European Journal of Risk Regulation (2025), 1–16
doi:10.1017/err.2025.6

CAMBRIDGE UNIVERSITY PRESS

ARTICLE

A Tale of Four Crises: The European Court of Justice's Response to Crises

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Abstract

While the European Union was recently affected by four major and multifaceted crises which gave rise to litigation, the response of the European Court of Justice to these events has remained understudied. From a close reading of the procedural features, the legal reasoning and timing of four key judgments concerning measures adopted in the wake of the Eurozone crisis, the migration crisis, Brexit, and the COVID-19 pandemic, this article sketches a broader narrative about the Court's response to crises which transcends the specificities of the legal issues and the context of each case. The findings suggest that the Court is likely to adjudicate a crisis case by applying the expedited procedure depending on political developments, assign a larger chamber, carefully justify its reasoning with references to settled case-law, conduct a context-sensitive balancing exercise, and deliver a decision at a politically relevant time.

Keywords: crises; European court of justice; strategic judicial behaviour

I. Introduction

The Eurozone crisis (2009), the migration crisis (2015), Brexit (2016) and the COVID-19 pandemic (2020), confronted the European Union (EU) with a plethora of multifaceted challenges. These four crises triggered a wide range of institutional responses and measures which gave rise to litigation before the European Court of Justice (the Court).[1] The role of the Court in shaping responses to these events, albeit crucial, remains largely underexplored in comparison to other EU institutions.[2] The literature falls short from advancing an overarching narrative of the Court's adjudication patterns. On the one hand, general accounts on how courts throughout Europe responded to recent crises overlook important details in the Court's use of judicial tools.[3] On the other hand, studies on the

[1] For an overview of litigation before the Court during the Eurozone, the migration, the rule of law, Ukraine and Brexit crises see L Conant, "The Court of Justice of the European Union" in M Riddervold, J Trondal and A Newsome (eds), *The Palgrave Handbook of EU Crises* (Cham, Switzerland, Springer International Publishing 2021) 278–9.

[2] JA Caporaso, "Europe's Triple Crisis and the Uneven Role of Institutions: The Euro, Refugees and Brexit" (2018) 56 JCMS: Journal of Common Market Studies 1345; F Allen, E Carletti and M Gulati (eds), *Institutions and the Crisis* (Florence, Italy, European University Institute 2018); M Riddervold, J Trondal and A Newsome (eds), *The Palgrave Handbook of EU Crises* (Cham, Switzerland, Springer International Publishing 2021).

[3] F Fabbrini, "Covid-19, Human Rights, and Judicial Review in Transatlantic Perspective" (October 2023) available at <https://regroup-horizon.eu/publications/human-rights/>; F Fabbrini, "The Euro-Crisis and the Courts: Judicial Review and the Political Process in Comparative Perspective" (2014) 32 (1) Berkeley Journal of

Court tend to narrowly focus on the specifics of each crisis without clarifying whether the observed judicial behaviour forms part of a broader underlying pattern.[4]

This article seeks to unveil the patterns and highlight the differences and commonalities in the Court's adjudication of highly politicised and salient topics in times of crisis. Specifically, the article examines the Court's judgments in *Pringle*,[5] *Jafari*,[6] *Wightman*[7] and *NORDIC INFO*[8] which respectively concern the Eurozone crisis, the migration crisis, Brexit, and the COVID-19 pandemic. In order to empirically assess the Court's response, the selected cases are analysed through three parameters: their procedural features, their legal reasoning and the timing of their delivery.

In *Pringle*, the Court was asked to rule on the validity of Decision 2011/199[9] and on whether Member States could conclude and ratify the Treaty establishing the European Stability Mechanism (ESM Treaty).[10] In *Jafari*, the Court was called to assess the applicability of Regulation 604/2013 (the Dublin III Regulation)[11] in situations of a mass influx of asylum seekers through the Western Balkans, which prompted some Member States to collectively disregard the rules stipulated in Regulation 610/2013[12] and to arrange transportation of third-country nationals wishing to transit through their territory in order to make an application for international protection in another Member State. The request for a preliminary ruling concerned Articles 2, 12 and 13 of the Dublin III Regulation and Article 5 of Regulation 610/2013.[13] In *Wightman*, following the notification of the United Kingdom's (UK) intention to withdraw from the EU, the national court sought the interpretation of Article 50 TEU asking whether this notification could be revoked, and if so, under which conditions.[14] In *NORDIC INFO*, Belgian legislation restricting freedom of movement during the COVID-19 pandemic raised issues of compatibility[15] with Directive 2004/38[16] and Regulation 2016/399 (Schengen Borders Code).[17] The contested Belgian

International Law 64; B De Witte, "Judicialization of the Euro Crisis? A Critical Evaluation' in Franklin Allen, Elena Carletti and Mitu Gulati (eds), *Institutions and the Crisis* (Florence, European University Institute 2018) 103–111.

[4] U Šadl and MR Madsen, "Did the Financial Crisis Change European Citizenship Law? An Analysis of Citizenship Rights Adjudication before and after the Financial Crisis" (2016) 22 European Law Journal 40; C Kilpatrick and B De Witte, "Social Rights in Times of Crisis in the Eurozone: The Role of Fundamental Rights' Challenges" available at <https://cadmus.eui.eu/handle/1814/31247> (last accessed 25 April 2024); E Muir, "EU Citizenship, Access to 'Social Benefits' and Third-Country National Family Members: Reflecting on the Relationship between Primary and Secondary Rights in Times of Brexit" in N Cambien, D Kochenov and E Muir (eds), *European Citizenship under Stress* (Brill, Nijhoff 2020) 170–198.

[5] Case C-370/12 *Pringle* ECLI:EU:C:2012:756.

[6] Case C-646/16 *Jafari* ECLI:EU:C:2017:586.

[7] Case C-621/18 *Wightman and Others* ECLI:EU:C:2018:999.

[8] Case C-128/22 *NORDIC INFO* ECLI:EU:C:2023:951.

[9] European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro (OJ 2011 L 91, p 1).

[10] *Pringle* (n 5, 28).

[11] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (OJ L 180, 29.6.2013, pp 31–59).

[12] Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 (OJ 2013 L 182, p 1).

[13] *Jafari* (n 6, 36).

[14] *Wightman* (n 7, 16).

[15] *NORDIC INFO* (n 8, 45).

[16] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (2004) OJ L158/77.

