democracy by the CCs is the way to engage with the essentially contested concept in complex legal texts. No research method is without limitation; in this case, besides limited generalization of the empirical material, the inclusion of more cases or subsequent eras of the CCs’ operation might invite revisiting the approach. Despite these drawbacks, the proposed approach (1) moves beyond an arbitrary selection of cases or a selection restricted to a few types of proceedings, such as constitutional interpretation or constitutional review of legislation; (2) studies the whole population, not just a sample, of judicial decisions meeting the given criterion, with each decision being clustered into smaller categories and analyzed with the establishment of more or less coherent narratives out of them; (3) accounts for the importance of political regime context as well as the potential independent agency of the CCs.

3.2. Overview of the dataset and descriptive trends, as basis for subsequent application

This section introduces a dataset of SCC and HCC cases that can form the basis of an analysis along the above lines. In total, 451 majority and separate opinions fit the criteria, with slightly more for the Hungarian (231) than the Slovak (220) CC. This includes more than a single count for some of the *judicial decisions*, as the reference(s) to democracy might occur in the majority and separate opinions as well. The cases are spread out from 1990 (for the HCC) and 1993 (the SCC) until September 2017, thus including the most

recent data at the moment of closing the empirical data collection.⁸ Considering that both courts decided thousands of cases (see Láštík and Steuer 2018, 190 and the references therein for Slovakia; for Hungary, e.g. Constitutional Court of Hungary 2019), the dataset covers only a fraction of their jurisprudence. However, it differs from previous analyses (e.g. Smithey and Ishiyama 2002; Póczy and Dobos 2018) by cutting across different types of proceedings without implicit assumptions about greater significance of some types of proceedings over others and applying a qualitative approach on more than a few dozen of selected cases or by drafting case notes.

Figure 4 shows the distribution through the three periods of the two CCs' operation (in the Hungarian case the period under the presidency of László Sólyom is the first one, while the second and third are separated by the adoption of the Fourth Amendment to the Fundamental Law). While the overall number of opinions is similar for the two countries, their distribution is significantly tilted towards majority opinions in Slovakia. This may be explained by the large number of opinions (89 out of 220) during the preliminary proceedings by the SCC. The HCC judges appear to have engaged slightly more in debates on democracy via separate opinions as compared to their Slovak counterparts.

FIGURE 4

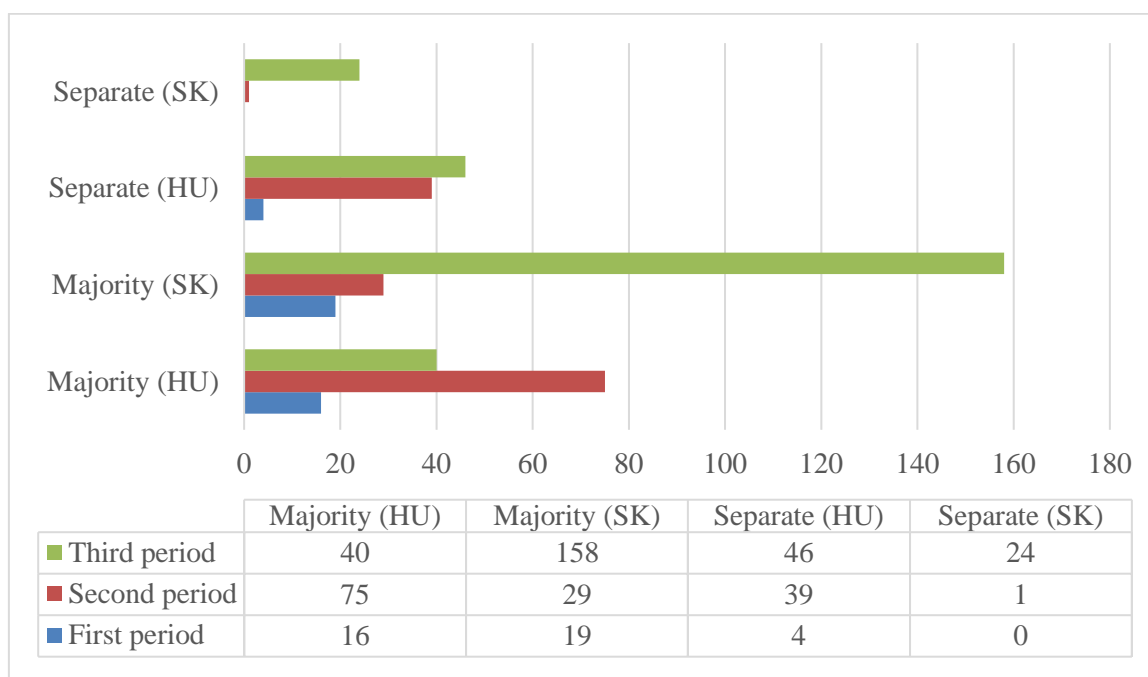


Figure 4. Distribution of opinions in to the three periods of the CCs' operation.

