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Theoretical model of the balance between legal certainty and the principle of justice in constitutional and supranational adjudication

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comparison. 4.3 Comparative patterns. 4.4 Theoretical model. 5. Discussion. 6. Conclusions. 7. References.

Abstract: This article examines when a constitutional or supranational court may correct the result of a formally applicable rule without undermining legal certainty. The study is limited to constitutional and rights-based adjudication in Ukraine, Germany, Spain and the European Court of Human Rights. Legal dogmatics and structured comparative analysis were applied to 17 normative and institutional sources and 24 purposively selected decisions identified within a 2014–2025 search window. The final judicial corpus comprised decisions issued between 2015 and 2022, six per jurisdiction or reference point. Each decision was coded for rule clarity, scope of discretion, proportionality, legitimate expectations, access to court, finality and departure from precedent. Three patterns were identified within the selected corpus: preservation of the rule, teleological interpretation within the rule's semantic range and corrective departure from the *prima facie* result on an express legal basis. Legal certainty operates as the presumption. Justice may modify the formal result only when a protected legal interest is identified, manifest disproportionality is demonstrated, the least disruptive corrective technique is used and consistency with the legal order is explained. The model is doctrinal rather than statistically representative and is intended to evaluate the quality and limits of judicial reasoning.

Keywords: Legal Certainty, Justice, Constitutional Adjudication, Judicial Discretion, Proportionality, Legitimate Expectations

1. Introduction

The legal-theoretical problem addressed in this study concerns judicial reasoning in constitutional and supranational rights adjudication. A formally applicable rule may produce a result that interferes excessively with a protected right, defeats a legitimate expectation or prevents effective access to court. At the same time, correction of that result may weaken the rule's guiding function if the court does not identify a legal basis, a defined threshold and a limited remedial technique. The relevant question is therefore not whether justice may displace law, but under what legal conditions a court may correct the *prima facie* result of a rule while preserving predictability and equality in its application.

Legal certainty is used here as an institutional requirement that rules be accessible, sufficiently clear, relatively stable and consistently applied. These requirements enable persons to plan conduct and constrain adjudicative discretion. Fuller connected the integrity of legality with generality, publicity, prospectivity, clarity, consistency, practicability, relative stability and congruence between announced rules and official action.⁶ Hart's account of open texture explains why those requirements do not eliminate interpretation in borderline cases,⁷ while Raz treats the capacity of law to guide conduct as a central reason for formal rule-of-law requirements.⁸

The principle of justice is defined more narrowly than a general moral ideal. Within this article, it denotes a legally mediated requirement to prevent a manifestly disproportionate consequence, protect a legally recognized expectation and secure effective judicial protection. The term "fairness" is retained only in established legal

⁶ FULLER, L. L. *The morality of law*. New Haven: Yale University Press, 1969. Available at: <https://yalebooks.yale.edu/book/9780300010701/the-morality-of-law/> (accessed on 26 July 2025).

⁷ HART, H. L. A. *The concept of law* (3rd ed.). Oxford: Oxford University Press, 2012. Available at: <https://global.oup.com/academic/product/the-concept-of-law-9780199644704> (accessed on 26 July 2025).

⁸ RAZ, J. *The authority of law: Essays on law and morality*. Oxford: Clarendon Press, 1979. <https://doi.org/10.1093/acprof:oso/9780198253457.001.0001>

expressions such as “fair trial” and “procedural fairness.” Dworkin’s account of principles explains why adjudication cannot be reduced to mechanical rule application;⁹ Alexy locates the rational control of competing constitutional principles in proportionality analysis;¹⁰ and Radbruch’s formula identifies an exceptional outer boundary at which extreme injustice defeats the claim of enacted law to application.¹¹ The present model does not extend Radbruch’s exceptional formula to ordinary disputes. It addresses controlled interpretation and correction within a valid legal order.

Ukraine, Germany, Spain and the European Court of Human Rights (ECHR) were selected as functionally comparable sites of constitutional or supranational rights reasoning, not as representatives of all adjudication within their legal systems. Scholarship on the Europeanisation of Ukrainian courts documents the interaction between domestic constitutional reasoning and European legal standards.¹² German constitutional doctrine provides an established account of Rechtsstaat and proportionality.¹³ Spanish scholarship develops legal certainty through the categories of imperio de la ley, seguridad jurídica, constitutional argumentation and rights adjudication.^{14,15,16} ECHR practice supplies a common external reference through foreseeability, access to court, finality, proportionality and legitimate expectations.

The research question was formulated as follows: under which cumulative legal conditions may a constitutional or supranational court move from preservation of a formally applicable rule to interpretation or corrective departure without converting justice into uncontrolled discretion? The aim was to construct a doctrinal model for evaluating that transition. The study therefore identified operational criteria, applied them to a disclosed corpus of decisions, compared recurring reasoning patterns within the corpus and defined the conditions that separate legally justified correction from judicial replacement of the rule.

2. Literature review

The literature on legal certainty distinguishes the quality of a rule from the predictability of its application. Maxeiner shows that certainty is not absolute determinacy but a set of institutional practices that reduce avoidable uncertainty.¹⁷ Fenwick and Wrzka similarly treat legal certainty as a contextual principle that operates across legislation, adjudication and administration.¹⁸ Tamanaha’s historical and theoretical account explains why the rule of law combines formal restraints with

⁹ DWORKIN, R. *Law’s empire*. Cambridge: Belknap Press, 1986.

¹⁰ ALEXY, R. *A theory of constitutional rights*. Oxford: Oxford University Press, 2002.

¹¹ RADBRUCH, G. “Statutory lawlessness and supra-statutory law”. *Oxford Journal of Legal Studies*, v. 26, n. 1, 2006, pp. 1–11.

¹² PETROV, R., and KALINICHENKO, P. “The Europeanization of third country judiciaries through the application of the EU acquis: The cases of Russia and Ukraine”. *International & Comparative Law Quarterly*, v. 60, n. 2, 2011, pp. 325–353.

¹³ GRIMM, D. “Proportionality in Canadian and German constitutional jurisprudence”. *University of Toronto Law Journal*, v. 57, n. 2, 2007, pp. 383–397. <https://doi.org/10.1353/tlj.2007.0014>

¹⁴ LAPORTA, F. J. *El imperio de la ley: Una visión actual*. Madrid: Trotta, 2007.

