

TABLE OF CONTENTS

<i>Acknowledgements</i>	IX
<i>About the contributors</i>	XI
Introduction: Unity of law achieved through judicial reasoning	1
<i>Pavel Ondřejek</i>	
1 The changing role of courts in Central Europe	1
2 Structure of the book and overview of individual chapters	4
2.1 Theoretical and doctrinal foundations of judicial law-making in Central European countries	5
2.2 Pro-systemic and anti-systemic effects of judge made-law and judicial interpretation	7
Part I THEORETICAL AND DOCTRINAL FOUNDATIONS OF JUDICIAL LAW-MAKING IN CENTRAL EUROPEAN COUNTRIES	13
<i>Ekklesia and Dikasterion—which body is considered to be <i>kyrion panton</i>? (Is it the right question to be asked?) Recent dimensions of an old problem</i>	15
<i>Alexander Bröstl</i>	
1 Introduction / Εισαγωγή	16
2 On the Relationship Between εκκλησία and δικαστηρίον in the Athenian Democracy	17
3 Strengthening the Judicial Power: The Birth of the Constitutional Review in the United States of America (Marbury v. Madison)	25
4 Who Should Be the Guard of the Constitution?	27
5 The Sword of Damocles Hanging Over Constitutional Amendments	29
Legal decision-making in the view of cognitive sciences: Between systematic and casuistic approaches to law	36
<i>Tomáš Gábriš</i>	
1 Introduction	37
2 Systematic versus Casuistic Approach to Law: On the Benefits of Legal Casuistry	38
2.1 Problems with the Systematic Approach to Law	38
2.2 Casuistic Jurisprudence	41
2.3 On the Use of Casuistry in Post-Positivist Legal Thought	42
3 Cognitive Science and Legal Problem-Solving	43

3.1 Judgment and Decision-Making from a Traditional View of Philosophy and Psychology	44
3.2 Judgment and Decision-Making in View of Cognitive Sciences	45
3.3 Implications for Legal Thinking (Judgment and Decision-Making of Lawyers)	47
4 Conclusions	50
 Beyond the coherence of legal rules	52
<i>Martin Abel</i>	
1 The context of interpretation	53
2 Beyond discovering	56
3 The pretence of deduction	58
4 The place of induction	63
 Sources of law and settled administrative practice	67
<i>Zdeněk Kühn</i>	
1 Position of established (settled) administrative practices within the dogmatics of sources of law	68
2 Case law of the Constitutional Court	70
3 Case law of the Supreme Administrative Court	72
 Part II PRO-SYSTEMIC AND ANTI-SYSTEMIC EFFECTS OF JUDGE MADE-LAW AND JUDICIAL INTERPRETATION	77
 Judicial interpretation as a competence	79
<i>Karel Beran</i>	
1 Introduction	80
2 What is interpretation of the law and in what ways it differs from interpretation in general?	81
3 Interpretation as part of the process of application of the law	83
4 What competences are required for interpreting the law?	87
5 Conclusion	92
 How the legislator and jurisprudence can increase the pro-systemic nature of judicial interpretation and application of the law?	95
<i>Katarzyna Žák Krzyżanková</i>	
1 Introduction	96
2 On the legislator's options to influence the pro-systemic nature of judicial decision-making	99
3 On the ability of jurisprudence to influence the pro-systemic nature of judicial decision-making	110
4 Conclusion	117

Maximalism and minimalism in judicial decision-making: How can courts strengthen or weaken the unity of a legal system? . . .	119
<i>Pavel Ondřejek</i>	
1 Introduction	120
2 Minimalism and maximalism in judicial decision-making	123
3 Integrity in law and Janus model of the effects of case law	126
4 Pro- and anti-systemic characteristics of a judicial decision in terms of width and depth of arguments	128
4.1 Pro-systemic minimalism.	129
4.2 Pro-systemic maximalism	130
4.3 Anti-systemic minimalism	132
4.4 Anti-systemic maximalism.	132
5 Summary	134
(Trans)Forming the applicable norm by the German type constitutional complaint—The case of Hungary	136
<i>Fruzsina Gárdos-Orosz</i>	
1 Introduction—the problem of judicial law making	137
2 The norm, the court and the German type constitutional complaint in Hungary	140
3 Finding and revising the norm created by the ordinary judiciary—the spotlight of the constitutional complaint procedure.	145
4 The Fundamental Law and the Constitutional Court case law in ordinary jurisprudence	150
4.1 Further thoughts on the constitutional change	150
4.2 References to CC decisions	152
5 The result: examples where the norm created by the ordinary court was changed by the Constitutional Court by constitutional complaint review procedure	154
6 Conclusions	157
Legitimacy of retrospective effects in judicial decision-making process	159
<i>Jan Tryzna</i>	
1 Introduction	160
2 Significance of judicial decision-making for legal order.	160
3 Retroactive/retrospective judicial decision making	168
4 Reasons for retrospective judicial decision making.	169
5 Prospective effect of judicial decisions	170
6 Conclusion	171

Evolutive vs. static interpretation: Unity or fragmentation in the intertemporal interpretation of the European Convention on Human Rights?	173
<i>Lisa Sonnleitner</i>	
1 Introduction	174
2 The European Convention on Human Rights as a “Living Instrument”	175
2.1 A History of Evolutive Interpretation of the ECHR.	175
2.2 The Brighton Process as an Obstacle to Evolutive Interpretation?	177
2.3 Unity versus Fragmentation in the Intertemporal Interpretation of the ECHR	178
3 Static and Evolutive Interpretation and the ECHR Constitution	179
3.1 The Constitutional Triangle of the ECHR	179
3.2 The Roots of Static and Evolutive Interpretation in the Constitutional Triangle	182
4 Evolutive and Static Interpretation in Balance	184
4.1 The Constitutional Values of the ECHR as Principles	184
4.2 Resolving the Conflict Between Static and Evolutive Interpretation: Cornerstones of a Balancing Model	185
5 Conclusions	187
<i>Summary</i>	189
<i>Bibliography</i>	191
<i>List of case law</i>	205
<i>Index</i>	209