[17] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (OJ L 77, 23.3.2016, pp 1–52).

legislation, adopted on public health grounds, prohibits Union citizens and their family members from engaging in non-essential travel to other Member States classified as high-risk zones, while also imposing an obligation requiring Union citizens who are not Belgian nationals to undergo screening tests and to observe quarantine when entering Belgium from high-risk Member States.[18] Because the selected cases examine core measures adopted in response to the four crises, they differ from other cases dealing with the ramifications of such measures.[19]

Crucially, the selected cases lend themselves to a comparison because of their similarities in both procedure and outcome. First, all four cases reached the Court through the preliminary reference procedure. In *Pringle*, the reference was made by the Irish Supreme Court in the context of an appeal against a judgment of the Irish High Court in proceedings brought by Mr. Pringle, a member of the Irish Parliament, against measures adopted by the executive branch.[20] In *Jafari*, the reference emerged in the course of the examination of an appeal brought before the Upper Administrative Court of Austria by asylum seekers, the Jafari sisters, following the decision of the competent Austrian authorities to reject their applications for international protection and to issue an order for their return to Croatia. In *Wightman*, the reference submitted by the Scottish Court of Session, Inner House, First Division, resulted from a petition for judicial review filed by one member of the UK Parliament, two members of the Scottish Parliament and three members of the European Parliament.[21] In *NORDIC INFO*, the request for preliminary ruling was made by the Brussels Court of First Instance (Dutch-speaking) in a dispute between a Belgian company, Nordic Info BV, and the Belgian State. Nordic Info BV sought compensation for damages allegedly suffered due to the national measures adopted to contain the COVID-19 pandemic.[22] The fact that all selected judgments share the same procedural features allows for a detailed analysis of the Court's choices and legal reasoning without having to control for procedural differences.

Second, the four judgments have comparable outcomes as the Court did not find any grounds to infirm the contested measures. The comparable outcomes allow for a more nuanced juxtaposition of the legal reasoning and the judicial choices underpinning these conclusions. The Court's three-fold answer in *Pringle* unequivocally confirmed the validity of Decision 2011/199,[23] held that EU law does not preclude Eurozone Member States from concluding and ratifying the ESM Treaty,[24] and that their ability to do so is not subject to the entry into force of Decision 2011/199.[25]

In *Jafari*, the Court upheld the asylum procedures established by the Dublin III Regulation. The Court ruled that practices such as those in the main proceedings where Member States provide transportation for crossing the border and issue police documents to third-country nationals who do not satisfy the entry conditions generally imposed by that Member State are not tantamount to the issuing of a "visa" within the meaning of Article 12 of the Dublin III Regulation.[26] The ruling further stressed that a third-country national whose entry was tolerated without fulfilling the entry conditions generally

[18] *NORDIC INFO* (n 8, 33).

[19] See for example Joined Cases C-8/15 P to C-10/15 P *Ledra Advertising Ltd and Others v European Commission and European Central Bank* ECLI:EU:C:2016:701 for the financial crisis; Case C-490/16 *A.S. v Republika Slovenija* ECLI:EU:C:2017:585 for the migration crisis; Case C-499/21 P *Silver and Others v Council* ECLI:EU:C:2023:479 for Brexit and Case C-659/22 *RK v Ministerstvo zdravotnictví* ECLI:EU:C:2023:745 for the COVID-19 pandemic.

[20] *Pringle* (n 5, 2).

[21] *Wightman* (n 7, 10).

[22] *NORDIC INFO* (n 8, 2).

[23] *Pringle* (n 5, 76).

[24] Ibid (n 5, 182).

[25] Ibid (n 5, 185).

[26] *Jafari* (n 6, 58).

imposed in the first Member State must be regarded as having "irregularly crossed" the border of the first Member State pursuant to Article 13 of the Dublin III Regulation.[27]

In *Wightman*, the Court interpreted Article 50 TEU as allowing a Member State which has notified the European Council of its intention to withdraw from the EU to revoke that notification unilaterally, in an unequivocal and unconditional manner, before the entry into force of a withdrawal agreement, and in the absence of such an agreement during the period provided for in Article 50(3) TEU, by a written notice addressed to the European Council. The Court further clarified that the revocation decision shall be taken in accordance with national constitutional requirements and its purpose is to terminate the withdrawal procedure by confirming the EU membership of that Member State.[28]

In *NORDIC INFO*, the Court held that Directive 2004/38 does not preclude national legislation such as that concerned in the main proceedings, in so far as it complies with Articles 30 and 32 of Directive 2004/38 and the Charter of Fundamental Rights of the European Union (the Charter), in particular the principles of non-discrimination and proportionality.[29] The Court also held that Articles 22, 23 and 25 of the Schengen Borders Code do not preclude restrictive national legislation if the measures do not have an effect equivalent to border checks, or in case they do, the threat posed by the pandemic corresponds to a serious threat to public policy or internal security.[30]

This article is structured as follows. Section II provides an overview of the literature examining judicial behaviour in times of crisis. Section III explores the procedural features of the selected cases. Section IV focuses on the legal reasoning while Section V provides a contextually embedded analysis of the timing of the decisions. The last section concludes and fleshes out the legal characteristics and the political implications of the Court's response to crises.

II. Judicial behaviour in times of crisis

The EU's long crisis decade attracted considerable scholarly attention with contributions offering various theoretical and empirical insights.[31] On a general level, EU institutions proved to be resilient as they mostly responded by "muddling through,"[32] a term which denotes "path-dependent incremental responses building on pre-existing institutional architectures."[33] Conant's analysis suggests that this was also true for the Court until Brexit.[34] According to Conant, Brexit presented the first case of a "breakdown" in an EU institution by ending free movement of people and the Court's jurisdiction in the UK.[35] Nonetheless, Conant does not provide a comprehensive examination of what a strategy of "muddling through" precisely entails for the Court.

Existing literature on judicial responses to crises tends to examine courts in Europe collectively – national courts, the European Court of Human Rights, and the Court – leading to general conclusions about the role of the judiciary in times of crisis. For example, Fabbrini's analysis of national and supranational courts reveals an increasing judicial involvement in the fiscal domain and points to the judicialisation of the Eurozone crisis.[36]

[27] Ibid (n 6, 102).
[28] *Wightman* (n 7, 75).
[29] *NORDIC INFO* (n 8, 98).
[30] Ibid (n 8, 129).
[31] Allen, Carletti and Gulati (n 2); Riddervold, Trondal and Newsome (n 2); E Jones, DR Kelemen and S Meunier, "Failing Forward? Crises and Patterns of European Integration" (2021) 28 Journal of European Public Policy 1519.
[32] Riddervold, Trondal and Newsome (n 2).
[33] Ibid (n 2) 11.
[34] Conant (n 1).
[35] Ibid.
[36] Fabbrini, "The Euro-Crisis and the Courts" (n 3).

De Witte qualifies Fabbrini's argument by demonstrating that courts in Europe, called to rule on the legality of measures adopted by politicians during the Eurozone crisis, displayed, overall, judicial deference.[37] Similarly, in the context of the COVID-19 pandemic, the literature tends to examine courts in Europe collectively rather than focusing on the Court's specific response.[38] This broader scope leaves unanswered questions about the peculiarities of the Court's response to the four crises.

