



Activity Report

2018

JUDICIAL STUDIES INSTITUTE

Masaryk University

Brno

Foreword



The Judicial Studies Institute started life in September 2016 as a research hub at the Faculty of Law, Masaryk University, which delivers a cutting-edge research in the fields of judicial studies, human rights law, constitutional theory, and international public law.

Research at JUSTIN currently studies 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. During the last year, a range of research areas investigated by the JUSTIN members has been extended, as we welcomed two new members, Madalina Moraru and Bríd Ní Ghráinne: Madalina focuses on the evolution of the EU administrative governance performance in times of crisis, while Bríd is interested in the establishment of the safe zones in armed conflicts. Madalina and Bríd also brought the migration and refugee law expertise into JUSTIN.

In 2018 we have reached two core achievements. Under the research 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) we published the Special Issue on Judicial Self-Governance in Europe, which analyses the ever-growing role of judicial councils and other forms of judicial self-governance. This issue (published by the German Law Journal as [Vol. 19, No. 7](#)) contains case studies that discuss judicial self-governance in 12 European jurisdictions as well horizontal articles that address the most vexing issues of court administration. The second major achievement of 2018 ties to the project [“Beyond Compliance - Domestic Implementation of International Human Rights Case Law”](#) (BeCom, 2016-2018, funded by the Czech Science Foundation). This project studied the impact of international human rights commitments on domestic politics and the Czech and Slovak legal systems. During the last year of the project, its investigators have published in the [European Journal of International Law](#) and [Masaryk University Journal of Law and Technology](#).

David Kosář

Director of JUSTIN

February 2019

2018 Highlights

September 2018: Conference: Law and Judicial Dialogue on the Return of Irregular Migrants from the European Union



On 6-7 September 2018, our member Madalina Moraru organized in cooperation with JUSTIN an international conference entitled “**Law and Judicial Dialogue on the Return of Irregular Migrants from the European Union**”. The conference brought together distinguished guests including judges, scholars and a representative of the European

Commission with an aim to discuss the draft chapters of the forthcoming book published by Hart (2019). The authors presented many interesting contributions ranging from the role of the domestic judiciary in the application of the Return Directive, to various forms of judicial interactions and their impact on the different stages of return proceedings as well as on the protection of individual rights in return procedures.



December 2018: Workshop: Informal Networks and Judicial Institutions (JUDI-ARCH)

At the beginning of December, the JUSTIN organized a workshop focused on Informal Judicial Networks. As it is evident from the title of Workshop, the participants discussed the informal aspects of relations of judiciary, which are often neglected, but they are without any doubts of crucial importance. It was our big pleasure to welcome in Brno three experts, namely,



Björn Dressel from Australian National University (Canberra), Raul Sanchez-Urribarri from La Trobe University (Melbourne) and Ling Li from University of Vienna.



2018 in Focus

ECPR General Conference, Hamburg, August 2018:

Katarína Šipulová organized a panel "Compliance and Legitimacy of International Human Rights Courts".

Papers presented:

David Kosař: "Beyond Compliance – Judicial Implementation of the Strasbourg Case Law"

Katarína Šipulová and Hubert Smekal: "Understanding Adoption of International Human Rights Treaties: Political Regimes and Modification of Compliance Control"

Katarína Šipulová: "Safeguarding the Democracy from Inside: The Story of the Constitutional Court and the Parliament in Czechia"

LSA Conference, Toronto, June 2018:

David Kosař: "The Rise of Judicial Self-Government" (co-authored with Adam Blisa)

ICON-S Conference, Hong Kong, June 2018:

David Kosař: "Chief Justices in Slovakia" (co-authored with Samuel Spáč)

ICON-S CEE Section, The Conference "The Power of Public Law in the 21st Century", Budapest, April 2018:

Katarína Šipulová: "The EU's response to Hungarian, Romanian, Polish and Austrian constitutional and democratic backsliding"

Oxford Transitional Justice Research Group, Oxford, April 2018:

Katarína Šipulová: "European Union and Democratisation: Backsliding in Tow of Unsuccessful Conditionality?"

AHRI Conference, Edinburgh, September 2018:

Hubert Smekal and Katarína Šipulová: "Beyond compliance – Domestic judicial implementation of the international human rights case law"

The Conference "Populist Constitutionalism", Prague, September 2018:

David Kosař: "The Twin Challenge to Separation of Powers in Central Europe"

The Conference "Rights Consciousness and Legal Cultures: Empirical Research Experiences", Institute for Legal Studies, Hungarian Academy of Sciences, Budapest, October 2018:

Katarína Šipulová: "Attitudes of judges towards the international law in transitioning countries"

Nino Tsereteli: "Informal Dimension of Judicial Self-Government in Georgia: Benefits and Challenges of Empirical Research"

The Conference "Challenges for public law in modern regulatory states", University of Münster, Münster, March 2018:

David Kosař - "Separation of Powers in Democratic Theory: Understanding Populism and Rise of the Unelected in Central Europe"

