



Activity Report
2019

JUDICIAL STUDIES INSTITUTE

Masaryk University
Brno

Foreword



As it may be quite difficult during these days to predict what is ahead of us in 2020, we would like to look back on the last year and share with you some of our achievements.

The Judicial Studies Institute (JUSTIN) celebrated its third birthday in 2019. Since its establishment, we have published many articles and books, and engaged with various topics. Nevertheless, the overarching goal of our work remains the same: to deliver a cutting-edge research in the fields of judicial studies, constitutional theory, comparative public law, general international law, asylum and migration law, and human rights law. Currently, our research covers a wide range of topics such as judicial independence, judicial accountability, public confidence in courts and judges, transparency of the judiciary, legitimacy of courts, legislative responses to the Strasbourg case law, references to the ECtHR's case law by domestic courts, and, more generally, domestic compliance with decisions of the European Court of Human Rights and UN human rights bodies. Moreover, in 2019 Dr. [Ondřej Kadlec](#) joined our team, which has strengthened JUSTIN's expertise in jurisprudence and constitutional theory. Ondřej has also been researching the role of Grand Chambers in the decision-making of European Supreme Courts, which has become a promising new research line for JUSTIN.

In 2019 we reached three core achievements. First, the project “[The Rise of Judicial Self-Government: Changing the Architecture of Separation of Powers without an Architect](#)” (JUDI-ARCH, 2016-2021, funded by the ERC) was evaluated by the ERC. Our progress was perceived very positively and we got the green light for moving into the second half of this project.

Second, we have finished our project “Beyond Compliance – Domestic Implementation of International Human Rights Case Law” (supported by the Grant Agency of the Czech Republic). The monograph entitled *Domestic Judicial Treatment of European Court of Human Rights – Beyond Compliance* has just been published by Routledge! This book presents unique empirical findings on how often, how and with what consequences domestic judges engage with the ECtHR's case law.

Third, we have published articles in the [European Constitutional Law Review](#), [Common Market Law Review](#), [International & Comparative Law Quarterly](#), [Human Rights Law Review](#), and other prestigious journals. One of our articles has even made it to a [top-ten-reads of 2019](#).

Kind regards and stay safe!

David Kosář

Director of JUSTIN

April 2020

2019 Highlights

April: ECPR Joint Sessions of Workshops

JUSTIN members attended the prestigious 2019 Joint Sessions of Workshops organised by the ECPR in Mons. Out of twenty-nine amazing workshops, we participated particularly actively in the workshop *Judicial Authority Under Pressure: Politicisation and Backlash against Courts in the Age of Populism*, co-convened by JUSTIN director David Kosař and Danis Naurin (PluriCourts Oslo). The workshop addressed two highly relevant topics related to the functioning of current democracies. The first topic reflected on the process of judicialisation of politics while the second dealt with the rise of populism (which is sometimes accompanied by the democratic backsliding). Within this workshop, two JUSTIN duos presented their research.



In their case study on the European Court of Human Rights, Nino Tsereteli and Hubert Smekal explained – by adopting the exit and voice framework – the conflicting tendencies of politicisation and judicialisation of politics.

Katarína Šipulová's and David Kosař's research focused on what processes and tools political leaders usually employ in order to change the composition of apex courts. As numerous examples of constitutional reforms are observable in this regard, they categorised them and provided an overview of court-packing strategies. Subsequently, David and Katarína evaluated the safeguards and strategies, which could be effective in helping the affected judges to withstand political pressure.



November: A Conference on Judicial Independence

The judicial branch of power in some countries has gained significant attention recently. The Visegrád Group is often in a spotlight in this regard. When speaking about judiciaries in V4 countries, one of the most discussed aspect is their independence vis-à-vis political pressures.

A conference addressing this topic took place at the Faculty of Social Studies, Masaryk University and it was organized by the International Institute of Political Science, the Department of Constitutional Law and Political Science (both at the Masaryk University) and Konrad-Adenauer-Stiftung. Our members could not miss this opportunity to present their latest research!