¹⁵ ATIENZA, M. *El derecho como argumentación*. Barcelona: Ariel, 2006.

¹⁶ FERRERES COMELLA, V. *Constitutional courts and democratic values: A European perspective*. New Haven: Yale University Press, 2009. Available at: <https://yalebooks.yale.edu/book/9780300148688/constitutional-courts-and-democratic-values/> (accessed on 26 July 2025).

¹⁷ MAXEINER, J. R. “Some realism about legal certainty in the globalization of the rule of law”. *Houston Journal of International Law*, v. 31, n. 1, 2008, pp. 27–46. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1230457 (accessed on 26 July 2025).

¹⁸ FENWICK, M., and WRZKA, S. (Eds.). *Legal certainty in a contemporary context: Private and criminal law perspectives*. Singapore: Springer, 2016. <https://doi.org/10.1007/978-981-10-0114-7>

institutional conditions rather than a single abstract formula.¹⁹ These approaches establish that a clear text is necessary but insufficient when judicial practice is inconsistent or remedies are unforeseeable.

A second line of scholarship concerns the legal control of discretion. Hart's open texture leaves a limited area in which legal language does not determine a single outcome, whereas Dworkin rejects the description of hard cases as a licence for strong discretion and requires justification through principles that fit the legal system. MacCormick links justified adjudication to universalizability, consistency and coherence.²⁰ These positions support an analytical distinction between interpretation within the semantic and systemic range of a rule and a corrective departure that requires an additional constitutional justification.

A third line concerns proportionality. Alexy treats principles as optimization requirements and balancing as a form of rational legal argument.²¹ Petersen examines the institutional risk that proportionality may become a vehicle for judicial activism when courts fail to disclose the intensity of review and the alternatives considered.²² The resulting methodological issue is not whether proportionality should be used, but whether it identifies the protected interest, legitimate aim, suitability, necessity and relative burden with sufficient precision.

The German and Spanish materials also require jurisdiction-specific theoretical support. German constitutional scholarship links the Rechtsstaat to structured proportionality and protection of reliance. Spanish scholarship treats seguridad jurídica as connected with publicity, non-retroactivity, equality in application and reasoned constitutional review. Prieto Sanchís analyses the relation between constitutional justice and fundamental rights;²³ Díez-Picazo systematizes the doctrinal content of fundamental rights;²⁴ and Gascón Abellán examines the argumentative discipline required for findings that support legal conclusions.²⁵ These works independently establish the concepts used to select and compare the jurisdictions.

Existing scholarship therefore supplies theories of legality, open texture, principles, proportionality and national constitutional doctrine. It does not, however, provide a single operational sequence for deciding when a court should preserve a rule, interpret it teleologically or depart from its prima facie result. The gap is methodological rather than a claim that prior theory ignored the tension between certainty and justice. The study addresses that gap through a disclosed decision corpus, a common coding matrix and a limited model applicable to the selected forms of rights adjudication.

3. Methodology

The research was designed as a structured comparative doctrinal study. Its unit of analysis was the reasoned judicial proposition that connected a rule, a protected legal interest and a remedial conclusion. The study did not compare entire legal

¹⁹ TAMANAHA, B. Z. *On the rule of law: History, politics, theory*. Cambridge: Cambridge University Press, 2004. <https://doi.org/10.1017/CBO9780511812378>

²⁰ MACCORMICK, N. *Rhetoric and the rule of law: A theory of legal reasoning*. Oxford, England: Oxford University Press, 2005.

²¹ ALEXY, R. "Constitutional rights, balancing, and rationality". *Ratio Juris*, v. 16, n. 2, 2003, pp. 131–140. <https://doi.org/10.1111/1467-9337.00228>

²² PETERSEN, N. *Proportionality and judicial activism: Fundamental rights adjudication in Canada, Germany and South Africa*. Cambridge: Cambridge University Press, 2017. <https://doi.org/10.1017/9781316823330>

²³ PRIETO SANCHÍS, L. *Justicia constitucional y derechos fundamentales*. Madrid: Trotta, 2003.

²⁴ DÍEZ-PICAZO, L. M. *Sistema de derechos fundamentales* (4th ed.). Cizur Menor: Civitas, 2013.

²⁵ GASCÓN ABELLÁN, M. *Los hechos en el derecho: Bases argumentales de la prueba* (3rd ed.). Madrid: Marcial Pons, 2010.

systems and did not measure the frequency of reasoning patterns. It examined whether the selected decisions contained legally indicative configurations that could be reconstructed under common criteria.

The research proceeded in three stages. The first stage identified the normative content of legal certainty, proportionality, legitimate expectations, access to court, finality and reasoned departure from prior practice. The second stage selected and coded six decisions from each jurisdiction or reference point. The third stage compared the coded propositions and formulated a decision sequence that moves from the presumption of rule preservation to a narrowly justified corrective technique. Political and historical context was considered only when it entered the court's legal reasoning, for example through institutional transition, emergency powers or the relationship between domestic and European standards. A general political history of the jurisdictions remained outside the research question.

Table 1 identifies the normative and institutional sources used in the comparative analysis. The European materials were used for fair-trial, foreseeability, proportionality, legal-certainty and judicial-independence criteria. The Ukrainian, German and Spanish materials were used to establish the relevant constitutional provisions, procedural rules and official texts of the selected decisions.

Table 1. Normative and institutional source base.

Jurisdiction / source group	Source	Function in the study
European sources	Convention for the Protection of Human Rights and Fundamental Freedoms ²⁶	Common standards of fair trial, foreseeability, proportionality and rights protection.
European sources	HUDOC case-law database ²⁷	Selection and verification of ECHR decisions and procedural data.
European sources	Updated Rule of Law Checklist ²⁸	Criteria concerning legality, legal certainty, prevention of arbitrariness and access to justice.
European sources	Venice Commission compilation on courts and judges ²⁹	Institutional guarantees relevant to independence and the control of discretion.
European sources	Venice Commission compilation on constitutional justice ³⁰	Comparative standards for constitutional review and constitutional adjudication.

²⁶ EUROPEAN CONVENTION ON HUMAN RIGHTS COUNCIL OF EUROPE. Convention for the protection of human rights and fundamental freedoms. 1950. Available at: <https://www.echr.coe.int/european-convention-on-human-rights> (accessed on 26 July 2025).