The Conference "The European Court of Human Rights in East-West Relations: Norms, Values and Legal Politics", Moscow, May 2018:

David Kosař: "The European Convention on Protection of Human Rights and Fundamental Freedoms in the Czech Republic: Determinants of Compliance Difficulties"

ESIL Research Forum, Jerusalem, February 2018:

Nino Tsereteli: "Evolution of the Remedial Powers of the European Court of Human Rights - Legitimacy management in Times and Change"

REJus (Roadmap to European Effective Justice) Final Conference, Brussels, October 2018:

Madalina Moraru: "Access to justice and effective protection of immigrants and asylum seekers"

ASIL Research Forum, Los Angeles, CA, November 2018:

Bríd Ní Ghráinne: "Safe Zones as Humanitarian Intervention"

The Conference "Paying Pensions to the Conflict-Affected Persons in Ukraine: How to Exercise the Constitutional Right to Pension?", Kiev, November 2018:

Bríd Ní Ghráinne: "IDPs' Pension Rights in International Law"

Annotation for Transparent Inquiry (ATI) workshop, New York, NY, November 2018:

Marína Urbániková: "Failed Expectations: Does the Establishment of Judicial Councils Enhance Confidence in Courts?" (co-authored with Katarína Šípulová)

The Conference "Law and Judicial Dialogue on the Return of Irregular Migrants from the EU" organized by Madalina Moraru, Brno, September 2018:

Madalina Moraru: "Risk of absconding as a ground for removal and detention: which objectivity?"

David Kosař and Adam Blisa: "Scope and intensity of judicial review: which power for judges within the control of immigration detention?"

IMISCOE Annual Conference, Barcelona, July 2018:

Madalina Moraru: "The evolution of the EU normative framework governing consular cooperation and protection of EU citizens in the world"

Special Workshop "Revitalising IDP Research", University of London: Refugee Law Initiative, London, July 2018:

Brid Ní Ghráinne: "Challenges in the Relationship between the Protection of Internally Displaced Persons and International Refugee Law"

The Conference "Refugee Protection in a Hostile World?", University of London: Refugee Law Initiative, London, July 2018:

Brid Ní Ghráinne: "Complementary Protection and Encampment: A Critical Analysis"

2018 Publications of JUSTIN members in English include:

Benvenuti, Simone. “Politics of judicial accountability in Italy. Shifting the balance”. *European Constitutional Law Review*, Vol. 14, Issue 2, 2018, pp. 369–396.

Benvenuti, Simone and Paris, Davide. “Judicial Self-Government in Italy: Merits, Limits and the Reality of an Export Model”. *German Law Journal*, Vol. 19, No. 7, 2018, pp. 1641–1670.

Blisa, Adam and Kosař, David. “Court Presidents: The Missing Piece in the Puzzle of Judicial Governance”. *German Law Journal*, Vol. 19, No. 7, 2018, pp. 2031–2076.

Blisa, Adam; Papoušková, Tereza and Urbániková, Marína. “Judicial Self-Government in Czechia: Europe’s Black Sheep?” *German Law Journal*, Vol. 19, No. 7, 2018, pp. 1951–1976.

Kosař, David. “Beyond Judicial Councils: Forms, Rationales and Impact of Judicial Self Governance in Europe”. *German Law Journal*, Vol. 19, No. 7, 2018, pp. 1567–1612.

Kosař, David. “The Strasbourg Court and Domestic Judicial Politics”. In Marlene Wind (ed.). *International Courts and Domestic Politics*. Cambridge: Cambridge UP, 2018, pp. 71–92.

Kosař, David. “The CJEU Has Spoken Out, But the Show Must Go On”. *Verfassungsblog*, August 2, 2018. Available online at: <https://verfassungsblog.de/the-cjeu-has-spoken-out-but-the-show-must-go-on/>.

Kosař, David and Petrov, Jan. “Determinants of Compliance Difficulties among ‘Good Compliers’: Implementation of International Human Rights Rulings in the Czech Republic”. *European Journal of International Law*, Vol. 29, Issue 2, 2018, pp. 397–425.

Kosař, David and Šipulová, Katarína. “The Strasbourg Court Meets Abusive Constitutionalism: Baka v. Hungary and the Rule of Law”. *Hague Journal on the Rule of Law*, Vol. 10, Issue 1, 2018, pp. 83–110.

Kosař, David and Spáč, Samuel. “Conceptualization(s) of Judicial Independence and Judicial Accountability by the European Network of Councils for the Judiciary: Two Steps Forward, One Step Back”. *International Journal for Court Administration*, Vol. 9, No. 3, 2018, pp. 37–46.

Ní Ghráinne, Bríd and McMahon, Aisling. “Ireland’s 8th amendment is a breach of its own human rights commitments”. *The Conversation*, May 24, 2018. Available online at: <http://theconversation.com/irelands-8th-amendment-is-a-breach-of-its-own-human-rights-commitments-97013>.