Meanwhile, studies centred on the Court tend to be limited to a given crisis. For example, in examining the impact of the financial crisis on the Court's citizenship jurisprudence, Šadl and Madsen observe a greater willingness to deploy legal diplomacy in cases decided during and after the financial crisis.[39] In the context of the migration crisis, Wallerman Ghavanini doctrinally and empirically illustrates the Court's crisis-induced judicial restraint vis-à-vis the executive at both the EU and the domestic level.[40] Scholarship on Brexit suggests that the Court's constitutionalisation of free movement rights played an instrumental role in the UK's decision to leave the EU,[41] and identifies patterns of deconstitutionalisation in response to Brexit.[42] In analysing judicial responses to the COVID-19 pandemic, Fabbrini observes that courts in Europe were more deferential to the political branch in the early stages of the pandemic and begun to tighten scrutiny as the crisis receded.[43] Due to their narrow focus on a specific crisis, such contributions do not offer generalisable conclusions about the Court's adjudication in times of crisis. It is therefore unclear whether the observed judicial behaviour is specific to the crisis reviewed, or if it forms part of the Court's typical response to crises.

Existing literature suggests that the Court is likely to be affected by the outbreak of a crisis. It is widely accepted that the Court does not operate in a political vacuum and is greatly influenced by changes in the broader context.[44] The Court is no longer "tacked away in the fairy-land Duchy of Luxembourg"[45] as the litigation inspired by recent crises brought it to centre stage,[46] and subjected its jurisprudence to increased politicisation and media attention.[47] Visibility and politicisation are in turn linked to modifications in the tune and tone of the Court's jurisprudence.[48] Even though a crisis is expected to have an observable impact on the Court's jurisprudence, the manner in which the Court reacts to crises remains largely understudied.

[37] De Witte (n 3).

[38] Fabbrini, "Covid-19, Human Rights, and Judicial Review in Transatlantic Perspective" (n 3).

[39] Šadl and Madsen (n 4).

[40] AW Ghavanini, "The CJEU's Give-and-Give Relationship with Executive Actors in Times of Crisis" (2023) 2 European Law Open 284.

[41] SK Schmidt, "Extending Citizenship Rights and Losing It All: Brexit and the Perils of 'Over-Constitutionalisation'" in Daniel Thym (ed), *Questioning EU Citizenship: Judges and the Limits of Free Movement and Solidarity in the EU* (Oxford, Hart Publishing 2017) 17–36; SK Schmidt, "No Match Made in Heaven. Parliamentary Sovereignty, EU over-Constitutionalization and Brexit" (2020) 27 Journal of European Public Policy 779; Conant (n 1).

[42] Muir (n 4).

[43] Fabbrini, "Covid-19, Human Rights, and Judicial Review in Transatlantic Perspective" (n 3).

[44] M Blauberger and Others, "ECJ Judges Read the Morning Papers. Explaining the Turnaround of European Citizenship Jurisprudence" (2018) 25 Journal of European Public Policy 1422; KJ Alter, LR Helfer and MR Madsen, "How Context Shapes the Authority of International Courts" (2016) 79 Law and Contemporary Problems 1.

[45] E Stein, "Lawyers, Judges, and the Making of a Transnational Constitution" (1981) 75 American Journal of International Law 1, 1.

[46] Conant (n 1); Fabbrini, "The Euro-Crisis and the Courts" (n 3).

[47] M Blauberger and DS Martinsen, "The Court of Justice in Times of Politicisation: 'Law as a Mask and Shield' Revisited" (2020) 27 Journal of European Public Policy 382; Blauberger and Others (n 44); J Dederke, "CJEU Judgments in the News – Capturing the Public Salience of Decisions of the EU's Highest Court" (2022) 29 Journal of European Public Policy 609.

[48] Blauberger and Others (n 44).

The literature unveiled a wide array of judicial tools often used by the Court to respond to the political context. The Court relies on procedural tools such as the assignment of a case to a larger chamber when deciding salient matters against political division.[49] Substantially, the Court responds to contextual demands through the legal reasoning, particularly the balancing of conflicting interests.[50] In order to improve the legal justifications in the face of an adverse political climate, the Court tends to refer more frequently to its existing case-law.[51] Lastly, the Court occasionally responded to the political context through the timing of its decisions.[52] Scholars noted that the Court's delivery of *Commission v United Kingdom*[53] in the built-up to the Brexit referendum had been a deliberate choice.[54] It is therefore expected that some, if not all, the judicial tools generally used in times of high politicisation and visibility will also form part of the Court's typical response to crises.

III. The procedural features of crisis cases

Given that the Court's typical response to crises is likely to entail procedural choices, this section examines, in the four selected cases, the application of the expedited procedure and the choice of chamber size.

1. The application of the expedited procedure

Article 23a of the Statute of the Court of Justice of the European Union (the Statute)[55] provides for an expedited or accelerated, procedure[56] which can be applied across subjects and types of proceedings, provided the nature of the case gives rise to a need to be dealt with within a short time. The referring court can request the application of the expedited procedure but ultimately the Court decides whether it is applicable. Under the expedited procedure the time-limits are significantly shorter, and the Court is able to issue a decision sooner rather than later.

The requests for a preliminary ruling in *Pringle*, *Jafari* and *Wightman* were decided under the expedited procedure but in *NORDIC INFO* under the standard one. The Belgian referring court in *NORDIC INFO* did not request the expedited procedure, and the Court did not apply it *ex officio*. The selected cases suggest that the application of the expedited procedure is highly contextual. The Court is more likely to opt for the expedited procedure in cases decided at the relatively early stages of a crisis.

In *Pringle*, the decision of the President of the Court to grant the request for the application of the expedited procedure appears highly motivated by developments linked to the Eurozone crisis. Even though Ireland and all other signatories had already ratified the ESM Treaty, the President of the Court stressed that it was necessary to promptly

[49] U Šadl and S Hermansen, "The European Court of Justice, an Able and Unwilling Lawmaker: Evidence from 920 Free Movement of Persons Judgments" in M Dawson, B De Witte and E Muir (eds), *Revisiting Judicial Politics in the European Union* (Cheltenham, England, Edward Elgar Publishing 2024) 282–304; RD Kelemen, "The Political Foundations of Judicial Independence in the European Union" (2012) 19 Journal of European Public Policy 43.

[50] Blauberger and Others (n 44); Šadl and Madsen (n 4).

[51] O Larsson and Others, "Speaking Law to Power: The Strategic Use of Precedent of the Court of Justice of the European Union" (2017) 50 Comparative Political Studies 879.

[52] Blauberger and Others (n 44).

[53] Case C-308/14 *Commission v United Kingdom* ECLI:EU:C:2016:436.

[54] C O'Brien, "The ECJ Sacrifices EU Citizenship in Vain: *Commission v. United Kingdom*" (2017) 54 (1) Common Market Law Review 209–243; Blauberger and Others (n 44).

[55] Consolidated version of the Treaty on the Functioning of the European Union, Protocol (No 3) On the Statute of the Court of Justice of the European Union OJ C 202, 7.6.2016.

