



Activity Report

2016 – 2017

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 striving to bring significant results by examining the field of domestic courts, international tribunals, and other bodies taking part in the administration of courts.

Research at JUSTIN currently concerns judicial independence, judicial accountability, public confidence in courts and judges, transparency of the judiciary, legitimacy of courts, legislative responses to the Strasbourg case law, citation analysis, and domestic compliance with decisions of the European Court of Human Rights and UN human rights bodies.

JUSTIN is at the moment home to two major research projects: [“The Rise of Judicial Self-Government: Changing the Architecture of Separation of Powers without an Architect”](#) (JUDI-ARCH, 2016-2021, funded by the ERC), which focuses on the ever growing role of judicial councils and other forms of judicial self-government in a globalizing legal order, and [“Beyond Compliance - Domestic Implementation of International Human Rights Case Law”](#) (BeCom, 2016-2018, funded by the Czech Science Foundation), which studies the impact of international human rights commitments on domestic politics and the Czech and Slovak legal systems.

Moreover, JUSTIN members also participated in one minor project [“Legislating from Strasbourg: How International Human Rights Law Influences Domestic Legislation”](#) (LEGIS, 01-04/2017, funded by the Norway Grants and MŠMT ČR) whose main aim was to strengthen ties between JUSTIN and the PluriCourts research centre based at the Law Faculty of the University of Oslo.

Furthermore, JUSTIN has also had collaborative partnerships with the iCourts centre at the Faculty of Law of the University of Copenhagen, Bergen Faculty of Law, and Middlesex University London, School of Law.

During its lifetime, JUSTIN has organized one conference and three workshops, the most significant of which was the JUDI-ARCH workshop in October 2017, which saw prominent experts in selected European jurisdictions come to Prague to present their contributions on individual forms of judicial self-government.

David Kosař

Director of JUSTIN

February 2018

2017 Highlights

February 2017: Workshop: Legislating from Strasbourg: How International Human Rights Law Influences Domestic Legislation

As part of the LEGIS project carried out at JUSTIN in the period from January to April 2017, the Institute jointly organized a workshop with the Norwegian research centre PluriCourts, which took place at the CEELI Institute in Prague. During the workshop both teams presented theoretical and methodological frameworks of their research projects as well as individual substantive papers on the role of international and domestic courts in the modern political and social systems. We were happy to host guest speakers Andreas Føllesdal, Geir Ulfstein, Matthew Saul, Davide Paris, Bríd Ni Ghráinne, Monika Hanych, and Alain Zysset.



May 2017: Conference: Beyond Compliance: Implementation of the Case Law of International Human Rights Bodies - Challenges and Their Reflection in the Czech Republic and Slovakia



Taking place at the Faculty of Social Sciences, Masaryk University, the conference zeroed in on the implementation of the case law of international human rights bodies and courts, and included prominent speakers such as judge Jiří Malenovský (Court of Justice of the European Union), Agent of the Government of the Czech Republic before the ECtHR Vít A. Schorm and Agent of the Government of the Slovak Republic before the ECtHR Marica Pirošíková.

The results of the BeCom project that were presented at the conference will be published as a book *Beyond Compliance – Implementace rozhodnutí mezinárodních lidskoprávních těles na národní úrovni* (forthcoming in 2018).

October 2017: Workshop: The Rise of Judicial Self-Government in Europe: Changing the Architecture of Separation of Powers without an Architect (JUDI-ARCH)

Among the most important events of 2017 was the first JUDI-ARCH Workshop that we hosted at the CEELI Institute in Villa Grébovka, Prague in October. This workshop brought together experts on judicial councils and other forms of judicial self-government from key European jurisdictions, namely: Davide Paris, Bianca Gutan, Elaine Mak, Christoph Krenn, Markus Vašek, Anna Śledzińska-Simon, Betül Durmuş, Fabian Wittreck, and Stewart Cunningham.