David Kosař and Katarína Šipulová presented a paper on court packing strategies. These strategies might not be very visible at first glance. However, on the other hand, court packing can significantly affect the way in which the courts, and whole judiciary in more general terms, operate.

As one of the conference's goals was to evaluate judicial independence in the Czech Republic from comparative perspective, a contribution on judicial independence in Slovakia was presented by Samuel Spáč.



2019 in Focus

Workshop "Law in Context", Centre for Socio-Legal Studies & International Journal of Law in Context, Oxford, September 2019:

Jan Petrov: "Populism and de-judicialization of politics?"

Conference "From Tampere 20 to Tampere 2.0' in Helsinki", European Migration Network Finland, the Odysseus Academic Network and the European Policy Centre (EPC) in connection with the Finnish EU Presidency, Helsinki, October 2019:

Madalina Moraru: "The challenges and solutions of the EU migration and asylum policies"

ECPR General Conference, Wrocław, September 2019:

Katarína Šipulová organized a panel "The Backlash Against Judicialisation: Can Courts Withstand Political Inferences?"

Papers presented:

David Kosař and *Katarína Šipulová*: "Judicial Authority Under Pressure: Politicisation and Backlash Against Courts in the Age of Populism"

Nino Tsereteli and *Hubert Smekal*: "Explaining Conflicting Tendencies of Politicisation and Judicialisation: The Case of the ECtHR"

Samuel Spáč: "Selecting Court Presidents in Slovakia, 2011–2017"

8th Junior Faculty Forum in International Law, National University of Singapore, Singapore, August 2019:

Brid Ní Ghráinne: "Safe Zones and Humanitarian Intervention"

Workshop "Oxford Handbook of International Refugee Law", Oxford, July 2019:

Brid Ní Ghráinne: "The Internal Protection Alternative"

Annual conference of the Berkley Law, The Berkeley Comparative Equality & Anti-Discrimination Law Study Group, June 2019:

Hubert Smekal chaired the panel "Race and equality"

16th IMISCOE Annual Conference "Understanding International Migration in the 21st Century: Conceptual and Methodological Approaches", Malmö University, Malmö, June 2019:

Madalina Moraru: "The impact of the migration crisis on the European supranational courts' jurisprudence and discourse"

Conference "State Capture: What It Is and What It Means for the Constitutional Order", University of Oxford, Oxford, June 2019:

Katarína Šipulová: "The Problems of JSG Models in Czechia and Slovakia"

4th annual conference of the Refugee Law Initiative, London, June 2019:

Brid Ní Ghráinne: "Safe Zones and International Human Rights Law"

Madalina Moraru: "The role of the CJEU in asylum and immigration"

Conference organized by the Council of Europe, Kyiv, May 2019:

Brid Ní Ghráinne: "The International Law Standards on the Protection of Internally Displaced Persons"

Conference "The Power of International Courts", iCourts, Copenhagen, May 2019:
David Kosař: "Judicialization of Judicial Politics by ECtHR"

Workshop on judiciaries and transitional justice, Bonavero Institute and Bingham Centre, Oxford, May 2019:
Katarína Šipulová: "Czech lustration of judges"

Responsibility to Protect in Theory and Practice conference, University of Ljubljana, Ljubljana, May 2019:
Brid Ní Ghráinne: "The Establishment of Safe Zones in International Law"

University of Michigan Junior Scholars Conference, Ann Arbor, MI, April 2019:
Brid Ní Ghráinne: "Safe Zones as Humanitarian Intervention"

German Law Journal 20th Anniversary Conference, London School of Economics and Political Science, London, April 2019:
David Kosař chaired the panel "Populism in Action"

Edinburgh-Glasgow International Law Workshop at the University of Edinburgh, Edinburgh, April 2019:
Brid Ní Ghráinne: "Safe Zones and Refugee Law"