²⁷ EUROPEAN COURT OF HUMAN RIGHTS. HUDOC case-law database. n.d. Available at: <https://hudoc.echr.coe.int/> (accessed on 26 July 2025).

²⁸ COUNCIL OF EUROPE. The rule of law checklist. 2025. Available at: <https://www.coe.int/en/web/venice-commission/rule-of-law-checklist> (accessed on 26 July 2025).

²⁹ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION). Compilation of Venice Commission Opinions and Reports concerning Courts and Judges, CDL-PI(2019)008. Available at: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI%282019%29008-e> (accessed on 18 September 2026).

³⁰ EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION). Compilation of Venice Commission Opinions, Reports and Studies on Constitutional Justice, CDL-PI(2017)008. Available at: <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI%282017%29008-e> (accessed on 18 September 2026).

Jurisdiction / source group	Source	Function in the study
Ukraine	Constitution of Ukraine ³¹	Constitutional basis of the rule of law, equality, rights and judicial protection.
Ukraine	Law of Ukraine "On the Constitutional Court of Ukraine" ³²	Jurisdiction and procedure of constitutional review.
Ukraine	Law of Ukraine "On the Judiciary and Status of Judges" ³³	Institutional requirements of judicial independence and reasoned adjudication.
Ukraine	Constitutional Court decisions database ³⁴	Official texts and identifiers of the selected Ukrainian decisions.
Germany	Basic Law for the Federal Republic of Germany ³⁵	Rights, Rechtsstaat, equality and constitutional review.
Germany	Federal Constitutional Court Act ³⁶	Jurisdiction and procedure of the Federal Constitutional Court.
Germany	Code of Civil Procedure ³⁷	Procedural finality and access-to-court context.
Germany	Federal Constitutional Court case-law database ³⁸	Official texts and identifiers of the selected German decisions.
Spain	Spanish Constitution ³⁹	Seguridad jurídica, equality, rights and constitutional review.
Spain	Organic Law 2/1979 on the Constitutional Court ⁴⁰	Jurisdiction and procedure of the Constitutional Court.
Spain	Ley 1/2000, de Enjuiciamiento Civil ⁴¹	Procedural access, finality and remedial context.

³¹ VERKHOVNA RADA OF UKRAINE. Constitution of Ukraine, No. 254k/96-VR. 1996. Available at: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (accessed on 26 July 2025).

³² VERKHOVNA RADA OF UKRAINE. Law of Ukraine "On the Constitutional Court of Ukraine," No. 2136-VIII. 2017. Available at: <https://zakon.rada.gov.ua/laws/show/2136-19#Text> (accessed on 26 July 2025).

³³ VERKHOVNA RADA OF UKRAINE. Law of Ukraine "On the Judiciary and Status of Judges," No. 1402-VIII. 2016. Available at: <https://zakon.rada.gov.ua/laws/show/1402-19#Text> (accessed on 26 July 2025).

³⁴ CONSTITUTIONAL COURT OF UKRAINE. Decisions of the Constitutional Court of Ukraine. Available at: <https://ccu.gov.ua/en/docs-search> (accessed on 26 July 2025).

³⁵ FEDERAL OFFICE OF JUSTICE. Basic law for the federal republic of Germany. 1949. Available at: https://www.gesetze-im-internet.de/englisch_gg/ (accessed on 26 July 2025).

³⁶ FEDERAL OFFICE OF JUSTICE. Act on the federal constitutional court. 1951. Available at: https://www.gesetze-im-internet.de/englisch_bverfgg/ (accessed on 26 July 2025).

³⁷ FEDERAL OFFICE OF JUSTICE. Code of civil procedure. 1877. Available at: https://www.gesetze-im-internet.de/englisch_zpo/ (accessed on 26 July 2025).

³⁸ FEDERAL CONSTITUTIONAL COURT OF GERMANY. Decisions database. Available at: https://www.bundesverfassungsgericht.de/EN/Decisions/decisions_node.html (accessed on 18 September 2026).

³⁹ STATE AGENCY OFFICIAL STATE GAZETTE. The Spanish constitution. 1978. Available at: <https://www.boe.es/buscar/pdf/1978/BOE-A-1978-31229-consolidado.pdf> (accessed on 26 July 2025).

⁴⁰ CONSTITUTIONAL COURT OF SPAIN. Organic law 2/1979 on the constitutional court. 1979. Available at: <https://www.tribunalconstitucional.es/es/tribunal/normativa/Normativa/LOTC-en.pdf> (accessed on 26 July 2025).

⁴¹ STATE AGENCY OFFICIAL STATE GAZETTE. Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil. 2000. Available at: <https://www.boe.es/buscar/act.php?id=BOE-A-2000-323> (accessed on 26 July 2025).

Jurisdiction / source group	Source	Function in the study
Spain	Constitutional Court case-law search engine ⁴²	Official texts and ECLI identifiers of the selected Spanish decisions.

Source: compiled by the authors.

3.1 Methods

Legal dogmatics was used to determine the content and relationship of constitutional provisions, procedural guarantees and judicial doctrines. The comparative method was functional: decisions were compared only where they addressed a common adjudicative problem, such as retroactivity, access to court, finality, legitimate expectations or proportionality. The systemic-structural method tested whether a proposed correction remained consistent with the hierarchy of norms, established remedies and prior legal positions. Functional analysis assessed the effect of each reasoning technique on predictability, protection of rights and the scope of judicial discretion.

3.2 Sample

The corpus comprised 17 normative and institutional sources and 24 judicial decisions identified through a 2014–2025 search window. The final judicial corpus consisted of decisions issued between 2015 and 2022: six from Ukraine, six from Germany, six from Spain and six Grand Chamber decisions of the ECHR. Purposeful selection was used because the study required decisions in which the relationship between a formal rule and a rights-based corrective argument was central to the reasoning or disposition. Inclusion required an identifiable rule, a protected legal interest, a reasoned treatment of certainty or proportionality and sufficient text to reconstruct the remedial logic. Decisions were excluded when the relevant concepts appeared only as formulaic references, when the reasoning could not be compared under the matrix, or when a later decision duplicated the same configuration without adding a distinct issue.