(Source: Author.)

The overall numbers in the above figures do not equal the overall number of *judicial decisions* included. This is because in some cases both the majority and one or more separate opinions contain references to democracy while others are represented in the

⁸ Due to the cutoff point, some cases were included in the preliminary proceeding but not run through the keyword search with the final decision delivered after September 2017. For example, the Slovak cases concerning extreme speech (PL. ÚS 5/2017) as well as amendments in the rules of procedure of the National Council (PL. ÚS 6/2017) include references to democracy in the preliminary proceeding stage, but they were both decided on the merits only in January 2019.

dataset either only through the majority opinion or the concurrence(s) and/or dissents. All combinations are possible. Figure 5 depicts how many cases are represented by both the majority opinion and *at least one* dissent/concurrence, by *at least two separate opinions* or (in a few instances in Slovakia) by a decision *both in the preliminary and the main proceedings*. The takeaway is that in Hungary there have been more cases than in Slovakia with a democracy debate ensuing via separate opinions during the period under study.

Regarding case types, *actio popularis* (until this type of proceeding had been in place), referenda and individual complaints have prevailed in Hungary, ex post reviews and individual complaints and electoral complaints in Slovakia. Less frequent case types included abstract constitutional interpretations, *a priori* reviews of constitutionality (only in Hungary), petitions on legislative omissions (may emerge from *actio popularis*) and a few rarely invoked types of proceedings (such as decisions on bias of CC judges).

FIGURE 5

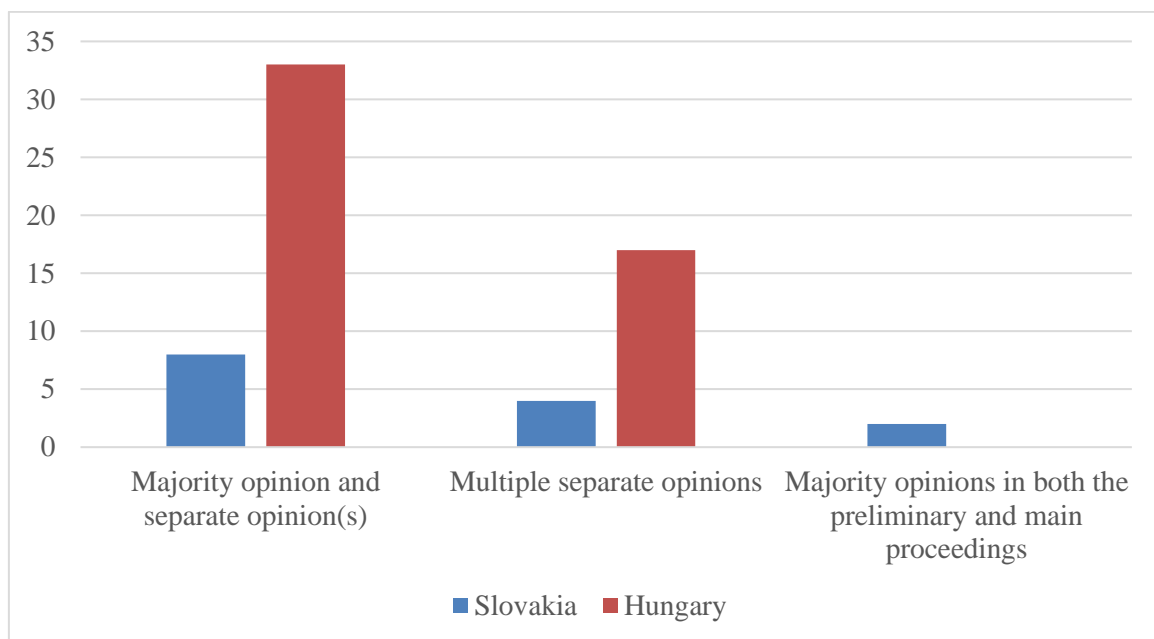


Figure 5. Number of decisions with more than one unit of observation included in the dataset. (Source: Author.)