[56] Art 23a of the Statute of the Court of Justice of the European Union.

eradicate the uncertainty surrounding the validity of this Treaty which adversely affected its prime objective of maintaining the financial stability of the Eurozone.[57] The expedited procedure was applied despite settled case-law which states that the parties' economic interests, irrespective of their significance and legitimacy, are not sufficient to justify its application.[58] For instance, in *Confédération générale du travail*[59] the Court denied the application of the then accelerated (now expedited) procedure on the ground that its application would only have the effect of reducing economic losses, as the national provisions concerned had already entered into force. The juxtaposition of the two cases suggests that the facts and the crisis context in *Pringle* were instrumental in the application of the expedited procedure. *Pringle* concerned the ESM Treaty, designed to provide stability to the Eurozone, and it was thus impossible to decouple the facts of the case from the crisis at hand. The explicit reference to the "exceptional circumstances of the financial crisis"[60] further suggests that the context was decisive in triggering the application of the expedited procedure in *Pringle*.

In the same tenor, in *Jafari*, the Court opted for the expedited procedure due to the exceptional circumstances flowing from the migration crisis. The President of the Court explicitly mentioned that the expedited procedure was necessary to uphold the proper functioning of the common European asylum system,[61] which could have been undermined by the high number of cases affected by the contested decision.[62] It is worth highlighting that in past cases, the large number of people potentially affected by a contested decision was found unlikely as such to be regarded an exceptional circumstance capable of giving rise to the expedited procedure.[63] The President of the Court further emphasised that the legal uncertainty in determining which Member State is responsible for examining asylum applications in such situations prevents the competent authorities from adopting the necessary measures to examine asylum applications falling within their responsibilities.[64] The context of the migration crisis thus appears to be the main driver behind the application of the expedited procedure in *Jafari*.

In *Wightman*, Brexit developments were catalytic in the Court's recourse to the expedited procedure. The President of the Court considered that this procedure was necessary in order to clarify the scope of Article 50 TEU before the UK Parliament's decision on the proposed withdrawal agreement.[65] The uncertainties affected "fundamental issues of national constitutional law and EU law,"[66] and thus generated a need to decide the case in a short time.

In *Pringle*, *Jafari* and *Wightman*, the crisis context was crucial for the decision to apply the expedited procedure. The speedy evolution of the events ancillary to the main proceedings – the financial stability of the Eurozone in *Pringle*, the proper functioning of the common European asylum system in *Jafari*, and the "meaningful vote" of the UK Parliament in *Wightman* – prompted the Court to decide these cases swiftly. Without the expedited procedure, it is unlikely that the Court could have issued its decision in *Pringle* after only 116 days. The average duration of proceedings for preliminary rulings decided in

[57] Order of the President of the Court of 4 October 2012 Case C-370/12 *Pringle* ECLI:EU:C:2012:620.
[58] Case C-322/18 *Schiaffini Travel* ECLI:EU:C:2019:5274 (19–22); Case C-115/06 *Radke* ECLI:EU:C:2006:284.
[59] Case C-385/05 *Confédération générale du travail* ECLI:EU:C:2005:707.
[60] Order of the President of the Court of 4 October 2012 (8).
[61] Order of the President of the Court of 15 February 2017 (15).
[62] Order of the President of the Court of 15 February 2017 Case C-646/16 Jafari ECLI:EU:C:2017:138 (10).
[63] Order of the President of the Court of 15 February 2017 (15).
[64] Order of the President of the Court of 15 February 2017 (14).
[65] Order of the President of the Court of 19 October 2018 Case C-621/18 *Wightman and Others* ECLI:EU:C:2018:851 (9).
[66] Ibid (10).

2012 under the standard procedure was 15.7 months, roughly 478 days.[67] Similarly, in *Jafari* the Court issued a decision after 223 days. The average duration for preliminary rulings decided in 2017 pursuant to the standard procedure was set at 478 days.[68] In *Wightman* the Court issued its decision in a record time of 68 days. This would have been impossible under the standard procedure, as the written observation stage alone has a time-limit of 2 months and 10 days.[69] Conversely, the proceedings in *NORDIC INFO*, decided under the standard procedure, lasted for 650 days. The urgency underpinning the decisions in *Pringle*, *Jafari* and *Wightman* is absent in *NORDIC INFO* as the case reached the Court at the late stages of the pandemic. *NORDIC INFO* was lodged on 23 February 2022, a point in time where the epidemiological situation had significantly improved, and most travel restrictions were already lifted.[70] The comparison of the four cases therefore suggests that the Court is relying on the expedited procedure in its adjudication of crisis cases depending on the context, and the stage of the crisis at hand.

2. *Chamber size*

As the Court tends to assign salient and divisive cases to larger chambers,[71] the theoretical expectation derived from the scholarship is that crisis cases will be adjudicated by larger chambers. The analysis confirms this expectation. *Pringle* and *Wightman*, were decided by the Full Court while, *Jafari* and *NORDIC INFO* were assigned to the Grand Chamber.

The Court can adjudicate a case in chambers of three or five judges, in a Grand Chamber comprised of fifteen judges, or as a Full Court.[72] Even though the Court in its early days used to decide cases in full plenary, in recent decades it typically hears cases in chambers of three or five judges.[73] The Full Court is reserved for specific cases prescribed by the Statute and cases of exceptional importance.[74] Both *Pringle* and *Wightman* fall in the latter category. The Grand Chamber is reserved for particularly complex or important cases or when it is requested by a Member State or an institution which is a party to the proceedings.[75] There is no evidence to suggest that the Member States concerned in *Jafari* and *NORDIC INFO* requested the cases to be heard by the Grand Chamber.[76] Considering recent literature revealing the Court's tendency to assign politically salient cases to the Grand Chamber,[77] it can be deduced that the allocation of both *Jafari* and *NORDIC INFO* to the Grand Chamber was motivated by their importance for the migration and COVID-19 crises respectively.

[67] Court of Justice of the European Union, *Annual Report 2012: Synopsis of the Work of the Court of Justice, the General Court and the Civil Service Tribunal.* (Publications Office 2013) available at <https://data.europa.eu/doi/10.2862/8581> (last accessed 12 April 2024).

[68] Court of Justice of the European Union, *Annual Report 2017 Judicial Activity: Synopsis of the Judicial Activity of the Court of Justice and the General Court.* (Publications Office 2018) available at <https://data.europa.eu/doi/10.2862/531984> (last accessed 14 September 2024).

[69] Court of Justice of the European Union, "Guide Pratique Relatif au Traitement des Affaires Portées Devant La Cour de Justice" (2019) Document Interne de la Cour.

[70] "Timeline COVID-19 Coronavirus – Consilium" available at <https://www.consilium.europa.eu/en/policies/coronavirus-pandemic/timeline/> (last accessed 17 September 2024).

[71] Šadl and Hermansen (n 49).

