Essay - A Tale of Two Supreme Courts, Progress and Communist Legacies

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Téma:	A Tale of Two Supreme Courts, Progress and Communist Legacies
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Introduction[1,2]

Within the Czech judiciary, a tale of two courts is being told — the tale about the formalistic Supreme Court and the discursive Supreme Administrative Court.[3] It is a story about how communist legacies affect transitional democracies and how we reflect on it.

Prevailing literature criticizes the "formalistic Supreme Court" for simply sticking to the letter of law while ignoring the purpose, principles or constitutional values. In this context, the term formalism is a bundle of condemnations.[4] The court is considered to be an example of the twisted tradition of legal reasoning, which is persistent within the Central and Eastern Europe as a legacy of the communist era. Supreme Court hinders its value choices, scholars claim, while hiding itself in hard cases behind the façade of simple legal syllogism. Consequently, the Supreme Court's reasoning shall allegedly breach rule of law due to the lack of proper justification. Simply put, the prevailing narrative holds that the Supreme Court's reasoning has not substantially changed since the communist era and remained deficient.[5]

[1] The creation of this essay was supported by the Charles University Grant Agency (project no. 185023).

[2] This paper also benefited from the assistance of large language models (LLMs), including Gemini, ChatGPT 4, and Claude, for tasks related to grammar, style and clarity enhancement. Nonetheless, all content and ideas are either original to the author or appropriately cited. The use of LLMs was strictly limited to improving presentation and style.

[3] Zdeněk Kühn, 'Worlds Apart: Western and Central European Judicial Culture at the Onset of the European Enlargement' (2004) 52 The American Journal of Comparative Law; Zdeněk Kühn, 'The Application of European Law in the New Member States: Several (Early) Predictions' (2005) 6 German Law Journal 563; Marcin Matczak, Matyas Bencze and Zdenek Kühn, 'Constitutions, EU Law and Judicial Strategies in the Czech Republic, Hungary and Poland' (2010) 30 Journal of Public Policy 81; Zdeněk Kühn, *The Judiciary in Central and Eastern Europe: Mechanical Jurisprudence in Transformation?* (Martinus Nijhoff Publishers 2011); Marcin Matczak, Matyas Bencze and Zdeněk Kühn, 'EU Law and Central European Judges: Administrative Judiciaries in the Czech Republic, Hungary and Poland Ten Years after Accession' in Michal Bobek (ed), *Central European Judges Under the European Infl uence The Transformative Power of the EU Revisited* (2015th edn, Hart Publishing 2015); Zdeněk Kühn, 'The Quality of Justice and of Judicial Reasoning in the Czech Republic' in Mátyás Bencze and Gar Yein Ng (eds), *How to Measure the Quality of Judicial Reasoning*, vol 69 (2018th edn, Springer International Publishing 2018); David Kosař and others, *Domestic Judicial Treatment of European Court of Human Rights Case Law: Beyond Compliance* (1st edn, Routledge 2020); Katarína Šipulová and David Kosař, 'Purging the Judiciary After a Transition: Between a Rock and a Hard Place' [2024] Hague Journal on the Rule of Law.

[4] Michal Bobek states that the term "formalism" has lost its meaning and is more often used as a mere insult. To avoid the vagueness and the confusion, I mean a particular version of formalism which I later on described in the section 1.1. Bobek opts for "textualism" instead of "formalism". See Michal Bobek (ed), 'Conclusions: Of Form and Substance in Central European Judicial Transitions', *Central European judges under the European influence: the transformative power of the EU revisited* (Hart Publishing 2015) 397.

[5] Kühn, 'Worlds Apart: Western and Central European Judicial Culture at the Onset of the European Enlargement' (n 2); Matczak, Bencze and Kühn, 'Constitutions, EU Law and Judicial Strategies in the Czech Republic, Hungary and Poland' (n 2); Matczak, Bencze and Kühn, 'EU Law and Central European Judges: Administrative Judiciaries in the Czech Republic, Hungary and Poland Ten Years after Accession' (n 2); Kühn, 'The Quality of Justice and of Judicial Reasoning in the Czech Republic' (n 2).

The strong condemnation of Supreme Court's reasoning stands in stark contrast with the scarcity of empirical evidence.[6] In particular, no scholars have empirically studied in systemic way how the Czech Supreme Court actually reasons and to what extends does its "defective reasoning" actually differ from the "acclaimed" discursive reasoning of the Supreme Administrative Court. While empirical studies have found important positive development of the Supreme Administrative Court, the practices of the Supreme Court have remained understudied.[7] Yet, with no support in proper empirical data, the Supreme Court is portrait as the formalistic court.