The decisions of the SCC and the HCC have a generally similar structure. The ruling is followed by the justification which typically begins by reproducing the main arguments from the petition. Sometimes the arguments by respondents or *amici curiae* are reproduced next. Then follows the CCs' reasoning which is often structured to identifying the governing legislation and relevant constitutional provisions and then interpreting them or applying them on the circumstances of the case. Lastly, a summary of the findings might be included.⁹ For this reason, Figure 6 illustrates the proportion of decisions in which one or more references to "democracy" were made by the petitioner(s)/respondent(s), by the CC in the reasoning part, or by both. It shows that

⁹ The SCC has often not identified the judge rapporteur, while the HCC almost always did. The HCC included a summary and keywords to many decisions, and occasionally also a 'Leitsatz' (leading sentence) although this one has not always been published together with the decision in its digital version. The presentation of the HCC's decisions has appeared slightly more user-friendly and comprehensive than of the SCC.

petitioners/respondents before the SCC were more inclined to mention democracy (98 as opposed to 38 decisions in Hungary) but this reference was “reciprocated” by the SCC in relatively few cases (19). Similarly to the lower number of separate opinions, SCC judges have appeared as less engaged with the concept of democracy than HCC judges.

FIGURE 6

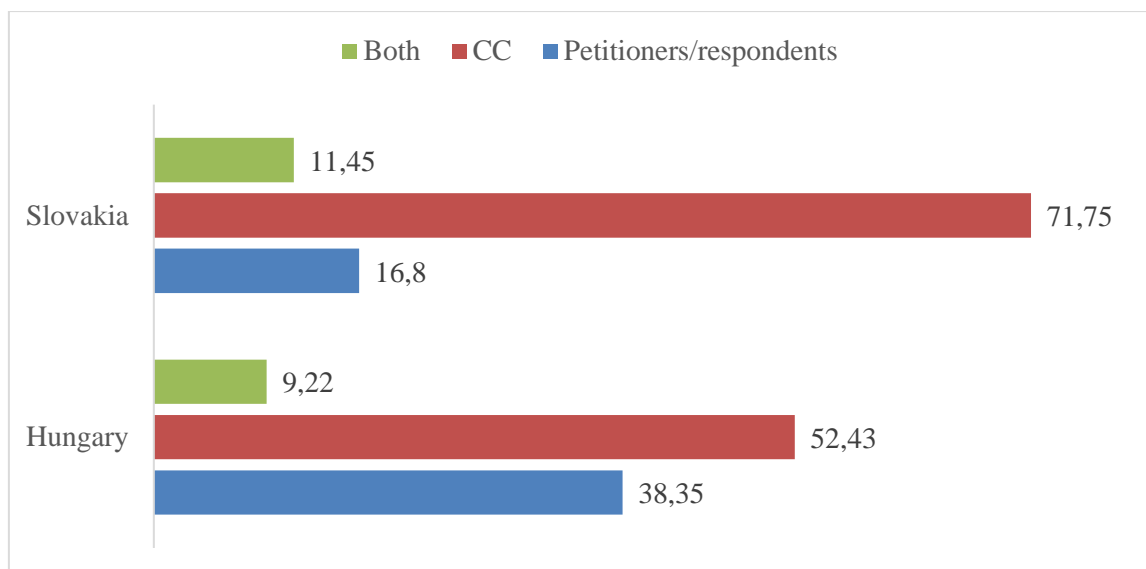


Figure 6. Reasoning with democracy by the petitioners/respondents and the CC (% from all majority opinions).

(Source: Author.)

While these descriptive measures introduce the dataset, the “world of (each) judicial decision” cannot be reduced to simple summary measures, which do not sufficiently account for the wide range of interpretive options. Moreover, given that judges may have voted against a particular majority opinion without submitting a separate opinion, it is impossible to calculate unanimity rates in a reliable manner if votes are not published either.

Another possibility for studying individual-level conceptions of democracy is to focus on the judge rapporteur of majority decisions, and the separate opinions. In Slovakia, the frequently missing information about judge rapporteurs combined with the low number of separate opinions does not allow to highlight which judges were most active in mentioning democracy in the cases they wrote majority opinions for.¹⁰ The results for Hungary are shown in Figure 7.¹¹ Adding some context to this data shows that

¹⁰ In terms of the separate opinions, Judge Mészáros appeared as most frequently engaging with democracy (10 out of 25 separate opinions, some co-authored), followed by Judge Orosz (four separate opinions). The different term lengths of the judges, with Judge Mészáros serving among the longest overall period of time, may have contributed to these results as well.