[72] Article 16, Statue of the Court of Justice of the European Union.

[73] M Malecki, "Do ECJ Judges All Speak with the Same Voice? Evidence of Divergent Preferences from the Judgments of Chambers" (2012) 19 Journal of European Public Policy 59, 63.

[74] Article 16, Statue of the Court of Justice of the European Union.

[75] Ibid.

[76] There are no reference to Article 16 of the Statute identifying the Member State or indication of a request to assign the case to the Grand Chamber as is otherwise customary, see for example Case C-650/18 *Hungary v European Parliament* ECLI:EU:C:2021:426 (16).

[77] Kelemen (n 49); Šadl and Hermansen (n 49).

The finding of larger chambers in all cases is in line with existing scholarship demonstrating the Court's tendency to "interpret the rules on chamber size with political context in mind".[78] Chamber size projects institutional authority and can strengthen procedural legitimacy.[79] The allocation of all four cases to larger chambers thus suggests that the Court is procedurally responding to crises by insulating its decisions from possible legitimacy attacks.

IV. The legal reasoning of crisis cases

Much ink has been devoted to the analysis of the Court's legal reasoning in *Pringle*,[80] *Jafari*,[81] *Wightman*[82] and *NORDIC INFO*.[83] Contrary to accounts providing a holistic overview of the Court's reasoning, the present analysis focuses on two judicial tools identified by the scholarship as allowing the Court to respond to contextual demands; citations to case-law and the balancing of competing interests.

1. Citations to case-law

References to earlier decisions are a typical feature of the Court's judgments and serve to justify the legal propositions forming its reasoning.[84] The Court tends to include numerous references in decisions which directly concern aspects of recent crises; *Pringle* contains 23, *Wightman* 30 and *NORDIC INFO* 57 such references, against the Court's overall average of 7.5 citations per judgment.[85]

Jafari appears to be an outlier in that it contains only 6 references to previous decisions. The scant references likely stem from the Court's literal interpretation of the relevant provisions. The reasoning is mostly conducted in a technical way with numerous references to the text of a wide range of EU provisions. The Court's emphasis on the wording chosen by the EU legislator eliminates the need for citations to earlier decisions. As Thym aptly notes, the Court in *Jafari* displayed a conventional approach by employing a literal interpretation of secondary rules as opposed to an expansive interpretation which

[78] Šadl and Hermansen (n 49) 291.

[79] Larsson and others (n 51).

[80] P Craig, "Pringle and the Nature of Legal Reasoning" (2014) 21 Maastricht Journal of European and Comparative Law 205; P Craig, "Pringle: Legal Reasoning, Text, Purpose and Teleology" (2013) 20 Maastricht Journal of European and Comparative Law 3; G Beck, "The Legal Reasoning of the Court of Justice and the Euro Crisis – The Flexibility of the Court's Cumulative Approach and the *Pringle* Case" (2013) 20 Maastricht Journal of European and Comparative Law 635.

[81] D Thym, "Judicial Maintenance of the Sputtering Dublin System on Asylum Jurisdiction: *Jafari, A.S., Mengesteab* and *Shiri*" (2018) 55 Common Market Law Review 549; NK Šalamon, "CJEU Rulings on the Western Balkan Route: Exceptional Times Do Not Necessarily Call for Exceptional Measures – EU Immigration and Asylum Law and Policy" (11 December 2017) available at <https://eumigrationlawblog.eu/cjeu-rulings-on-the-western-balkan-route-exceptional-times-do-not-necessarily-call-for-exceptional-measures/> (last accessed 12 September 2024).

[82] G Martinico and M Simoncini, "*Wightman* and the Perils of Britain's Withdrawal" (2020) 21 German Law Journal 799; J Cotter, "Ten Months Later: A Retrospective of Wightman – Brexit Institute" (21 October 2019) available at <https://dcubrexitinstitute.eu/2019/10/ten-months-later-a-retrospective-of-wightman/> (last accessed 11 April 2024).

[83] DF Povse, "So Long and See You in the Next Pandemic? The Court's One-and-Done Approach on Permissible Reasons to Restrict Freedom of Movement for Public Health Reasons in the Nordic Info Case (C-128/22) of 5 December 2023" (*European Law Blog*, 19 December 2023) available at <https://europeanlawblog.eu/2023/12/19/so-long-and-see-you-in-the-next-pandemic-the-courts-one-and-done-approach-on-permissible-reasons-to-restrict-freedom-of-movement-for-public-health-reasons-in-the-nordic-info-case-c-128-22/> (last accessed 17 April 2024).

[84] Y Panagis and U Šadl, "The Force of EU Case Law: A Multi-Dimensional Study of Case Citations" (2015) Legal Knowledge and Information Systems 71.

[85] Larsson and others (n 51) 890.

would expose the Court to accusations of judicial activism.[86] The 78 references to provisions of legal instruments such as Treaty articles, Council Decisions, Regulations further corroborate this conclusion. Therefore, unlike the other crisis cases reviewed, which contain numerous references to the Court's case-law, *Jafari* cites a vast number of legal provisions.

Qualitatively, the citations to earlier decisions in all selected cases enhance the justification offered for legal propositions which are expected to attract criticism. In *Jafari* the Court refers to its earlier decisions in the course of interpreting concepts which are not defined by the legislator. For example, the definition of the concept of 'visa' is supported with references to two judgments,[87] *X and X*[88] and *C. K. and Others.*[89] References to case-law also appear in support of propositions which are expected to attract criticism from Member States. For instance, the Court cites *C. K. and Others* to justify an interpretation of Article 3(2) of the Dublin III Regulation and Article 4 of the Charter which prohibits the transfer of an applicant for international protection to the Member State responsible where that transfer entails a genuine risk that the person concerned may suffer inhuman or degrading treatment.[90]

The use of citations in all selected cases suggest that, in times of crisis, the Court tends to enhance the legal justifications offered in support of its reasoning. The justificatory force of references to earlier decisions is largely undisputed in the scholarship[91]; they foster the Court's credibility vis-à-vis Member States and EU institutions,[92] and justify intrusions into Member State competence.[93] All four judgments were inherently controversial due to the polarisation of public opinion during a crisis. For example, *Wightman*, was bound to attract criticism from the remain or leave Brexit campaigns regardless of the Court's answer. Considering the politicisation and high media coverage of these cases, references to earlier decisions denote the Court's attempt to "speak law to power"[94] by carefully aligning its reasoning with settled case-law and therefore safeguarding its institutional legitimacy. On the one hand, the Court's numerous citations in *Pringle*, *Wightman* and *NORDIC INFO* could be perceived as an attempt to better shield the decisions from external criticism through a strength in numbers approach. In *Jafari* on the other hand, the Court, despite not citing numerous judgments, it strategically cites its earlier decisions to justify legal propositions which are expected to attract opposition from Member States.