Ní Ghráinne, Bríd and McMahon, Aisling. “Ireland is likely to liberalise abortion laws”. *Oxford Analytica Daily Brief*, May 3, 2018. Available online at: <https://dailybrief.oxan.com/Analysis/DB233534/Ireland-is-likely-to-liberalise-abortion-laws>.

Moraru, Madalina; Penasa, Simone and Strazzari, Davide. “Re-Jus Casebook: Effective Justice in Asylum and Immigration”. Roadmap to European Effective Justice (Re-Jus), JUST/2015/JTRA/AG/EJTR/8703, October 31, 2018. Available online at: https://www.rejus.eu/sites/default/files/content/materials/rejus_casebook_effective_justice_in_asylum_and_immigration.pdf.

Petrov, Jan. “Unpacking the partnership: typology of constitutional courts’ roles in implementation of the European Court of Human Rights’ case law”. *European Constitutional Law Review*, Vol. 14, No. 3, 2018, pp. 499–531.

Šipulová, Katarína. “The Czech Constitutional Court: Far away from political influence” In Kálmán Pócza (ed.). *Constitutional Politics and the Judiciary: Decision-making in Central and Eastern Europe*. Abingdon and New York, NY: Routledge, 2018.

Šipulová, Katarína; Janovský, Jozef and Smekal, Hubert. “Ideology and International Human Rights Commitments in Post-Communist Regimes: The Cases of the Czech Republic and Slovakia” In Marlene Wind (ed.). *International Courts and Domestic Politics*. Cambridge: Cambridge UP, 2018, pp. 181–205.

Šipulová, Katarína; Smekal, Hubert and Janovský, Jozef. “Searching for A Reference: Using Automated Text Analysis to Study Judicial Compliance”. *Masaryk University Journal of Law and Technology*, Vol. 12, No. 2, 2018, pp. 131–160.

Spáč, Samuel. “Recruiting European Judges in the Age of Judicial Self-Government”. *German Law Journal*, Vol. 19, No. 7, 2018, pp. 2077–2104.

Spáč, Samuel; Šipulová, Katarína and Urbániková, Marína. “Capturing the Judiciary from Inside: The Story of Judicial Self-Governance in Slovakia”. *German Law Journal*, Vol. 19, No. 7, 2018, pp. 1741–1768.

Tsereteli, Nino. “Quality Control in the Preliminary Examination of the Georgia Situation”. In Morten Bergsmo and Carsten Stahn (eds.). *Quality Control in Preliminary Examination: Volume 1*. Brussels: Torkel Opsahl Academic EPublisher, 2018, pp.521–554. Available online at: <http://www.toaep.org/ps-pdf/32-bergsmo-stahn>.

Tsereteli, Nino and Smekal, Hubert. “The Judicial Self-Government at the International Level – A New Research Agenda”. *German Law Journal*, Vol. 19, No. 7, 2018, pp. 2137–2164.

Urbániková, Marína and Šipulová, Katarína. “Failed Expectations: Does the Establishment of Judicial Councils Enhance Confidence in Courts?” *German Law Journal*, Vol. 19, No. 7, 2018, pp. 2105–2136.

2018 Publications of JUSTIN members in Czech include:

Blisa, Adam. “„Stará“ a „nová“ dělba moci: nový pohled na starý koncept” [„Old“ and „New“ Separation of Powers: a New Look at the Old Concept]. *Časopis pro právní vědu a praxi [Journal of Jurisprudence and Legal Practice]*, Vol. 26, No. 3, 2018, pp.547–556.

Kosař, David and Vyhnánek, Ladislav. “Ústavní identita České republiky” [The Constitutional Identity of the Czech Republic]. *Právník [Lawyer]*, Vol. 157, No. 10, 2018, pp. 854–872.

Papoušková, Tereza. “Advokáti před Ústavním soudem: za jakých okolností se na něj obrací?” [Lawyers before the Constitutional Court of the Czech Republic: Under What They Petition It?]. *Jurisprudence*, Vol. 27, No. 1, 2018, pp. 28–41.

Papoušková, Tereza. “Nastolování agendy u Ústavního soudu: Kdo a na základě čeho vybírá, které případy projednat a které odmítnout?” [Agenda Setting at the Constitutional Court of the Czech Republic: who decides and how which cases are decided on merit]. *Jurisprudence*, Vol. 27, No.6, 2018, pp. 3–21.

Smekal, Hubert and Vyhnánek, Ladislav et al. *Beyond Compliance – Implementace rozhodnutí mezinárodních lidskoprávních těles na národní úrovni [Beyond Compliance – Implementation of International Human Rights Case Law]*. Prague: Wolters Kluwer, 2018.



JUDICIAL STUDIES INSTITUTE

MASARYK UNIVERSITY BRNO

MUNI



Judicial Studies Institute
Faculty of Law, Masaryk University
Veveří 70
611 80 Brno
Czech Republic

Telephone: +420 549 49 1250 **E-mail:** justin@law.muni.cz

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