The workshop aimed to discuss the most vexing issues regarding the judicial independence and other judicial virtues. The papers presented in Prague will be published collectively this year.



November 2017: Workshop: Implementation of Human Rights Judgments and Decisions against the Czech Republic

On the occasion of the 10th anniversary of the ECtHR's Grand Chamber's judgment in *D.H. v. Czech Republic* concerning the Roma children segregation in the Czech primary schools JUSTIN co-organized a workshop on the "Implementation of Human Rights Judgments and Decisions against the Czech Republic". This workshop was organized jointly by JUSTIN (BeCom project) and Middlesex University London, School of Law (Human Rights Law Implementation Project) which was represented by Alice Donald and Anne-Katrin Speck. The aim of the workshop was to discuss the legacy of the *D.H. v. Czech Republic* case and implementation of other ECtHR's leading cases against the Czech Republic.



2016 in Focus

ECPR General Conference, Prague, September 2016:

David Kosař, Hubert Smekal, Jan Petrov and Katarína Šipulová jointly organized a panel "Beyond Compliance: Domestic Politics, National Courts and International Human Rights Law" together with iCourts members (prof. Marlene Wind, Juan A. Mayoral), and Andreas von Staden (University of Hamburg).

Papers presented:

David Kosař and Jan Petrov: "The Architecture of the Strasbourg System of Human Rights: The Crucial Role of the Domestic Level and the Constitutional Courts in Particular"

Katarína Šipulová and Hubert Smekal: "(Cross)referencing between Constitutional Courts and International HR Bodies in Times of Transition in Central European Countries"

ASIL Research Forum, Seattle, USA, November 2016:

David Kosař and Lucas Lixinski (University of New South Wales, Australia): "Transitional Justice in Regional Human Rights Courts and the Paradoxes of International Justice"

2017 in Focus

University of New South Wales, Sydney, Australia, February 2017:

David Kosař: "Constitutional Identity of the Czech Republic: A New Twist on the Old Fashioned Idea?" (co-authored with Ladislav Vyhnánek).

AHRI Conference, Leuven, April 2017:

Organized by the Leuven Centre for Global Governance Studies in conjunction with the FRAME project: "The Promotion and Enforcement of Human Rights by International and Regional Organizations"

Katarína Šipulová and Hubert Smekal: "Political Regimes and Global Commitment Patterns"

4th Conference for Junior Researchers, Stanford Law School, California, USA, May 2017:

Nino Tsereteli: "Evolution of the Remedial Powers of the ECtHR and Legitimacy Management Strategies of the ECtHR"

LSA International Meeting on Law and Society, New Mexico, USA, June 2017

David Kosař: "From Transmission Belts to (Semi)Autonomous Actors - Chief Justices in the Czech Republic and Slovakia" (co-authored with Samuel Spáč)

ICON-S Conference, Copenhagen, 2017, July 2017

Organized under the auspices of the Faculty of Law, University of Copenhagen and iCourts: "Courts, Power, and Public Law". As part of the conference David Kosař and Katarína Šipulová arranged a panel "Transitional Justice and Democratization: Does International Law Make a Difference?"

Papers presented:

Katarína Šipulová: "Slovakia: Democratic Backsliding and (Ab)use of Constitutional Identity: Slovakian Place in the Concept of Fundamental Constitutional Values of the European Union" and "Externalities in Transitional Justice Decisions: The European Union and Transitional Justice Processes in Post-Communist Countries" (paper presented within the panel "Transitional Justice and Democratization").