The sample is doctrinal and non-statistical. It cannot support prevalence claims about national judicial practice. The expressions “Ukrainian pattern,” “German pattern,” “Spanish pattern” and “ECHR pattern” therefore refer only to the recurring configuration found in the selected corpus. Table 2 discloses the full judicial sample and the reason for inclusion.

Table 2. Judicial decisions included in the comparative corpus.

Reference point	Decision	Legal issue	Reason for inclusion / matrix focus
Ukraine	Constitutional Court, Decision No. 1-r/2018, 27 February 2018	Taxation of pensions; non-retroactivity	Rule stability, legitimate expectations and temporal legal effects.
Ukraine	Constitutional Court, Decision No. 5-r/2018, 22 May 2018	Reduction of social guarantees	Constitutional protection of acquired legal positions and proportionality.
Ukraine	Constitutional Court, Decision No. 2-r(II)/2019, 15 May 2019	Enforcement of a final judgment	Effective judicial protection and the practical meaning of finality.

⁴² SPANISH CONSTITUTIONAL COURT OF SPAIN. Constitutional case-law search engine. Available at: <https://hj.tribunalconstitucional.es/en> (accessed on 26 July 2025).

Reference point	Decision	Legal issue	Reason for inclusion / matrix focus
Ukraine	Constitutional Court, Decision No. 3-r(I)/2019, 5 June 2019	Tax legislation and METRO Cash & Carry Ukraine	Foreseeability, non-retroactivity and protection of reliance.
Ukraine	Constitutional Court, Decision No. 4-r/2019, 13 June 2019	Appealability under Article 392 of the Criminal Procedure Code	Access to court and correction of procedural formalism.
Ukraine	Constitutional Court, Decision No. 7-r/2019, 25 June 2019	Mandatory detention without individualized assessment	Proportionality and the requirement of judicial assessment.
Germany	Federal Constitutional Court, Order of 27 January 2015, 1 BvR 471/10 and 1 BvR 1181/10	General prohibition of religious head coverings	Concrete-risk requirement and proportionality of a categorical rule.
Germany	Federal Constitutional Court, Order of 15 December 2015, 2 BvR 2735/14	European arrest warrant and constitutional identity	Human dignity as a limit on mutual recognition and formal cooperation.
Germany	Federal Constitutional Court, Order of 10 October 2017, 1 BvR 2019/16	Civil-status registration beyond binary gender	Equality, personality rights and remedial restraint.
Germany	Federal Constitutional Court, Order of 6 November 2019, 1 BvR 16/13, Right to Be Forgotten I	Privacy and freedom of expression under domestic fundamental rights	Structured balancing and temporal change in the weight of interests.
Germany	Federal Constitutional Court, Order of 6 November 2019, 1 BvR 276/17, Right to Be Forgotten II	Application of EU fundamental rights	Allocation of review standards and coherent multilevel protection.
Germany	Federal Constitutional Court, Order of 8 July 2021, 1 BvR 2237/14 and 1 BvR 2422/17	Interest on tax arrears and temporal effects	Equality, reliance and prospective limitation of remedial consequences.
Spain	Constitutional Court, STC 83/2016, 28 April 2016, ECLI:ES:TC:2016:83	Legal nature and review of a state of alarm	Competence, reviewability and legal form in emergency governance.
Spain	Constitutional Court, STC 112/2016, 20 June 2016, ECLI:ES:TC:2016:112	Freedom of expression and criminal sanction	Proportionality of sanction and constitutional limits of expression.
Spain	Constitutional Court, STC 140/2016, 21 July 2016, ECLI:ES:TC:2016:140	Court fees	Access to justice and disproportionate financial barriers.
Spain	Constitutional Court, STC 58/2018, 4 June 2018, ECLI:ES:TC:2018:58	Right to be forgotten in digital archives	Balancing privacy, information and passage of time.

Reference point	Decision	Legal issue	Reason for inclusion / matrix focus
Spain	Constitutional Court, STC 148/2021, 14 July 2021, ECLI:ES:TC:2021:148	First COVID-19 state of alarm	Legal basis and intensity of restrictions on movement.
Spain	Constitutional Court, STC 183/2021, 27 October 2021, ECLI:ES:TC:2021:183	Extension and delegation under the state of alarm	Parliamentary control, competence and legal certainty.
ECHR	Bochan v. Ukraine (No. 2) [GC], no. 22251/08, 5 February 2015	Extraordinary review after an ECHR judgment	Res judicata, arbitrariness and the limits of reopening.
ECHR	Lupeni Greek Catholic Parish and Others v. Romania [GC], no. 76943/11, 29 November 2016	Divergent case law and access to court	Mechanisms for resolving inconsistency and legal certainty.
ECHR	Béláné Nagy v. Hungary [GC], no. 53080/13, 13 December 2016	Social-security entitlement	Legitimate expectations and proportionality under property protection.
ECHR	Zubac v. Croatia [GC], no. 40160/12, 5 April 2018	Admissibility threshold for access to the Supreme Court	Excessive formalism, party responsibility and effective access.
ECHR	Guðmundur Andri Ástráðsson v. Iceland [GC], no. 26374/18, 1 December 2020	Tribunal established by law	Three-stage test balancing legality, certainty and institutional integrity.
ECHR	Vegotex International S.A. v. Belgium [GC], no. 49812/09, 3 November 2022	Retroactive legislation in pending tax proceedings	Compelling public-interest justification, foreseeability and fair trial.

Source: compiled by the authors from the official case-law databases identified in Table 1.

The twenty-four decisions in Table 2 constitute the complete case-based corpus, and each decision contributes a distinct coded proposition to the comparative analysis in Section 4.2.

3.3 Analytical instrument

Each decision was coded under eight questions: whether the applicable rule was accessible and sufficiently clear; whether the court identified a protected legal interest; whether discretion was expressly bounded; whether proportionality was applied; whether legitimate expectations were present; whether access to court or finality was affected; whether the decision departed from prior practice; and whether the remedy preserved systemic coherence. Coding was qualitative and binary-descriptive rather than numerical. A category was recorded only when the reasoning supplied a legal proposition that could be traced to the text of the decision.

