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Financial Crisis and Judicial Asymmetries: The Case of Greece

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Greek courts have recognized constitutional supremacy as the basis for judicial review of the constitutionality of legislation since the late nineteenth century. However, they have long maintained a deferential attitude to the political branches of government. Following the proportionality’s explicit constitutional guarantee since 2001, courts and constitutional scholars have undertaken rigorous scrutiny more often. However, in the wake of the financial crisis the standards of constitutional scrutiny remain asymmetric among different domains of constitutional law. Initially, the Greek financial emergency emphatically resulted in a self-restrained variation of proportionality. In the last years, a tendency of judicial empowerment has prevailed, thus reversing the initial pattern of the crisis jurisprudence. However, courts have targeted almost exclusively cuts in state expenditures, e.g. striking down reductions in pensions as well as cuts in the wages of specific categories of public officials, such as judges, military personnel and university professors. In contrast, Greek courts have left intact tax and other measures that aim at increasing state revenues; in this respect, courts have intervened solely on peripheral issues. This paper argues that this approach is untenable on constitutional grounds. Both the policy leeway of the political branches of government and the constitutional limitations apply with equal strength with respect to state expenditures and state revenues.