ECPR Joint Sessions of Workshops, Mons, April 2019:
David Kosař and *Katarína Šipulová*: "Under Pressure: Designing Constitutional Safeguards Against Court-Packing Strategies"
Hubert Smekal and *Nino Tsereteli*: "Explaining Conflicting Tendencies of Politicisation and Judicialisation: The Case of the ECtHR"

European Society of International Law (ESIL) 2019 Research Forum, Göttingen, April 2019:
Jan Petrov: "Supranational Guardians of the Rule of Law? European Courts v. Populist Judicial Reforms"

ICON-S Conference (CEE Chapter), Prague, March 2019:
Katarína Šipulová: "Role of Constitutional Courts in Democratization and their take on the Separation of Powers Principles"

Conference "Putney Debates 2019", Oxford Foundation for Law, Justice and Society, London, March 2019:
Katarína Šipulová: "Judicial Independence in Visegrad 4 Countries"

2019 Publications of JUSTIN members in English include:

Hamřík, Lukáš and Petr Kaniok. 2019. “Is it all about European Democracy? The Motives behind the Institutionalisation of the Spitzenkandidaten”. *Journal of Contemporary European Research*, Vol. 15, No. 4, 2019, pp. 354–377.

Kosař, David, Jiří Baroš and Pavel Dufek. 2019. “The Twin Challenges to Separation of Powers in Central Europe: Technocratic Governance and Populism”. *European Constitutional Law Review*, Vol. 15, No. 3, pp. 427–461.

Kosař, David and Petrov, Jan. 2019. “The Domestic Judiciary in the Architecture of the Strasbourg System of Human Rights”. In *How International Law Works in Times of Crisis*, edited by George Ulrich and Ineta Ziemele, 255–271. Oxford: Oxford University Press.

Kosař, David and Ladislav Vyhnánek. 2019. “Constitutional Identity in the Czech Republic: A New Twist on the Old-Fashioned Idea?” In *Constitutional identity in a Europe of Multilevel Constitutionalism*, edited by Christian Calliess and Gerhard van der Schyff, 85–113. Cambridge: Cambridge University Press.

Moraru, Madalina. 2019. “An Analysis of the Consular Protection Directive: Are EU Citizens Now Better Protected in The World?” *Common Market Law Review*, Vol. 56, No. 2, pp. 417–461.

Ní Ghráinne, Bríd. 2019. “Internally Displaced Persons and International Refugee Law”. In *Elgar Research Handbook on Refugee Law*, edited by Satvinder Singh Juss, pp. 31–43. Cheltenham and Northampton, MA: Edward Elgar Publishing.

Ní Ghráinne, Bríd and Aisling McMahon. 2019. “Abortion in Northern Ireland and the European Convention on Human Rights: Reflections from the UK Supreme Court”. *International & Comparative Law Quarterly*, Vol. 68, No. 2, pp. 477–494.

Ní Ghráinne, Bríd and McMahon, Aisling. 2019. “After the Eighth: Ireland, Abortion and International Law”. *Medico-Legal Journal of Ireland*, Vol. 25, No. 1, pp. 22–40.

Ní Ghráinne, Bríd and Aisling McMahon. 2019. “Access to Abortion in Cases of Fatal Foetal Abnormality: A New Direction for the European Court of Human Rights?” *Human Rights Law Review*, Vol. 19, No. 3, pp. 561–584.

Šipulová, Katarína. 2019. “The Czech Constitutional Court: Far away from political influence”. In *Constitutional Politics and the Judiciary Decision-making in Central and Eastern Europe*, edited by Kálmán Pócza, pp. 32–60. Abingdon and New York, NY: Routledge.

Šipulová, Katarína. 2019. “ECtHR – Ally, Adversary, or Foe? The Attitudes of Judges Towards International Human Rights Law in the (Post-) Transitioning Area”. *Jahrbuch für Ostrecht*, No. 1, pp. 235–252.