2. *Balancing of competing interests at stake*

At the heart of all judgments is the Court's balancing of conflicting interests. In *Pringle*, the financial stability of the Eurozone was balanced against the protection of individuals, in *Jafari*, the interests of Member States further north were in direct conflict with those of Member States at the external borders, in *Wightman*, national sovereignty was evaluated against the interests of the EU legal order while in *NORDIC INFO*, free movement was weighted against public health. In all cases the balancing exercise played a pivotal role in justifying the Court's answer which confirmed the legality of the contested measures.

[86] Thym (n 81).
[87] *Jafari* (n 6, 1).
[88] Case C-638/16 PPU *X and X* EU:C:2017:173.
[89] Case C-578/16 PPU *C. K. and Others* EU:C:2017:127.
[90] *Jafari* (n 6, 101).
[91] Panagis and Šadl (n 84); M Jacob, *Precedents and Case-Based Reasoning in the European Court of Justice: Unfinished Business* (Cambridge, Cambridge University Press 2014); Larsson and others (n 51).
[92] Jacob (n 91) 5.
[93] Panagis and Šadl (n 84) 7.
[94] Larsson and others (n 51).

In *Pringle*, the Court prioritised financial stability over the protection of individuals. The Court in answering the second question ruled that the ESM, having been established outside the EU legal order, does not fall within the scope of the Charter.[95] Consequently, austerity programmes adopted under the ESM are not subject to the Charter and the rights enshrined therein. The Court's emphasis on the strict conditionality requirement further legitimised the political choices taken at supranational level to combat the crisis, namely austerity measures, which curtailed individual rights, especially social rights.[96] The Court asserts that under Articles 3 and 12(1) of the ESM Treaty, stability support is only available when "such support is indispensable to safeguard the financial stability of the euro area as a whole and of its Member States"[97] and is subject to strict conditionality.[98] The Court's balancing tilts the scales in favour of financial stability at the expense of individual rights and justifies this outcome by capitalising on the extraordinary circumstances under which the ESM is triggered. As commentators unanimously point out, the outcome in *Pringle* was unsurprising as the judicial invalidation of the ESM would have been catastrophic for the Eurozone and the evolution of the crisis.[99] The Court therefore through the balancing of competing interests demonstrated a deferential stance to the political choices made during the Eurozone crisis and judicially rescued the ESM.

In *Jafari*, the unprecedented influx of third-country nationals seeking international protection revealed an asymmetry in the burden imposed by the first entry rule on Member States at the external border and Member States further north. The Court by confirming the applicability of the Dublin III Regulation in times of crisis appears to be prioritising the interests of Northern Member States at the expense of Southern ones with an external EU border.[100] The effect of upholding the controversial first entry rule is somewhat softened by the Court's caveat that under Article 3(2) of the Dublin III Regulation and Article 4 of the Charter an applicant cannot be transferred to the Member State responsible if the transfer entails a genuine risk that the person concerned may suffer inhuman or degrading treatment following the arrival of an unusually large number of third-country nationals seeking international protection.[101] The Court therefore appears to be introducing an emergency brake in the operation of the first entry rule reserved for instances where the arrival of an unusually large number of third-country nationals seeking international protection compromises the ability of the first Member State to such degree that a genuine risk of inhuman or degrading treatment exists. The Court further reminds Member States of the power enshrined in Article 17(1) of the Dublin III Regulation which allows them to decide to examine applications for international protection lodged with them even when it is not their responsibility in the spirit of solidarity.[102] The Court's invocation of solidarity underscores an attempt to better distribute the burden amongst Member States while upholding the system established by the Dublin III Regulation. Overall, the Court's balancing exercise reveals this dilemma and ultimately, leaves it up to politicians to remedy the disproportionate burden on Member States at the external border by replacing the system established by the Dublin III Regulation.

In *Wightman*, the political context makes the Court's balancing between national sovereignty and the interests of the EU legal order more intelligible. The Court is thought to be pursuing a pro-integration agenda advocating for more Europe at the expense of

[95] *Pringle* (n 5, 178–82).

[96] P Koutrakos, "Political Choices and Europe's Judges" (2013) 38 European Law Review 291–292.

[97] *Pringle* (n 5, 142).

[98] Ibid, (n 5, 142).

[99] Koutrakos (n 96) 292; Craig (n 67) 3; De Witte (n 25); A Hinarejos, "The Court of Justice of the EU and the Legality of the European Stability Mechanism" (2013) 72 The Cambridge Law Journal 237.

[100] *Jafari* (n 6, 54, 93).

[101] Ibid (n 6, 101).

[102] Ibid (n 6, 100).

national sovereignty.[103] Nonetheless, in *Wightman* the Court's reasoning is exemplary of deference to national sovereignty as it stresses that the revocation of the notification of an intention to withdraw "reflects a sovereign decision by that State to retain its status as a Member State of the European Union".[104] As Armstrong rightly points out, the Court's repetition of the term "sovereign" sends a powerful message about membership to the EU.[105] The Court further explicitly rejects the proposal advanced by the EU institutions advocating for the right of a Member State to revoke the notification of withdrawal to be subject to the unanimous approval of the European Council.[106] The EU institutions in their observations stressed that a unilateral revocation would enable Member States to abuse the mechanism enshrined in Article 50 TEU to the detriment of the EU.[107] The Court responds to such concerns by confirming that a unilateral revocation is only possible before the entry into force of a withdrawal agreement or in the absence of such agreement before the expiration of the two-year period enshrined in Article 50(3) TEU and the possible extension laid therein. In its totality, the Court's balancing exercise emphasises the importance of national sovereignty in the process of revoking the notification of withdrawal. In prioritising national sovereignty, the Court responds to contextual demands, particularly the 'take back control' Brexit narrative.

The exceptional circumstances of the COVID-19 pandemic were the main driver behind the Court's choice of prioritising public health over freedom of movement in *NORDIC INFO*. The Court balanced freedom of movement and public health through a three-step proportionality test.[108] Before elaborating on the proportionality test, the Court clarified that pandemics fall within the scope of the exemptions of Articles 27 and 29 of Directive 2004/38[109] and that the contested measures, which had a non-economic objective,[110] constitute a restriction on freedom of movement.[111] In conducting the balancing exercise the Court had to ensure that the measures first, are appropriate for attaining the protection of public health, second, are limited to what is strictly necessary and, third, are not disproportionate to that objective.[112] The Court's analysis strongly suggests that the contested measures satisfy the three-limb test and are therefore proportionate, subject to the verification of the national court.[113] The proportionality assessment is heavily determined by the epidemiological situation in Belgium at the time of the facts. The Court defers to expert opinion in assessing the epidemiological situation by instructing the national court to consider factors such as the scientific data commonly accepted in July 2020, the trends in infections and mortality, the state of the national healthcare system and the risk of increased infections due to summer holidays.[114] The emphasis on the situation in Belgium at the time of the facts suggests that the balancing exercise is heavily context-dependent and perhaps the same measures could be disproportionate at a different point in the pandemic cycle. The Court being largely guided by expert opinion, strikes a context-sensitive balance between the interests of public health and free

[103] A Vauchez, "Keeping the Dream Alive: The European Court of Justice and the Transnational Fabric of Integrationist Jurisprudence" (2012) 4 European Political Science Review 51.