For the purpose of the model, “manifest disproportionality” means that the burden imposed by the rule is not necessary for the stated legitimate aim or is materially excessive in relation to the protected interest, as demonstrated by reasons addressing feasible alternatives and the intensity of interference. “Argumentatively controlled correction” means that the court identifies an express constitutional, statutory or Convention basis; specifies the protected interest; applies a review standard; selects the least disruptive interpretive or remedial technique; and explains

the effect on precedent, finality and similarly situated cases. These definitions make the transition between the model's stages verifiable in the reasons of a decision.

4. Results

4.1 Normative criteria

The source analysis produced eight criteria that connect rule quality, rights protection and remedial discipline. Table 3 states the content of each criterion and the observable question used in the decision analysis.

Table 3. Criteria for analysing the balance between legal certainty and justice.

Criterion	Legal content	Observable question
Normative certainty	Accessibility, clarity, stability and foreseeable legal effects.	Could the addressee identify the applicable rule and reasonably foresee its consequence?
Protected legal interest	A right, legitimate expectation or procedural guarantee recognized by positive law.	Did the court identify the legal interest affected by the formal result?
Limits of discretion	Legal constraints on choice among interpretive or remedial alternatives.	Did the reasons specify why the chosen option was legally available and bounded?
Proportionality	Legitimate aim, suitability, necessity and relative burden.	Did the court compare the interference with the aim and available less restrictive means?
Legitimate expectations	Reliance on stable regulation, final decisions or consistent official conduct.	Was reliance legally grounded, sufficiently concrete and affected by state action?
Access to court	Practical and effective opportunity to obtain judicial determination.	Did procedural form prevent examination of the claim without adequate justification?
Finality and precedent	Respect for res judicata and reasoned treatment of established legal positions.	Was reopening or departure based on an exceptional and disclosed legal ground?
Systemic effect	Consistency of the remedy with the hierarchy of norms and future like cases.	Did the court explain the temporal, personal and precedential reach of the correction?

Source: compiled by the authors.

4.2 Case-based comparison

In the Ukrainian corpus, Decision No. 2-r(II)/2019⁴³ treated enforcement as part of the right to judicial protection rather than as an administrative consequence external to the judgment. The court preserved the final judgment but corrected a legal arrangement that deprived finality of practical effect. Decision No. 4-r/2019⁴⁴ required a separate appeal against an order extending pre-trial detention, because review postponed until the appeal against the final judgment could not provide

⁴³ CONSTITUTIONAL COURT OF UKRAINE. Decision No. 2-r(II)/2019. 2019, May 15. Available at: https://ccu.gov.ua/sites/default/files/docs/2_r_2_2019_0.doc (accessed on 26 July 2025).

⁴⁴ CONSTITUTIONAL COURT OF UKRAINE. Decision No. 4-r/2019. 2019, June 13. Available at: <https://zakon.rada.gov.ua/laws/show/v004p710-19#Text> (accessed on 26 July 2025).

effective protection of personal liberty. Decision No. 7-r/2019⁴⁵ addressed mandatory detention and rejected a categorical procedural consequence that excluded individualized judicial assessment. The corrective move was based on liberty, proportionality and the judicial function, not on an unbounded appeal to justice. Decision No. 5-r/2018⁴⁶ examined a legislative reduction of guarantees for persons affected by the Chornobyl disaster and treated human dignity and the prohibition on impairing the essence of constitutional rights as limits on statutory retrenchment. Decisions No. 1-r/2018⁴⁷ and No. 3-r(I)/2019⁴⁸ supplied the opposite control: changes affecting taxation and reliance required attention to non-retroactivity and foreseeable legal effects. Within the selected Ukrainian decisions, correction was strongest where the formal rule removed judicial assessment or made an existing remedy ineffective.

The German decisions displayed a more explicit separation between the constitutional defect and the remedial consequence. The order of 27 January 2015, 1 BvR 471/10 and 1 BvR 1181/10⁴⁹ rejected a general prohibition on religious head coverings and required a sufficiently concrete danger to school peace or state neutrality. The order of 15 December 2015, 2 BvR 2735/14⁵⁰ placed the protection of human dignity within constitutional identity review and required the surrender court to verify that the requested person would have an effective opportunity to contest an in absentia conviction. The order of 10 October 2017, 1 BvR 2019/16⁵¹ held that persons whose gender development does not fit the male/female categories could not be compelled either to select one of them or to omit a positive status entry; the legislature retained several constitutionally permissible remedial options. In *Right to Be Forgotten I*,⁵² the Federal Constitutional Court balanced privacy and freedom of expression under domestic fundamental rights and treated the passage of time as a legally relevant factor. *Right to Be Forgotten II*⁵³ first determined the applicable catalogue of rights in a fully harmonized field of EU law and then carried out the

⁴⁵ CONSTITUTIONAL COURT OF UKRAINE. Decision No. 7-r/2019. 2019, June 25. Available at: https://ccu.gov.ua/sites/default/files/docs/7_r_2019.doc (accessed on 26 July 2025).

⁴⁶ CONSTITUTIONAL COURT OF UKRAINE. Decision No. 5-r/2018. 2018, May 22. Available at: <https://zakon.rada.gov.ua/laws/show/v005p710-18#Text> (accessed on 26 July 2025).

⁴⁷ CONSTITUTIONAL COURT OF UKRAINE. Decision No. 1-r/2018. 2018, February 27. Available at: https://ccu.gov.ua/sites/default/files/docs/1_r_2018.doc (accessed on 26 July 2025).

⁴⁸ CONSTITUTIONAL COURT OF UKRAINE. Decision No. 3-r(I)/2019. 2019, June 5. Available at: https://ccu.gov.ua/sites/default/files/docs/3_r1_2019.doc (accessed on 26 July 2025).

⁴⁹ FEDERAL CONSTITUTIONAL COURT OF GERMANY. Order, 1 BvR 471/10 and 1 BvR 1181/10. 2015, January 27. Available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2015/01/rs2015_0127_1bvr047110en.html (accessed on 26 July 2025).

⁵⁰ FEDERAL CONSTITUTIONAL COURT OF GERMANY. Order, 2 BvR 2735/14. 2015, December 15. Available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2015/12/rs2015_1215_2bvr273514en.html (accessed on 26 July 2025).

⁵¹ FEDERAL CONSTITUTIONAL COURT OF GERMANY. Order, 1 BvR 2019/16. 2017, October 10. Available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2017/10/rs2017_1010_1bvr201916en.html (accessed on 26 July 2025).