Urbániková, Marína. 2019. “Being LGBT+ in the Czech Republic: Experience with Prejudice, Discrimination, and Violence”. *V4 Human Rights Review*, Vol. 1, No. 1, pp. 10–12.

2019 Publications of JUSTIN members in Czech include:

Kadlec, Ondřej. 2019. *Role velkých senátů v rozhodování českých vrcholných soudů [The Role of Grand Chambers in the Decision-Making of Czech Apex Courts]*. Prague: Wolters Kluwer.

Kühn, Zdeněk, Kocourek, Tomáš, Mikeš, Petr, Kadlec, Ondřej et al. 2019. *Soudní řád správní. Komentář [The Code of Administrative Procedure. Commentary]*. Prague: Wolters Kluwer.

Petrov, Jan. 2019. “Vnitrostátní soudy a způsoby argumentace judikaturou ESLP” [Domestic courts and methods of argumentation with the ECtHR’s case law]. *Právník [Lawyer]*, Vol. 158, No. 2, pp. 163–181.

Forthcoming publications in 2020

Kosař, David, Petrov, Jan, Šipulová, Katarína, Smekal, Hubert, Vyhnánek, Ladislav and Jozef Janovský. *Domestic Judicial Treatment of European Court of Human Rights – Beyond Compliance*. Routledge.

Kosař, David and Adam Blisa. “Scope and Intensity of Judicial Review: Which Power for Judges within the Control of Immigration Detention?”. In *Law and Judicial Dialogue on the Return of Irregular Migrants from the European Union*, edited by Madalina Bianca Moraru, Galina Cornelisse, and Philippe De Bruycker. Hart Publishing.

Kosař, David and Katarína Šipulová. “Court-packing, aneb jak obsadit soudy svými lidmi” [Court-Packing]. In *Nezávislost soudní moci [Judicial Independence]*, edited by Vojtěch Šimíček. Prague: Leges.

Kosař, David and Ladislav Vyhnánek. “The Constitutional Court of Czechia”. In *The Max Planck Handbooks in European Public Law, Vol. III: Constitutional Adjudication: Institutions*, edited by Admin von Bogdandy, Peter Huber and Christoph Grabenwarter. Oxford University Press.

Moraru, Madalina Bianca, Cornelisse, Galina and Philippe De Bruycker. *Law and Judicial Dialogue on the Return of Irregular Migrants from the European Union*. Hart Publishing.

Moraru, Madalina Bianca and Nica, Felicia. “A practical evaluation of border activities in Romania: control, surveillance and expulsions”. In *Justicing Europe’s Frontiers: Effective Access to Justice in Bordering and Expulsion Policies*, edited by Sergio Carrera and Marco Stefan. Routledge.

Ní Ghráinne, Bríd. “Safe Zones and the Internal Protection Alternative”. *International & Comparative Law Quarterly*.

Ní Ghráinne, Bríd. “Internal Protection Alternative”. In *Oxford Handbook on International Refugee Law*, edited by Cathryn Costello, Michelle Foster and Jane McAdam. Oxford: Oxford University Press.

Petrov, Jan. “The Populist Challenge to the European Court of Human Rights”. *International Journal of Constitutional Law*, Vol. 18, No. 2.

Tsereteli, Nino. “Backsliding into Judicial Oligarchy? The Cautionary Tale of Georgia’s Failed Judicial Reforms, Informal Judicial Networks and Limited Access to Leadership Positions”. *Review of Central and East European Law*.

Urbániková, Marína, David Kosař and Barbara Havelková. 2019. “Ženské právo? (De)feminizace a genderová segregace českého soudnictví v číslech” [De(feminisation) and Gender Segregation of the Czech Judiciary]. In *Mužské právo. Jsou právní pravidla neutrální?* [Men’s Law: Are Legal Rules Neutral?], edited by Barbara Havelková, Pavla Špondrová and Kateřina Šimáčková. Prague: Wolters Kluwer.



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