

Polarization of the Third Constitutional Court: an analysis of the dissenting behaviour of constitutional judges

Abstract

The Constitutional Court, as a judicial body for the protection of constitutionality, is a key element of the constitutional architecture of the Czech Republic, ensuring its character as a democratic state governed by the rule of law. Given its key role, it is crucial to empirically examine in as much detail as possible the factors affecting the internal functioning and potentially the quality of the Constitutional Court's work. One of the key elements that has been the focus of the foreign literature in this context in particular is the dissenting behaviour of judges, which can tell us a lot about the conditions or dynamics of relations at the Court.

In this diploma, I therefore examine the dynamics and evolution of relations between the judges of the Constitutional Court through an analysis of the ties within dissenting coalitions. The research question for this diploma was formulated as follows: „*How has the nature of ties between the judges of the Constitutional Court changed in the three decades of its existence?*“. The hypotheses relating to this question were derived from previous literature, which, however, was relatively limited in both quantity and methodological rigor.

I tested the hypotheses using the social network analysis method with Blondel's algorithm, whose primary goal was to discover and quantify the existence and form of relationships between the judges of the Constitutional Court in the formation of dissenting opinions.

The diploma concluded that none of the voting coalition hypotheses were fully confirmed. In two cases (the first and third decades of the Constitutional Court), the hypotheses were confirmed at least to the general characteristics of the pattern of relations in the Constitutional Court. In sum, the first Constitutional Court represented a cooperative model of relations. In this model, although the algorithm divides the judges into different coalitions, it is clear from the interrelationships that judges cooperate with judges from other coalitions and the strength of the ties within and across coalitions does not differ significantly. The Second Constitutional Court, on the other hand, approached a fragmented model, as the degree of solitary dissents outweighed the common dissents among a large number of judges, even within individual coalitions. It turned out that the most important writers of solitary dissents were judges Eliška Wagnerová and Ivana Janů, Stanislav Balík, Jan Musil and Vladimír Kůrka. The Third Constitutional Court most closely resembled a polarized model, as two oppositional coalitions of judges emerged and ties within the coalitions significantly outweighed ties between the coalitions. The core of the first coalition was

the trio of Vojtěch Šimíček, Kateřina Šimáčková and Ludvík David, while the core of the second coalition was the trio of Radoslav Suchánek, Josef Fiala and Vladimír Sládeček. The crossing („*swing*“) judges were Jan Filip and Milada Tomková.

In my diploma I do not aim to explain causally how and why the cooperation, fragmentation or polarization occurred. I merely evaluate dissenting coalitions using a social network analysis method and use existing findings from the literature and follow-up research on dissenting behavior of Constitutional Court judges to present different alternative sides of the interpretation of these results. However, the mere conceptualization, operationalization, and subsequent discovery of the aforementioned patterns of relations between Constitutional Court judges through the analysis of empirical data is a significant result that opens up a number of interesting research questions as well as theoretical considerations for the future.

Key words: Dissenting opinions, Dissent, Constitutional Court of the Czech Republic, Network analysis, Coalition.