⁵² FEDERAL CONSTITUTIONAL COURT OF GERMANY. *Right to Be Forgotten I*, 1 BvR 16/13. 2019, November 6. Available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2019/11/rs2019_1106_1bvr001613en.html (accessed on 26 July 2025).

⁵³ FEDERAL CONSTITUTIONAL COURT OF GERMANY. *Right to Be Forgotten II*, 1 BvR 276/17. 2019, November 6. Available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2019/11/rs2019_1106_1bvr027617en.html (accessed on 26 July 2025).

substantive balance. The tax-interest order of 8 July 2021⁵⁴ found an equality defect but limited the temporal consequences of the ruling, thereby protecting reliance and fiscal administrability. These decisions illustrate that a finding of disproportionality does not determine the remedy automatically; the court separately justifies the standard of review, the intensity of interference and the temporal effect.

In the Spanish corpus, STC 83/2016⁵⁵ treated the decree declaring a state of alarm as having the force of law for review purposes, channeling direct review to the Constitutional Court while preserving judicial review of implementing acts. STC 112/2016⁵⁶ tested a conviction for glorification of terrorism against freedom of expression through context, incitement and risk, and treated criminal punishment as constitutionally legitimate only where the expression encouraged violence or endangered persons, rights or the democratic order. STC 140/2016⁵⁷ invalidated court-fee arrangements that created an excessive financial barrier to judicial protection. The result did not rest on a general preference for equitable access but on the constitutional right to effective judicial protection and the absence of a proportionate relationship between the fee and the legitimate regulatory aim. STC 58/2018⁵⁸ balanced privacy and freedom of information in relation to a digital newspaper archive, treating the passage of time and mode of accessibility as factors in the remedy. STC 148/2021⁵⁹ and STC 183/2021⁶⁰ demonstrate the significance of legal form, competence and parliamentary control in emergency restrictions. They also show the limit of broad comparative claims: later Spanish constitutional development may revise the reasoning or scope of a given emergency-law proposition, so the present classification is confined to the decisions listed in Table 2.

The ECHR corpus supplied tests that national courts can apply without replacing domestic rules. In *Bochan v. Ukraine* (No. 2),⁶¹ the Grand Chamber treated the Supreme Court's gross misrepresentation of a prior Strasbourg judgment in extraordinary review proceedings as arbitrariness amounting to a denial of justice; finality did not shield proceedings conducted in that manner. In *Lupeni Greek Catholic Parish and Others v. Romania*,⁶² prolonged conflicting case law within the highest

⁵⁴ FEDERAL CONSTITUTIONAL COURT OF GERMANY. Order, 1 BvR 2237/14 and 1 BvR 2422/17. 2021, July 8. Available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2021/07/rs2021_0708_1bvr223714.html (accessed on 26 July 2025).

⁵⁵ CONSTITUTIONAL COURT OF SPAIN. STC 83/2016, ECLI:ES:TC:2016:83. 2016, April 28. Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2016-5195> (accessed on 18 September 2026).

⁵⁶ CONSTITUTIONAL COURT OF SPAIN. STC 112/2016, ECLI:ES:TC:2016:112. 2016, June 20. Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2016-7289> (accessed on 18 September 2026).

⁵⁷ CONSTITUTIONAL COURT OF SPAIN. STC 140/2016, ECLI:ES:TC:2016:140. 2016, July 21. Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2016-7905> (accessed on 18 September 2026).

⁵⁸ CONSTITUTIONAL COURT OF SPAIN. STC 58/2018, ECLI:ES:TC:2018:58. 2018, June 4. Available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2018-9534 (accessed on 18 September 2026).

⁵⁹ CONSTITUTIONAL COURT OF SPAIN. STC 148/2021, ECLI:ES:TC:2021:148. 2021, July 14. Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2021-13032> (accessed on 18 September 2026).

⁶⁰ CONSTITUTIONAL COURT OF SPAIN. STC 183/2021, ECLI:ES:TC:2021:183. 2021, October 27. Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2021-19512> (accessed on 18 September 2026).

⁶¹ EUROPEAN COURT OF HUMAN RIGHTS. *Bochan v. Ukraine* (No. 2) [GC], no. 22251/08. 2015, February 5. Available at: <https://hudoc.echr.coe.int/eng?i=001-152331> (accessed on 26 July 2025).

⁶² EUROPEAN COURT OF HUMAN RIGHTS. *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11. 2016, November 29. Available at: <https://hudoc.echr.coe.int/eng?i=001-169054> (accessed on 26 July 2025).

court and failure to use the domestic harmonization mechanism breached legal certainty, although the applicants had obtained a determination on the merits and therefore retained access to court. In *Zubac v. Croatia*,⁶³ the Grand Chamber assessed access to a supreme court by examining foreseeability, procedural responsibility, excessive formalism and the role of the higher court. It did not treat every admissibility requirement as unjust. In *Vegotex International S.A. v. Belgium*,⁶⁴ the Court accepted that retroactive legislation in pending proceedings required compelling public-interest reasons and a close examination of foreseeability. *Bélané Nagy v. Hungary*⁶⁵ linked legitimate expectations to a sufficiently established legal position, while *Guðmundur Andri Ástráðsson v. Iceland*⁶⁶ formulated a staged test for defects in judicial appointment. Across these decisions, the Convention standard operated as a review of legal quality and justification rather than a general power to replace national law with the Court's preferred outcome.

4.3 Comparative patterns

The coded decisions produced three recurring techniques: preservation of the rule, teleological interpretation within the rule's legally available range and corrective departure from the *prima facie* result. The comparative difference lay in the justificatory path and remedial design, not in a fixed national preference for certainty or justice. Table 4 reports only patterns observed in the selected corpus.

Table 4. Comparative reasoning patterns within the selected corpus.

Reference point	Observed justificatory focus	Condition for correction in the corpus	Effect on certainty
Ukraine	Effective rights protection under conditions of changing legislation and procedural design.	Correction when a categorical rule removes individualized review, defeats enforcement or produces unforeseeable retroactive effects.	Higher instability risk if the court does not state the legal basis and reach of the remedy.
Germany	Structured review through <i>Rechtsstaat</i> , rights balancing, proportionality and protection of reliance.	Correction after separate identification of constitutional defect, review intensity and remedial consequences.	Predictability supported by staged reasoning and express temporal limitation.
Spain	Seguridad jurídica combined with equality, effective judicial protection, competence and proportionality.	Correction when legal form or a procedural burden lacks a proportionate relation to the constitutional aim.	Predictability depends on clear treatment of competence, legal form and the scope of invalidity.