This essay poses following research question: Has there been a progress in the reasoning of the Czech Supreme Court in hard cases over the last 25 years? Two sub-questions follow. First, do the trends in Supreme Court's reasoning copy (or differ from) the trends in the Supreme Administrative Court's reasoning in hard cases? Second, what is the current reasoning pattern of the Supreme Court in hard cases?

My perspective is empirical. To answer the research questions, this essay employs a systematic content analysis and focuses on the Supreme Court's case law. Thus, the study analyses a representative dataset of 160 decisions from the period 1999 – 2022.[8]

Three reasons justify the wider timespan. First, I track how different patterns of Supreme Court's reasoning may have changed over time. Second, the timespan also enables a comparison between the reasoning of the Supreme Court and the Supreme Administrative Court in the period 1999-2013. And third, I verify/reject the claim about current practices of the Supreme Court.[9]

Concerning the evaluative question of progress, the essay explicitly uses the framework of the existing literature that considers a shift towards discursive reasoning to be a positive way to decide

[6] Already in 2015, J. Komárek claimed that the so called anti-formalistic narrative holds extremely strong claims despite lacking solid empirical grounds. See Jan Komárek, 'The Struggle for Legal Reform After Communism' (2015) 63 The American Journal of Comparative Law 285, 290. Similarly, Bobek states that the claims about CEE region are empirically based (besides being normative) and would need to be verified, e.g., in comparison with German, Swiss or other courts. See Bobek (n 3) 400.

[7] Matczak, Bencze and Kühn, 'Constitutions, EU Law and Judicial Strategies in the Czech Republic, Hungary and Poland' (n 2); Matczak, Bencze and Kühn, 'EU Law and Central European Judges: Administrative Judiciaries in the Czech Republic, Hungary and Poland Ten Years after Accession' (n 2).

[8] The total population of decisions I am interested in consists of all the Supreme Court's judgments on the merits (rozsudky) issued between 01.01.1999 and 31.12.2022 that were published in the official journal of the Supreme Court (in total 1667 judgments according to the journal of the court accessible on-line https://sbirka.nsoud.cz/). For the sampling process, see the part two below.

[9] There are no empirical studies mapping the reasoning patterns of the Supreme Administrative Court after 2013.

cases.[10] Although potentially controversial to some extent, it is beyond the scope of this essay to doubt this premise.[11]

The essay provides three key findings. First, the Supreme Court's reasoning has demonstrably improved since 1999, shifting towards more discursive and less formalistic tradition in hard cases. Second, the main reasoning patterns of the two top Czech courts had developed similarly, not disparately. Third, the tale of two courts does not have evidence in the Supreme Court's current case law in important cases; on the contrary, the court has been referring to principles, purpose of the law or the constitution in majority of its recent published decisions (hard cases).

My essay challenges the dominant normative claims accusing the Supreme Court of formalism and twisted reasoning tradition. Doing so, it provides a better understanding of the Court's real decision-making, both past and present, and its place within the Czech judiciary. My study also challenges the anti-formalist narrative omnipresent in the CEE region.

The essay is structured as follows. First, it describes the Supreme Court in the broader context of the (i) current debates on formalism in CEE and (ii) previous empirical studies on Czech administrative courts. Second, it describes the methodology and the analysed data. Third, it presents the results and discusses the key findings.

Part One: Related Work and Key Questions

The normative claims about Supreme Court's reasoning are a direct part of the international discussion on the CEE judiciary. Thus, I explain the debate on the Supreme Court in the European context first and discuss the particular Czech context afterwards.

[10] Matczak, Bencze and Kühn, 'Constitutions, EU Law and Judicial Strategies in the Czech Republic, Hungary and Poland' (n 2); Matczak, Bencze and Kühn, 'EU Law and Central European Judges: Administrative Judiciaries in the Czech Republic, Hungary and Poland Ten Years after Accession' (n 2); Mátyás Bencze, 'Obstacles and Opportunities—Measuring the Quality of Judicial Reasoning' in Mátyás Bencze and Gar Yein Ng (eds), *How to Measure the Quality of Judicial Reasoning*, vol 69 (Springer International Publishing 2018).