[104] *Wightman* (n 7, 59).

[105] K Armstrong, "The Right to Revoke an EU Withdrawal Notification: Putting the Bullet Back in the Article 50 Chamber?" (2019) 78 The Cambridge Law Journal 34.

[106] *Wightman* (n 7, 72).

[107] Ibid (n 7, 39).

[108] *NORDIC INFO* (n 8, 76).

[109] Ibid (n 8, 50–2).

[110] Ibid (n 8, 54).

[111] Ibid (n 8, 55–59).

[112] Ibid (n 8, 77).

[113] Ibid (n 8, 95–97).

[114] Ibid (n 8, 82, 91).

movement. In doing so it temporarily and conditionally sacrifices the "cherished child"[115] of EU law in the fight against COVID-19.

The analysis showed that the Court's balancing of competing interests is highly contextual. Crucially, this balancing exercise enables the Court to arrive at, and legally justify, an outcome necessitated by the circumstances in all cases. In *Pringle*, the sacrifice of the protection afforded to individual rights was necessary to safeguard the legality of the ESM which would otherwise be challenged based on its incompatibility with the Charter. Similarly, in *Jafari* in order to legally rescue the common European asylum system established by the Dublin III Regulation, the Court favours the interests of Member States further north over those of Member States at the external border. In *Wightman*, the Court would have encouraged Brexit-related challenges to its authority if it had accepted the position advanced by EU institutions at the expense of national sovereignty. The balancing exercise in *NORDIC INFO* enables the Court to prioritise public health over free movement in so far as this is necessary to contain the spread of the virus.

V. The timing of crisis cases

The four cases arrived at the Court at different points of their respective crisis cycles. *Pringle* was decided at a relatively early and crucial stage of the Eurozone crisis, *Jafari* after the migration crisis had already reached its climax, *Wightman* amid Brexit negotiations, while *NORDIC INFO* towards the end of the COVID-19 pandemic. Nonetheless, they were all delivered at a politically significant point in time.

Pringle was delivered on 27 November 2012, at the height of the Eurozone crisis. The period before *Pringle* is marked by uncertainty and a lack of political consensus on measures to tackle the crisis. The ESM, the core measure designed to provide assistance to Member States, was only ratified after the *Pringle* case was lodged and a few months before the decision was issued.[116] During the extraordinary meeting of the European Council of 22–23 November 2012 no agreement was reached on the multiannual financial framework.[117] Conversely, the aftermath of *Pringle* is characterised by a new impetus in the EU's response to the financial crisis. On 28 November 2012, only a day after the delivery of *Pringle*, the European Commission laid out the foundations for the European Semester for economic policy coordination by unveiling the five priorities designed to help Member States through the crisis.[118] On the same day the European Commission also adopted a Blueprint for a deep and genuine Economic and Monetary Union.[119] *Pringle* could thus be perceived as providing the EU political branch with the necessary momentum to adopt crisis measures. As Koutrakos aptly observes the judgment "was also a message to the Union's political leaders"[120] as it reassured them that past, and potentially future, measures addressing the crisis would most likely not be quashed by the EU's judiciary.

[115] Opinion of Advocate General Emiliou Case C-128/22 *NORDIC INFO* ECLI:EU:C:2023:645 (128).

[116] Council of the European Union, "Agreement and Ratification Details, Treaty Establishing the European Stability Mechanism" available at <https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2012002> (last accessed 21 April 2024).

[117] European Council, "Remarks by President Herman Van Rompuy following the European Council EUCO 228/12" available at <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/133724.pdf> (last accessed 21 April 2024).

[118] European Commission, "Annual Growth Survey 2013: Charting the Course to Recovery IP/12/1274" available at <http://europa.eu/rapid/ press-release_IP-12-1274_en.htm> (last accessed 21 April 2024).

[119] European Commission, "A Blueprint for a Deep and Genuine Economic and Monetary Union: Launching a European Debate IP/12/1272" available at <http://europa.eu/rapid/press-release_IP-12-1272_en.htm> (last accessed 21 April 2024).

[120] Koutrakos (n 96) 292.

Jafari was delivered on 26 July 2017 as the EU was slowly getting a grip of the migration crisis which begun in 2015 and reached its climax in the winter of 2016.[121] By the time the judgment was delivered the first steps were already taken towards the reform of the common European asylum system. The European Commission presented a legislative proposal in May 2016 and during the June 2017 Justice and Home Affairs Council more progress was made on the topic.[122] Furthermore, in June 2017 an agreement between the Council and the European Parliament was reached on the proposal for an Entry-Exit System and a proposal amending the Schengen Border Code which sought to register entry, exit and refusal of entry information of third-country nationals crossing the external borders of the Schengen area.[123] Considering such legislative initiatives, the delivery of two judgments dealing with the migration crisis on the same day, *Jafari* and *A.S.*, sends a strong message of judicial deference by emphasising that the reform of the Dublin III Regulation is a task for the EU legislator. The timing of *Jafari* could thus be interpreted as the Court's readiness to uphold the current system and provide a temporary solution until a permanent agreement on the reform of the common European asylum system is reached.

Wightman is another politically salient judgment delivered in the trajectory of events set to discuss and settle crisis issues. The Court issued the widely anticipated Brexit judgment on 10 December 2018, only a day before the 'meaningful vote' on the adoption of a withdrawal agreement, which provided the factual background of the case, was scheduled.[124] The UK government, on the day of the Court's delivery of *Wightman*, officially announced its decision to postpone the Parliament's vote on the first draft of the Withdrawal Agreement[125] which was negotiated in November.[126] The importance of the timing of *Wightman* comes from the Court's confirmation that a revocation is possible at any point prior to the entry into force of the withdrawal agreement and in the absence of such agreement before the end of the period stipulated in Article 50(3) TEU. Given the uncertainty stemming from the possibility of a 'no deal' Brexit, the Court provided British politicians with an alternative course of action. Even though eventually an agreement between the two parties was reached,[127] the Court through the timing of *Wightman* reassured the public that a 'no deal' Brexit was avoidable and debunked fears as to the loss of national sovereignty.

[121] "Timeline – EU Migration and Asylum Policy" (*Consilium*) available at <https://www.consilium.europa.eu/en/policies/eu-migration-policy/migration-timeline/> (last accessed 18 September 2024).

[122] European Parliament, "Revision of the Dublin Regulation | Legislative Train Schedule" (*European Parliament*) available at <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-jd-revision-of-the-dublin-regulation> (last accessed 18 September 2024).