⁶³ EUROPEAN COURT OF HUMAN RIGHTS. *Zubac v. Croatia* [GC], no. 40160/12. 2018, April 5. Available at: <https://hudoc.echr.coe.int/eng?i=001-181821> (accessed on 26 July 2025).

⁶⁴ EUROPEAN COURT OF HUMAN RIGHTS. *Vegotex International S.A. v. Belgium* [GC], no. 49812/09. 2022, November 3. Available at: <https://hudoc.echr.coe.int/eng?i=001-220142> (accessed on 26 July 2025).

⁶⁵ EUROPEAN COURT OF HUMAN RIGHTS. *Bélané Nagy v. Hungary* [GC], no. 53080/13. 2016, December 13. Available at: <https://hudoc.echr.coe.int/eng?i=001-169663> (accessed on 26 July 2025).

⁶⁶ EUROPEAN COURT OF HUMAN RIGHTS. *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18. 2020, December 1. Available at: <https://hudoc.echr.coe.int/eng?i=001-206582> (accessed on 26 July 2025).

Reference point	Observed justificatory focus	Condition for correction in the corpus	Effect on certainty
ECHR	Supranational review through foreseeability, fair trial, access, legitimate expectations and proportionality.	Correction when domestic formalism or retroactivity lacks sufficient justification under a Convention right.	The Court reviews Convention compatibility while leaving the design of national rules principally to the respondent state.

Source: compiled by the authors from the decisions in Table 2.

4.4 Theoretical model

The model begins with legal certainty as a rebuttable presumption of preserving the rule's prima facie result. It then requires a legal check of the protected interest, legitimate expectations, access to court, proportionality and finality. The degree of legal imbalance determines the least disruptive technique available. Absence of a demonstrated imbalance leads to preservation of the rule. A moderate conflict that can be resolved within the text and purpose of the rule leads to teleological interpretation. A manifestly disproportionate result may justify corrective departure only when the legal basis, threshold, remedy and systemic consequences are stated in the reasons.

Figure 1 links each result to a distinct legal condition. Absence of a legally relevant imbalance requires preservation of the rule. An imbalance remediable within the rule's semantic range permits teleological interpretation. Manifest disproportionality, supported by an express legal basis, permits corrective departure. Teleological interpretation remains within the legally available meaning of the rule and therefore requires no suspension of the rule's authority. Corrective departure changes the prima facie result and consequently carries a higher justificatory burden. The final stage is not a free-standing balance of moral preferences. It is an argumentatively controlled conclusion that must remain generalizable to materially similar cases and compatible with the hierarchy, temporal operation and remedial structure of the legal order.

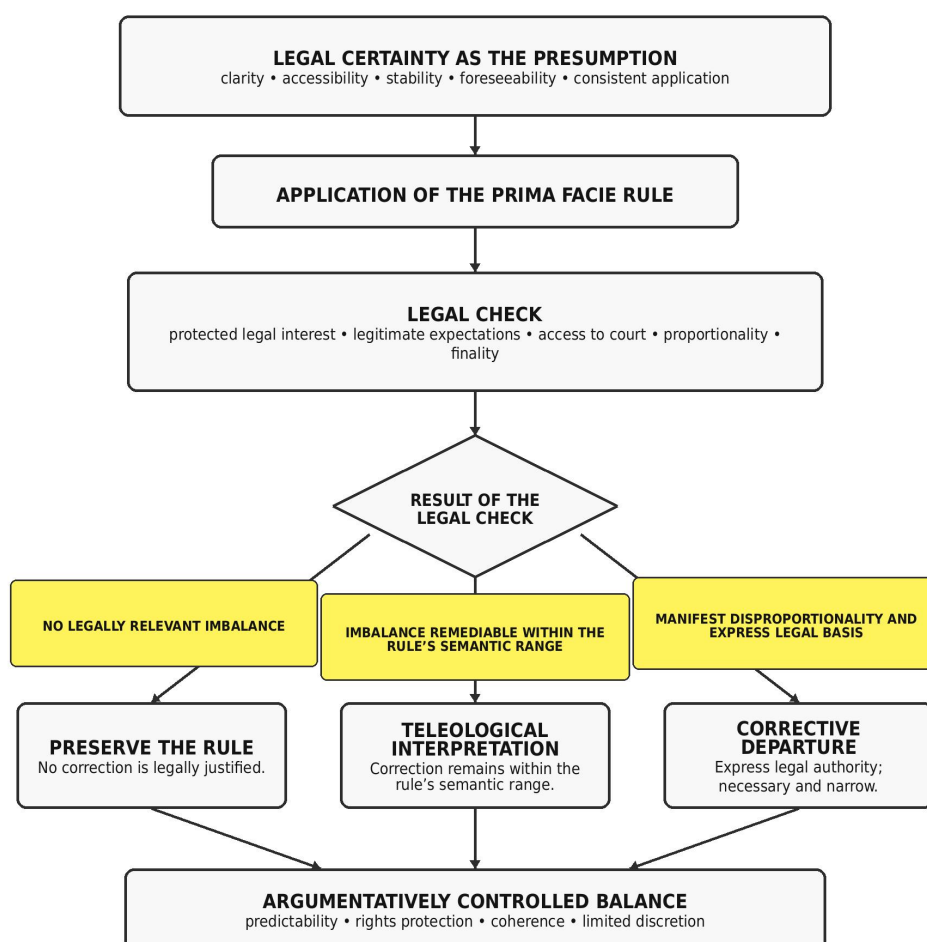


Figure 1. The sequence for applying the theoretical model of the balance between legal certainty and justice.

Source: created by the authors.

5. Discussion

The findings refine the relationship between formal legality and rights-based correction. Waldron argues that the rule of law concerns the way legal institutions subject power to public norms,⁶⁷ while Marmor identifies limits to treating formal rule-of-law values as complete answers to substantive legal disputes.⁶⁸ The present results locate the interaction at the level of reasons: formal certainty remains the starting presumption, and a rights-based correction is legitimate only if the court shows why continued application of the prima facie result would contradict another legally binding requirement.