Simone Benvenuti: "Images of judicial self-governance. A comparative and historical study of three main jurisdictions: France, United Kingdom, United States"

David Kosař: "Constitutional Identity of the Czech Republic" and "Transitional Justice in Regional Human Rights Courts and the Paradoxes of International Justice" (co-authored with Lucas Lixinski; paper presented within the panel "Transitional Justice and Democratization")

Jan Petrov: "International Input to Domestic Implementation Mechanisms in the ECHR System"

ECPR General Conference, Oslo, September 2017:

JUSTIN members were actively involved in three panels. First, David Kosař and Samuel Spáč co-organized a panel "Selection of Judges". Second, Hubert Smekal and Katarína Šipulová were in charge of the panel "Courts and Separation of Powers". Third, Katarína and Hubert, together with Jozef Janovský arranged a panel "Principles for Institutional Design".

Papers presented:

Katarína Šipulová: "Constitutional Courts as Catalysts of Democratization"

Hubert Smekal: "International Human Rights Case Law in Domestic High Politics"

Katarína Šipulová and Hubert Smekal (co-authored with Jozef Janovský): "Understanding Adoption of International Human Rights Treaties: Political Regimes and Commitment Patterns"

European University Institute, Florence, Italy, October 2017:

David Kosař: "Constitutional Identity of the Czech Republic"

2016 – 2017 Publications of JUSTIN members in English include:

Føllesdal, Andreas, and Nino Tsereteli. The Margin of Appreciation in Europe and beyond. *The International Journal of Human Rights*, Vol. 20, No. 8, 2016, pp. 1055–1057 (introduction into the special section).

Kilian, Petr, Ivo Pospíšil, and Hubert Smekal. International Human Rights in Czech Legal Education. *International and Comparative Law Review*, Vol. 16, No. 2, 2016, pp. 87–98.

Kosař, David. Politics of Judicial Independence and Judicial Accountability in Czechia: Bargaining in the Shadow of the Law between Court Presidents and the Ministry of Justice. *European Constitutional Law Review*, Vol. 13, No. 1, 2017, pp. 96–123.

Kosař, David. Nudging Domestic Judicial Reforms from Strasbourg: How the European Court of Human Rights Shapes Domestic Judicial Design. *Utrecht Law Review*, Vol. 13, No. 1, 2017, pp. 112–123.

Kosař, David, and Jan Petrov. The Architecture of the Strasbourg System of Human Rights: The Crucial Role of the Domestic Level and the Constitutional Courts in Particular. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 77, No. 3, 2017, pp. 585–621.

Kosař, David, and Katarína Šipulová: The Strasbourg Court Meets Abusive Constitutionalism: *Baka v. Hungary* and the Rule of Law. *Hague Journal on the Rule of Law*, pp. 1–28 (forthcoming in January 2018).

Krpec, Oldřich, Petr Ocelík, and Hubert Smekal. Narrowing the Divide: Perspectives on the Future of Mixed Methods Report From Central and Eastern Europe. *The Journal of Mixed Methods Research*, Vol. 11, No. 1, 2017, pp. 4–16.

Smekal, Hubert, Katarína Šipulová, Ivo Pospíšil, Jozef Janovský, and Petr Kilian. *Making Sense of Human Rights Commitments: A Study of Two Emerging European Democracies*. Brno: MUNI Press, 2016.

Tsereteli, Nino. Emerging Doctrine of Deference of the Inter-American Court of Human Rights? *International Journal of Human Rights*, Vol. 20, No. 8, 2016, pp. 1097–1112.

Tsereteli, Nino. The Role of the European Court of Human Rights in Guiding and Facilitating Legislative Reforms. In *International Human Rights Judiciary and National Parliaments*, edited by Matthew Saul, Andreas Føllesdal, and Geir Ulfstein. Cambridge: Cambridge University Press, 2017, pp. 223–247.

Tsereteli, Nino. Quality Control in the Preliminary Examination of the Georgia Situation, C. Stahn and M. Bergsmo eds. *The Torkel Opsahl Academic EPublisher (TOAEP)* (forthcoming in January 2018).

Vyhnánek, Ladislav. A Holistic View of the Czech Constitutional Court Approach to the ECtHR's Case Law. *Heidelberg Journal of International Law*, Vol. 77, No. 3, 2017, pp. 715–744.

