

Destructive or integrative?

Conflict management by courts during the Eurozone crisis

The experience of interdependence and the strengthening of EU economic governance during the crisis have altered the structure of conflicts in the EU. Crisis-related decisions by European institutions have been highly visible in the public realm and new conflict parties have emerged. The fundamental change in the visibility and structure of conflicts in the EU puts the Union at a crossroad, as conflicts can be seen to have the potential for both: jeopardizing the European integration project or serving as catalysts for the deepening of European integration or even the development of a transnational European society. Whether a conflict turns out to be destructive or constructive depends on various parameters, one being the mechanisms of conflict resolution. Notably courts, both at the domestic and at the supranational level, are important actors in this regard. In this panel, we seek to address the question, how selected courts have managed crisis-related conflicts and whether they can be seen to harvest the constructive potential of conflicts, or – at least – mitigate destructive effects. We will focus on two domestic constitutional courts, namely the Spanish and the Portuguese constitutional courts, and the European Court of Justice. Since a key question in this regard concerns the relationship between courts and the European and national legislators, the Panel will also include one presentation focusing on parliaments' role during the crisis.

Conflicts over EU public authority after the crisis and their constructive or deconstructive potential

Jenny Preunkert (University of Oldenburg)

In recent years, the process of European integration has been increasingly confronted with political responses from the European citizenry. The long-standing permissive consensus among Europeans, which meant that European citizens were positive but also indifferent towards the European Union, is gradually eroding. The impact of European political institutions, processes and decisions on the living conditions of citizens is now being watched closely by the European public. European citizens have become interested in and aware of the consequences of European integration for their daily lives. Particularly the redistribution of the costs of European integration is contested and has caused different kinds of political and social conflicts among European societies. The aim of this presentation is to develop a theoretical framework for understanding the potential constructive or destructive consequences of these new conflicts. Furthermore, I will discuss the consequences of these conflicts on the basis of selected empirical examples. It will be argued that depending on the type of conflict, conflicts either result in further European integration or in re-nationalization. Especially when conflicts are fuelled by the dissatisfaction and fears of the presumed losers of Europeanization and globalization processes, they are likely to result in national closure and the re-nationalization of policies. By contrast, when conflicts are fuelled by different versions of transnationalism and transnational solidarity, they are likely to result in further integration.

The role of national parliaments and the European Parliament during the Eurozone crisis:

Unable to manage conflicts?

Cristina Fasone (Guido Carli University LUISS, Rome)

The roles of national parliaments and of the European Parliament (EP) during the Eurozone crisis have been shaped by the respective competences in matters of economic governance and by the specific economic situation in place in a Member State. The way the austerity measures have been adopted both at European and national level appeared at first to have sidelined parliaments as budgetary authorities. The proposed paper investigates if and, in case, how, national parliaments and the EP have been able to manage the political conflicts arising from the “Euro-crisis law”. It is argued that while the EP has tried to play a role in the Euro-crisis-related conflict management, despite its limited competence in matters of economic policy, national parliaments to some extent have abdicated this role, unless courts have forced them to act. As for the comparative analysis on national parliaments, the proposed paper intends to focus on selected national cases – France, Germany and Italy – representing different economic conditions experienced throughout the crisis and various systems of government, in terms of powers structure between the legislature and the executive and the powers of constitutional courts.

Conflict management by the Spanish Constitutional Court in times of crisis

Tomás de la Quadra-Salcedo Janini (Universidad Autónoma, Madrid)

In this presentation we want to analyze how the Spanish Constitutional Court has approached the control of the reforms that have occurred as a consequence of the crisis. This includes legislative but also constitutional reforms that have affected both the constitutional economic model and the model of territorial decentralization. With regard to crisis-related measures, the Constitutional Court has notably been confronted with the question as to the value of international treaties in interpreting the rights contained in the Constitution. In contrast to greater activism by other constitutional courts such as the Portuguese or the Italian constitutional courts, the Spanish Constitutional Court has formally accepted the constitutionality of most of the reforms introduced. An area that seems *prima facie* unrelated to crisis measures, but which could become important also in relation to them, is the tension between the case law of the Spanish Constitutional Court and the European Court of Justice on determining the level of protection of fundamental rights (the “Melloni-saga”). Also this aspect will be addressed in this contribution.

The Portuguese constitutional case-law on austerity legislation

Protecting social rights by curbing the legislator’s choices?

Teresa Violante (Universidade Nova, Lisbon)

Social rights have been heavily affected by the economic crisis that Portugal has been facing, especially through the approval of concrete austerity measures. The right to work and the rights of workers, social security, health and education were the most important targets of the foreseen reforms.

A significant bulk of austerity legislation taken to the Constitutional Court was ruled unconstitutional. However, and perhaps quite surprisingly if we have in mind the detailed constitutional catalogue of social rights, the most common reasoning employed by the Court to support its decisions has not been the violation of social rights *per se*, but the violation of well-established constitutional principles, such as equality, legal certainty and the protection of legitimate expectations.

This contribution will analyse these decisions from the perspective of social rights' protection within the framework of a dialogue between constitutional justice and the legislator, taking into account the normative framework and its implementation by the so-called *austerity case-law*.

Conflict management by the European Court of Justice in times of crisis

Anuscheh Farahat (Goethe University Frankfurt) & Christoph Krenn (Max Planck Institute for comparative public law and international law, Heidelberg)

In this presentation we wish to analyse how the European Court of Justice is managing conflicts in times of crisis, in particular how it has dealt with the increasingly politicized nature of the conflicts brought before it during the Eurozone crisis and the emergence of new conflict parties. We argue that the ECJ has only reluctantly accepted the challenges arising from these conflicts. After its initial denial of jurisdiction, the ECJ only recently accepted its responsibility for the fundamental constitutional changes resulting from the Eurozone crisis, when it accepted a claim for damages against the Commission in a case concerning Cypriote banks. Today, the ECJ seems to be moving slowly toward taking its role as an EU constitutional court seriously. It increasingly focuses on the protection of the balance of power between EU institutions and simultaneously is more willing to also restrict the power of these institutions to the advantage of domestic legislators and their peculiar welfare state arrangements. This suggests that the ECJ is increasingly aware of the politicized nature of conflicts it is confronted with in an increasingly polarized political environment. If this is true, the ECJ may indeed contribute to the productive potential of conflicts or at least mitigate their destructive effects.