The model also specifies the role of rational justification. Aarnio connects acceptability in legal interpretation with reasoned justification addressed to a legal community.⁶⁹ Barak presents proportionality as a structured method for reviewing

⁶⁷ WALDRON, J. "The concept and the rule of law". *Georgia Law Review*, v. 43, n. 1, 2008, pp. 1–61. Available at: <https://digitalcommons.law.uga.edu/glr/vol43/iss1/2> (accessed on 26 July 2025).

⁶⁸ MARMOR, A. "The rule of law and its limits". *Law and Philosophy*, v. 23, n. 1, 2004, pp. 1–43. <http://www.jstor.org/stable/4150562>

⁶⁹ AARNIO, A. *The rational as reasonable: A treatise on legal justification*. Netherlands: D. Reidel, 1987.

limitations of constitutional rights,⁷⁰ and Stone Sweet and Mathews describe its wider constitutional diffusion.⁷¹ In the selected decisions, proportionality performed a controlling function only when the court stated the legitimate aim, degree of interference and remedial alternative. A bare assertion that an outcome is unjust, without those elements, did not satisfy the matrix.

Coherence supplies a second control. MacCormick's account of legal reasoning requires a decision to be consistent with valid rules and coherent with the principles that explain the legal order.⁷² Grimm's comparative constitutional work shows that proportionality is embedded in institutional traditions rather than operating as an identical transnational formula.⁷³ Rubio Llorente likewise situates Spanish constitutional adjudication within the legal forms and distribution of public power.⁷⁴ This explains why the model uses common questions but does not infer that identical verbal formulas have identical doctrinal effects in every jurisdiction.

The cumulative threshold for corrective departure contains five requirements. First, the court must identify a positive-law basis in a constitution, statute, treaty or settled doctrine. Second, it must specify the protected legal interest and the concrete burden produced by the *prima facie* result. Third, it must demonstrate manifest disproportionality through necessity and relative-burden reasoning rather than assertion. Fourth, it must select the least disruptive technique: interpretation before invalidation, narrow exception before general displacement and prospective limitation where immediate retroactive effect would create a new certainty defect. Fifth, it must explain how the result applies to materially similar cases and how it affects finality and precedent. Popelier's analysis of the tensions inherent in legal certainty supports the need to evaluate both rule stability and the consequences of legal change,⁷⁵ while Klatt and Meister's account of proportionality supports the separation of review stages and argumentative burdens.⁷⁶

These requirements distinguish the model from judicial substitution of subjective justice for law. Justice has no autonomous remedial effect in the model. It enters through a legally recognized right, principle or procedural guarantee and remains constrained by competence, form, proportionality and coherence. The distinction is particularly important in disputes concerning final judgments and established practice, where an individualized correction may benefit one party while undermining equality and reliance for others.

The comparative result is limited. The twenty-four decisions do not establish how frequently courts in Ukraine, Germany, Spain or Strasbourg use each technique. They also do not support causal claims that political or historical characteristics determine judicial outcomes. The study identifies legally indicative patterns within a purposive corpus. Context was included only where it altered the legal problem, as in emergency powers, institutional transition or multilevel rights review. Further research should use larger sector-specific corpora and examine constitutional, administrative, civil and criminal adjudication separately.

⁷⁰ BARAK, A. *Proportionality: Constitutional rights and their limitations*. Cambridge: Cambridge University Press, 2012. <https://doi.org/10.1017/CBO9781139035293>

⁷¹ STONE SWEET, A., and MATHEWS, J. "Proportionality balancing and global constitutionalism". *Columbia Journal of Transnational Law*, v. 47, n. 1, 2008, pp. 68-149. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1569344 (accessed on 26 July 2025).

⁷² MACCORMICK, N. *Legal reasoning and legal theory*. Oxford: Clarendon Press, 1978.

⁷³ GRIMM, D. *Constitutionalism: Past, present, and future*. Oxford: Oxford University Press, 2016. <https://doi.org/10.1093/acprof:oso/9780198766124.001.0001>

⁷⁴ RUBIO LLORENTE, F. *La forma del poder: Estudios sobre la Constitución* (3rd ed.). Madrid: Centro de Estudios Políticos y Constitucionales, 2012.

⁷⁵ POPELIER, P. "Five paradoxes on legal certainty and the lawmaker". *Legisprudence*, v. 2, n. 1, 2008, pp. 47-66. <https://doi.org/10.1080/17521467.2008.11424673>

⁷⁶ KLATT, M., and MEISTER, M. *The constitutional structure of proportionality*. Oxford: Oxford University Press, 2012. <https://doi.org/10.1093/acprof:oso/9780199662463.001.0001>

6. Conclusions

The conceptual contribution is a precise relationship between the two principles. Legal certainty is the rebuttable presumption that the *prima facie* result of an accessible and valid rule should be preserved. Justice is a legally mediated corrective principle, not an independent authorization to replace the rule. It becomes operative only through a protected legal interest and a demonstrated conflict with proportionality, legitimate expectations or effective judicial protection.

The methodological contribution is the analytical sequence and its disclosed indicators. The sequence requires identification of the rule, protected interest, scope of discretion, proportionality, expectations, access, finality and systemic effect. It distinguishes preservation of the rule, teleological interpretation and corrective departure and assigns a progressively higher burden of reasons to each move away from the *prima facie* result.

The comparative contribution is confined to the selected decisions. The Ukrainian corpus emphasized effective review and the risks created by changing legislation and categorical procedural consequences. The German corpus separated the finding of a constitutional defect from the design and temporal effect of the remedy. The Spanish corpus connected *seguridad jurídica* with competence, legal form, equality and effective judicial protection. The ECHR corpus reviewed foreseeability, excessive formalism, finality and legitimate expectations without treating the Convention as a general power to redesign national law.

The practical contribution is a reasoned checklist for evaluating judicial discretion. A corrective departure is justified only when it has a positive-law basis, addresses a specified protected interest, demonstrates manifest disproportionality, uses the least disruptive legal technique and explains its effect on precedent, finality and similar cases. The model therefore disciplines correction rather than enlarging judicial freedom. Its validity should be tested in subsequent sector-specific studies with broader and independently coded case corpora.

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