¹¹ The majority decisions in which only the petitioner/respondent refers to democracy were not counted separately as the judge rapporteur still has an important voice in determining which segments of the petition are reproduced in the respective part of the decision. The overall number does not match with the overall number of HCC decisions in the dataset because in a few cases the information about the judge rapporteur was not available, and in a few other cases (especially from the 1990s) two judge rapporteurs were listed together.

democracy was referred to overwhelmingly by judges¹² with an academic background. This raises the question whether democracy remains more of a “business of the academia” from the CCs’ perspective.

FIGURE 7

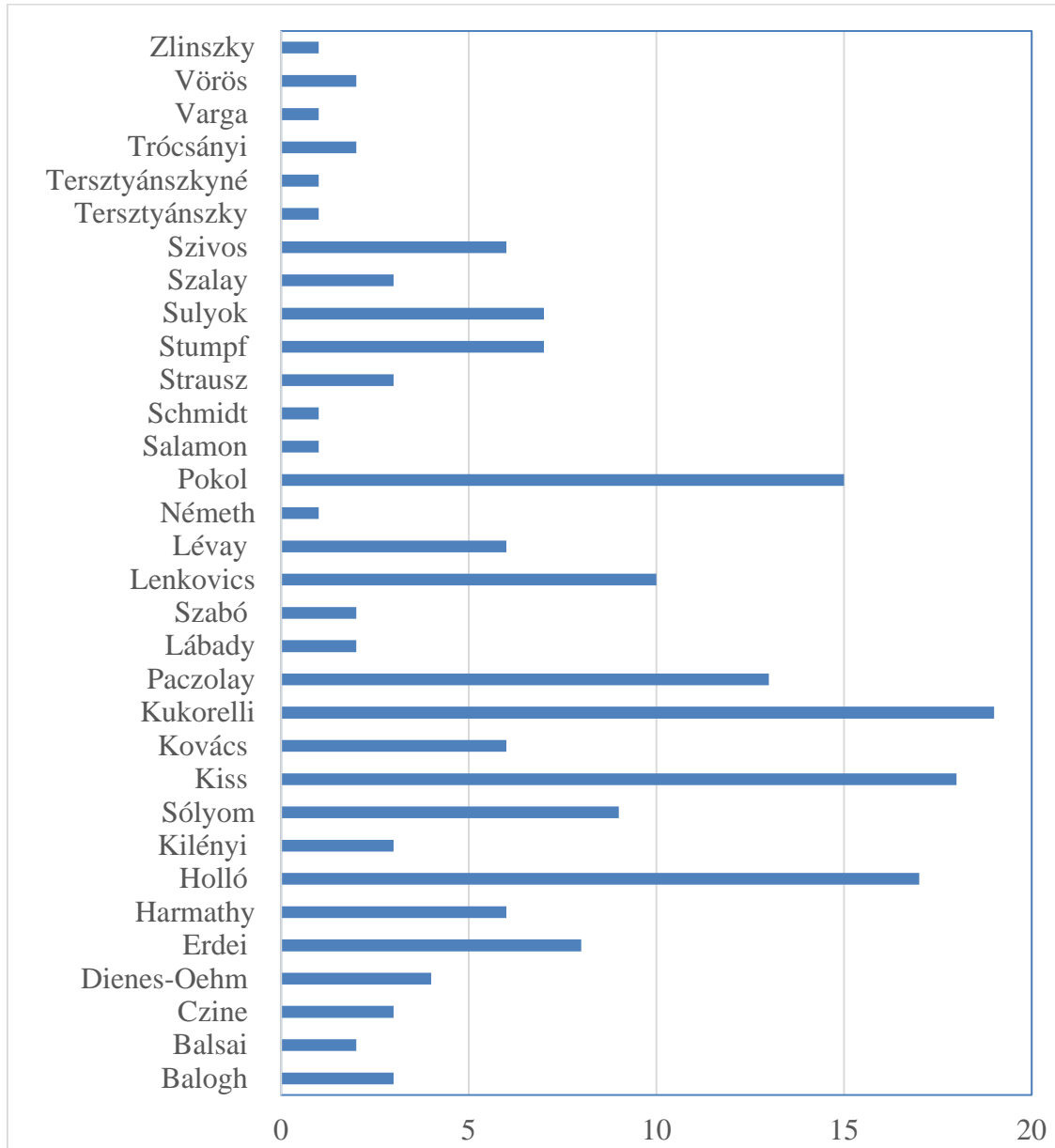


Figure 7. Number of opinions with reasoning on democracy in the HCC according to judge rapporteur or separate opinion author (1990–9/2017).
(Source: Author.)