[123] "Entry-Exit System: Council Confirms Agreement between Presidency and European Parliament on Main Political Provisions" (*Consilium*) available at <https://www.consilium.europa.eu/en/press/press-releases/2017/06/30/entry-exit-system/> (last accessed 18 September 2024).

[124] O Garner, "The ECJ Confirms That Article 50 Notification Can Be Unilaterally Revoked – Brexit Institute" (11 December 2018) available at <https://dcubrexitinstitute.eu/2018/12/the-ecj-confirms-that-article-50-notification-can-be-unilaterally-revoked/> (last accessed 21 April 2024).

[125] P Walker and J Elgot, "May Admits She Would Have Lost Brexit Deal Vote by Large Margin" *The Guardian* (10 December 2018) available at <https://www.theguardian.com/politics/2018/dec/10/brexit-deal-may-admits-she-would-have-lost-vote-by-large-margin> (last accessed 21 April 2024).

[126] European Commission, "Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as Agreed at Negotiators' level on 14 November 2018, TF50 (2018) 55 – Commission to EU27" available at <https://commission.europa.eu/publications/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-0_en> (last accessed 21 April 2024).

[127] Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community 2019/C 384 I/0, XT/21054/2019/INIT OJ C 384I, 12.11.2019.

NORDIC INFO was delivered on 5 December 2023, right before the Christmas vacation. The World Health Organization had already declared on 5 May 2023 that COVID-19 was no longer regarded a public health emergency of international concern.[128] Member States lifted all intra-EU travel restrictions in August 2022 and measures adopted at EU level such as the EU Digital COVID Certificate Regulation were not extended beyond 30 June 2023.[129] Despite the urgency of the COVID-19 crisis having largely subsided, the judgment was delivered against a background of a reported surge in infections.[130] In the immediate aftermath of *NORDIC INFO*, Belgium despite facing a new wave did not reintroduce travel restrictions.[131] Against growing fears of further deterioration of the situation due to the combined effects of winter weather and Christmas travel, the Court's decision could be read as a reassurance to citizens and a warning to politicians that restrictions would only be legally upheld in so far as they are necessary and proportionate.

The comparison of the timing of the four judgments reveals that the Court can issue a politically relevant decision and send important messages to other actors through its judgments at various stages of a crisis. Crucially, the timing of the decisions on the legality of measures taken to combat recent crises underscored the role of the Court in the EU's crisis response. In *Pringle*, this translated to a legislative impetus, in *Jafari* to a 'band-aid' solution until a permanent reform of the Dublin III Regulation is agreed, in *Wightman* to an alternative to a 'no deal' Brexit while in *NORDIC INFO* a guide for fighting the winter surge of infections.

VI. Conclusion

The comparative analysis of the selected case demonstrates that the Court responds to crises through the procedural features, the substance, and the timing of its decisions. Procedurally, the Court applies the expedited procedure depending on the evolution of the crisis at hand and assigns crisis cases to larger chambers in order to foster the timeliness and legitimacy of its decisions. This conclusion is in line with recent scholarship arguing that the Court is responding both substantively and procedurally to the political context.[132]

Substantively, crisis cases are characterised by careful citations to earlier case-law and a context-sensitive balancing of conflicting interests. The Court is relying on citations quantitatively by referencing numerous decisions in crisis cases, as well as substantively by citing earlier judgments to justify and legitimise controversial legal propositions. The strategic use of precedent in crisis cases is unsurprising considering the justificatory force of references to settled case-law.[133] Furthermore, the Court in all four cases conducts a highly contextual balancing exercise which plays an instrumental role in upholding the contested measures. The analysis revealed the Court's balancing of competing interests to

[128] "Statement on the Fifteenth Meeting of the IHR (2005) Emergency Committee on the COVID-19 Pandemic" available at <https://www.who.int/news/item/05-05-2023-statement-on-the-fifteenth-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-coronavirus-disease-(covid-19)-pandemic> (last accessed 22 April 2024).

[129] "Travel during the Coronavirus Pandemic – European Commission" available at <https://commission.europa.eu/strategy-and-policy/coronavirus-response/travel-during-coronavirus-pandemic_en> (last accessed 22 April 2024).

[130] "COVID-19 Epidemiological Update – 22 December 2023" available at <https://www.who.int/publications/m/item/covid-19-epidemiological-update—22-december-2023> (last accessed 22 April 2024).

[131] "Belgium in the Grip of Second-Biggest Covid-19 Wave, But No New Rules" available at <https://www.brusselstimes.com/845450/belgium-in-the-grip-of-second-biggest-covid-19-wave-but-no-new-rules> (last accessed 22 April 2024).

[132] Šadl and Hermansen (n 49).

[133] Panagis and Šadl (n 84); Larsson and Others (n 51).

be exemplary of judicial restraint and deference to the political choices concerning the crisis. The finding of judicial restraint through the balancing exercise in all four cases confirms de Witte's observation of judicial deference despite the judicialisation of politics beyond the specific context of the Eurozone crisis.[134]

Timing-wise, the analysis suggests that the Court takes the pulse of crisis developments and uses its judgments to send messages to political actors. Crucially, the analysis revealed that the strategic timing of *Commission v United Kingdom* is not an isolated instance.[135] The timing of decisions is a legal tool typically employed by the Court in its adjudication of crisis cases to attain political ends.

The Court has so far responded to various crises by relying on established judicial tools which enabled it to adapt its jurisprudence to contextual demands. In other words, the Court responded to recent crises by "muddling through"[136] in a manner akin to other EU institutions. The findings suggest that the Court is likely to adjudicate a crisis case by applying the expedited procedure depending on crisis developments, assign the case to a larger chamber, carefully justify its reasoning with references to settled case-law, conduct a context-sensitive balancing exercise, and deliver a decision at a relevant point in time.

The close reading and juxtaposition of the selected cases points to a broader narrative about the Court's adjudication in times of crisis which transcends the specificities of the legal issues and the context of each judgment. The analysis of the Court's adjudication of crisis cases paints a picture of judicial restraint and deference to political actors. To borrow Thym's analogy, the Court has proven itself to be a reliable "mechanic"[137] by judicially sustaining the EU's crisis apparatus until a permanent solution to the crisis is found at the political front. In empirically illustrating the Court's response to recent crises the analysis lays the groundwork for a normative assessment and a critical reflection of the Court's role in crises. Lastly, but most importantly, the comparative analysis of the four selected judgments addressing the Eurozone crisis, the migration crisis, Brexit, and the COVID-19 pandemic offers valuable insights which can be extrapolated to other crises, past or future.

Competing interests. The author has no conflicts of interest to declare.

[134] De Witte (n 3).
[135] O'Brien (n 51); Blauberger and Others (n 44).
[136] Riddervold, Trondal and Newsome (n 2).
[137] Thym (n 81).

Cite this article: E Constantinou, "A Tale of Four Crises: The European Court of Justice's Response to Crises". *European Journal of Risk Regulation*. https://doi.org/10.1017/err.2025.6