2016 – 2017 Publications of JUSTIN members in Czech include:

Blisa, Adam. Odměňování soudců jako součást soudcovské nezávislosti [Judicial Remuneration as a Component of Judicial Independence]. *Časopis pro právní vědu a praxi*, Vol. 24, No. 3, 2016, pp. 391–413.

Kadlec, Ondřej, and Jan Petrov. Rozšířený senát NSS: Judikatura ESLP jako zákaz vjezdu na křižovatce právních názorů [The Grand Chamber of the Supreme Administrative Court: ECtHR's Case Law as a No-Entry Sign at the Crossroads of Legal Solutions]. *Soudní rozhledy*, No. 1, 2017, pp. 2–7.

Kosař, David and Jan Petrov. Jak vybrat „případy“ do případové studie a pracovat s nimi v právu: poznatky z výzkumu na pomezí práva a politologie [How to Select and Develop Case Studies in Law: Insights from Law and Political Science Research]. *Jurisprudence*, Vol. 25, No. 6, 2016, pp. 21–30.

Kosař, David. *Judicializace justiční politiky Evropským soudem pro lidská práva* [Judicialization of Judicial Politics by the European Court of Human Rights]. Praha: Wolters Kluwer, 2017.

Kosař, David, and Tereza Papoušková. *Kárná odpovědnost soudce v přerodu: Ponaučení z České republiky* [Judicial Discipline in Transition: Lessons from the Czech Republic]. Praha: Wolters Kluwer, 2017.

Kosař, David, and Tereza Papoušková. Přinesla „Pospíšilova“ reforma kárného řízení skutečně zpřísnění kárného postihu českých soudců? [Has "Pospíšil's" Reform of Disciplining Judges Really Led to Harsher Disciplinary Sanctions?]. *Časopis pro právní vědu a praxi*, Vol. 25, No. 2, 2017, pp. 219–240.

Papoušková, Tereza, and Jan Papoušek. Ústavní soudci v kvantitativní perspektivě [Czech Constitutional Justices in the Quantitative Perspective]. *Časopis pro právní vědu a praxi*, Vol. 25, No. 1, 2017, pp. 73–92.

Papoušková, Tereza, and Jan Papoušek. Advokáti před ústavním soudem: zaručuje jejich zkušenost úspěch? [Lawyers before the Constitutional Court of the Czech Republic: Does Experience Make Them More Successful?]. *Jurisprudence*, Vol. 26, No. 2, 2017, pp. 12–24.

Smekal, Hubert, and Katarína Šipulová. Výzkum lidských práv: Kritická reflexe současných přístupů [Research on Human Rights: Critical Reflection of Current Approaches]. *Středoevropské politické studie*, Vol. 18, No. 4, November 2016, pp. 381–411.

Smekal, Hubert, and Katarína Šipulová. Empirický právní výzkum [Empirical Legal Research]. *Jurisprudence*, Vol. 25, No. 6, December 2016, pp. 31–38.

Šamánek, Jiří, Eva Nehudková, Petr Polák, Marína Urbániková, and Lucie Obrovská. *Antidiskriminační právo v judikatuře a praxi* [Antidiscrimination Law in Case Law and Practise]. Praha: C.H.Beck, 2017.

Urbániková, Marína, and Hubert Smekal. Právní věda a právní psaní: postačí vždy jako výzkumná metoda "číst, přemýšlet a psát"? [Legal Science and Legal Writing: Does "Reading, Thinking, and Writing" always Suffice as a Research Method?]. *Jurisprudence*, Vol. 26, No. 4, 2017, pp. 37–41.

2016 – 2017 Publications of JUSTIN members in other languages include:

Tsereteli, Nino. The Impact of the Judgments of the European Court of Human Rights on the Georgian Domestic Legal Order. In *National and International Mechanisms of Human Rights Protection*, edited by Konstantin Korkelia. 2016, pp. 163–183, (Georgian).



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