

# Evidence, Impact Assessments and Constitutional Courts

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Day of Parliamentary Research, 26 June 2023

Panel I: Different Types of Evidence in(to) Parliamentary Processes

# The Constitutional Law Perspective

- Constitutions typically do not explicitly regulate what type of evidence should be used by parliaments, but
- evidentiary requirements are embedded within fundamental rights
  - „proportionality test“ – is a specific measure suited and necessary to achieve its goals?
  - Is the legislator – by constitutional law – obliged to provide reliable evidence for its assumptions?
- ultimately, Constitutional Courts decide what evidence must be used by legislators
  - variations of „evidence-based judicial review“

# Germany: Bundesverfassungsgericht (BVerfG)

- BVerfG has argued in very specific cases that legislator is obliged to provide reliable evidence for its assumptions
  - BVerfG 125, 175, Hartz-IV
- No general obligation to provide reliable evidence or for laws to undergo impact assessments
  - BVerfG 24.03.2021, 1 BvR 2656/18,  
ECLI:DE:BVerfG:2021:rs20210324.1bvr265618 (= German Climate Case)

# European Union: Court of Justice of the European Union (CJEU)

- EU legislator is accorded a wide margin of appreciation, especially in view of complex technical considerations and prognostic decisions
  - Wide margin of appreciation accompanied by stringent rules on impact assessments
    - CJEU 08.06.2010, C-58/08, Vodafone, ECLI:EU:C:2010:32
    - CJEU 21.06.2018, C-5/16, Poland / EP and Council, ECLI:EU:C:2018:483
- CJEU follows a procedural review approach

# Austria: Verfassungsgerichtshof (VfGH)

- Legislator is not obliged to provide reliable evidence
- Even contradictory parliamentary materials are irrelevant for the constitutionality of the corresponding law
  - VfGH 13.12.2019, G78/2019 et al.

# Conclusion

Constitutional Courts shape evidentiary requirements for parliaments and legislators.

Most Constitutional Courts in Europe follow a procedural approach - not (yet) testing the quality of the evidence provided for by the legislator but rather checking whether (any) evidence was provided.

Thank you!

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