¹² Unlike in Pócsa and Dobos (2018), this dataset does not count the judges who *subscribed to* separate opinions written by their colleagues as co-authored by all of the undersigned judges. If, for instance, a dissent has one author and three other judges supporting it, it is only attributed to the original author. However, if the dissent is explicitly noted as co-authored, then it “adds” to the statistics of each of its co-authors. Co-authoring a separate opinion is a different degree of involvement than subscribing to it. In the latter case, the exact choice of words has not been one of the subscribing judge. This is in line with taking the way judges present their arguments in support or in opposition to the rulings rather than just the rulings, seriously (cf. Scheppelle 1988). In addition, it is not satisfactory to reach a conclusion by chance. Justifications are the “meat” of the judges’ work.

In sum, the Slovak and Hungarian cases are suitable for the present analytical framework, with the possibility to revisit two dimensions about these CCs' performance: the existing "canons" (Schwartz 1998, 2002, Sólyom 2003, Malová 2010, Halmai 2010) about the two CCs' contributions to democracy and the belief in incapacitation of the HCC as opposed to the SCC by an executive assault (see contributions in Gárdos-Orosz and Szente 2014; also Sólyom 2015; Scheppele 2015). Doing so satisfactorily exceeds the scope of this article. Instead, it remains an invitation to avoid the regional clustering of the approach and use it with CCs beyond the Visegrád Four.

4. Conclusion

This article provided an alternative to conventional conceptualizations of the relationship between CCs and democracy. By shifting the emphasis on the CCs' independent potential to safeguard democracy in various political contexts, a new approach of assessing a concrete CC's contribution to maintaining and developing democracy emerges. The approach may be used, for instance, to analyze a selection of cases based on expert judgment of "landmark cases" beyond the data collection via keyword search and has no in-built obstacles from being applied to all CCs, although it may hit some so far undiscovered limits if it was utilized in some specific contexts. Moreover, empirical analyses may assess the conceptions of democracy by CCs in relation to other key political concepts, indicating, ultimately the degree to which they conceive of themselves as responsible to be resilient vis-à-vis autocratization.

Further comparative and collaborative research is called for. In line with the new institutionalist premises, the reflection of the "mission" of the institution can show the actual political change achieved through its actions. For this purpose, process-tracing methodology (Collier 2011, Beach and Pedersen 2013, Trampusch and Palier 2016) examining the societal (e.g. media, political party elite) reflections of the CCs' conceptions of democracy can also be a useful aide.

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Appendix: Selected indicators from BTI reports for the V4 countries¹³

Indicator	2003	2006	2008	2010	2012	2014	2016	2018	2020	2022	2024
Overall	9,6	9,2	9,2	9,4	9,0	9,1	8,9	8,6	8,7	8,8	8,6
Stateness	/	10	10	10	9,8	9,8	9,5	9,5	9,8	9,8	9,8
Political Participation	/	10	10	9,8	9,5	9,8	9,8	9,8	9,5	9,8	9,5
Rule of Law	/	9,0	9,3	9,3	8,5	8,5	8,3	8	8	8,3	8
Separation of Powers	/	10	10	10	9	9	8	8	8	9	8
Independent Judiciary	/	9	9	9	8	8	8	8	8	9	8
Prosecution of Office Abuse	/	8	8	8	8	8	8	7	7	9	7
Civil Rights	/	9	10	10	9	9	9	9	9	9	9
Stability of democratic institutions	/	9,5	9	9,5	9,0	9,0	8,5	8	8	8	8,5
Performance	/	9	9	9	9	8	8	8	8	8	9
Commitment	/	10	9	10	9	10	9	8	8	8	8
No. of CC remarks	3	3	4	4	10	7	8	4	6 ¹⁴	6 ¹⁵	13 ¹⁶

Table 2. Selected BTI indicators for Slovakia (Bertelsmann Stiftung 2024).

Indicator	2003	2006	2008	2010	2012	2014	2016	2018	2020	2022	2024
Overall	9,6	9,5	9,6	9,8	9,7	9,6	9,5	9,5	9,4	9,3	9,2
Stateness	/	10	10	10	10	10	10	10	10	10	10
Political Participation	/	10	10	10	10	10	9,8	10	10	9,8	9,5
Rule of Law	/	9	9,3	9,5	9,3	9,3	9,3	9,3	9	9	9
Separation of Powers	/	10	10	10	10	10	10	10	10	10	10
Independent Judiciary	/	9	9	10	9	9	9	9	9	10	10
Prosecution of Office Abuse	/	8	8	8	8	8	8	8	7	7	7
Civil Rights	/	9	10	10	10	10	10	10	10	9	9
Stability of democratic institutions	/	9,5	9,5	10	10	10	9,5	9	9	9	9
Performance	/	9	9	10	10	10	9	9	9	9	9
Commitment	/	10	10	10	10	10	10	9	9	9	9
No. of CC remarks	4	2	5	3	7	4	10	7	8 ¹⁷	8 ¹⁸	8 ¹⁹

Table 3. Selected BTI indicators for the Czech Republic (Bertelsmann Stiftung 2024).

¹³ The references to CCs that exclusively repeat historical realities across several reports (e.g. in the Slovak case the reference to the backlash against the SCC during the Mečiar period) are not counted. More references in a single paragraph are counted as one, as they overwhelmingly address the same point related to the CC. In the Polish case, both 'CC' and 'Constitutional Tribunal' (the official name of the Polish CC) are considered.

¹⁴ https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2020_SVK.pdf

¹⁵ https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_SVK.pdf

¹⁶ https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2024_SVK.pdf

¹⁷ https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2020_CZE.pdf

¹⁸ https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_CZE.pdf

¹⁹ https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2024_CZE.pdf

Indicator	2003	2006	2008	2010	2012	2014	2016	2018	2020	2022	2024
Overall	9,7	9,4	9,4	9,3	8,4	8,0	7,6	7,4	6,8	6,4	6,3
Stateness	/	10	10	10	9,8	9,5	9,5	9,3	9,3	8,8	9
Political Participation	/	10	10	10	9,0	8,8	7,5	7,5	7	6,3	6,3
Rule of Law	/	9	9,3	9,0	7,8	7,3	6,5	6	5,8	5,3	5
Separation of Powers	/	10	10	10	7	6	5	5	5	4	4
Independent Judiciary	/	9	9	9	8	7	6	6	6	6	6
Prosecution of Office Abuse	/	8	8	8	8	8	7	6	5	5	4
Civil Rights	/	9	10	9	8	8	8	7	7	6	6
Stability of democratic institutions	/	9	9	8,5	7,5	7,5	7,5	6,5	5,5	5	5
Performance	/	10	8	8	7	7	7	6	6	5	5
Commitment	/	9,5	10	9	8	8	8	7	5	5	5
No. of CC remarks	5	7	8	2	4	11	6	2	5 ²⁰	7 ²¹	6 ²²

Table 4. Selected BTI indicators for Hungary (Bertelsmann Stiftung 2024).

Indicator	2003	2006	2008	2010	2012	2014	2016	2018	2020	2022	2024
Overall	9,4	9,2	8,8	9	9,2	9,4	9,5	8,58	8	7,5	7,4
Stateness	/	9,8	9,8	9,8	9,5	9,8	9,8	9,5	9,3	9	9
Political Participation	/	9,8	9,5	9,8	9,8	9,8	10	9,3	8,8	7,8	7,5
Rule of Law	/	9,3	8,8	8,8	9,3	9,3	9,3	8	6,8	6,3	6
Separation of Powers	/	10	9	9	10	10	10	8	6	5	5
Independent Judiciary	/	9	9	9	9	9	9	7	6	5	5
Prosecution of Office Abuse	/	8	8	8	8	8	9	8	7	7	6
Civil Rights	/	10	9	9	10	10	9	9	8	8	8
Stability of democratic institutions	/	9,5	8,5	9	9,5	9,5	10	8	7	6,5	6,5
Performance	/	9	8	9	10	10	10	8	7	6	6
Commitment	/	10	9	9	9	9	10	8	7	7	7
No. of CC remarks	1	1	1	4	3	3	3	19	8 ²³	8 ²⁴	7 ²⁵

Table 5. Selected BTI indicators for Poland (Bertelsmann Stiftung 2024).

²⁰ https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2020_HUN.pdf

²¹ https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_HUN.pdf

²² https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2024_HUN.pdf

²³ https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2020_POL.pdf

²⁴ https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2022_POL.pdf

²⁵ https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2024_POL.pdf