[11] One of the alternatives might be the stance of M. Bobek who finds the calls for the discursive reasoning suspicious. See Michal Bobek, 'What Role for Courts in Transforming a Society? A Central European Cautionary Tale' in Michal Bobek and others (eds), *Transition 2.0: Re-establishing Constitutional Democracy in EU Member States* (Nomos Verlagsgesellschaft mbH & Co KG 2023) 367–368, 376. Nonetheless, even if we reject the premise that discursive reasoning means progress, the essay still stands as it brings new valuable insides about the practices of the Supreme Court which have remained understudied. In other words, if we reject that, e.g., more references to constitution mean progress, it is still valuable to know how the Supreme Court's justify its decisions and how has this practice developed.

1.1. CEE as the Post-Communist Region with Flawed Judiciary?

As mentioned, Czech judiciary is often described as a tale about the formalistic Supreme Court and the discursive Supreme Administrative Court. In this context, the "deeply rooted formalism of Supreme Court" could be seen as just one example of the wider CEE formalistic tradition.[12]

Scholars across the region claim that CEE judiciary is formalistic. This critical stance has been recently described as an anti-formalistic narrative by Cserne.[13] The anti-formalistic narrative considers formalism to be distinct feature of the CEE judiciary related to its communist past. Just like the Czech Supreme Court, the judiciaries across Poland,[14] Slovakia,[15] Hungary,[16] Croatia[17] or Bosna and Herzegovina and other former Yugoslavian states[18] have been described as "hypertextualist", "hyperpositivistic" or as the "last bastion formalism". This dominant narrative denounces CEE judges for having "persistent heritage of communist or socialist legal thought"; as such, CEE alleged formalism "is considered and condemned as a sign of limited mind, blind conservatism, incompetence, or lack of transparency".[19]

Long list of literature describing CEE formalism exist. I focus mainly on two main studies that are both greatly relevant for the Czech context and representative for the CEE discussion.[20] These authors describe formalism as a judicial strategy that favours strict adherence to legal text and established rules. Formalistic judge applies law mechanically, relying on a "closest rule" and a limited set of arguments, i.e., arguments derived from legal texts. Such judge emphasizes internal

[12] Concerning the "deeply rooted formalism" of the Supreme Court, see Šipulová and Kosař (n 2).

[13] For the meta-dicussion about the narratives in CEE see Péter Cserne, 'Discourses on Judicial Formalism in Central and Eastern Europe: Symptom of an Inferiority Complex?' (2020) 28 European Review 880; Péter Cserne, 'Judicial Formalism and Regional Legal Identity in Central and Eastern Europe' in Cosmin Sebastian Cercel, Alexandra Mercescu and Mirosław Michał Sadowski (eds), *Law, culture, and identity in Central and Eastern Europe: a comparative engagement* (Routledge 2024).

[14] Rafał Mańko, 'Weeds in the Gardens of Justice? The Survival of Hyperpositivism in Polish Legal Culture as a Symptom/Sinthome' (2013) 7 Pólemos; Piotr Bystranowski and others, 'Do Formalist Judges Abide By Their Abstract Principles? A Two-Country Study in Adjudication' (2022) 35 International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique 1903.

[15] Radoslav Procházka, *Mission Accomplished: On Founding Constitutional Adjudication in Central Europe* (Central European University Press 2002); Kühn, 'The Application of European Law in the New Member States' (n 2).

[16] Matczak, Bencze and Kühn, 'Constitutions, EU Law and Judicial Strategies in the Czech Republic, Hungary and Poland' (n 2).

[17] Alan Uzelac, 'Survival of the Third Legal Tradition?' (2010) 39 Supreme Court Law Review 377.

[18] Fikret Karčić, 'A Study on Legal Formalism in the Former Yugoslavia and Its Successor States. CIDS Report Nr. 1/2020'.

[19] Cserne (n 11) 87–89.

[20] Matczak, Bencze and Kühn, 'Constitutions, EU Law and Judicial Strategies in the Czech Republic, Hungary and Poland' (n 2); Matczak, Bencze and Kühn, 'EU Law and Central European Judges: Administrative Judiciaries in the Czech Republic, Hungary and Poland Ten Years after Accession' (n 2).

legal logic and consistency disregarding the fairness of the outcome. Besides, she excludes external standards, like policies or efficiency, from the legal reasoning.

The authors state that the key concern is "strategic formalism" – treating hard cases as simple ones. While the authors acknowledge that some degree of formalism is necessary, they argue that hard cases can't be decided solely based on the wording. Presenting a hard case as a simple one allows judges to hide the underlying value judgments they make. Doing so, judges hinder transparency and the real reasons from both the parties and the public. As such, formalism adversely affects rule of law. Furthermore, by ignoring broader principles and purposes, formalism can infringe constitutions, fundamental rights EU law; it also allegedly hinders the realization of the constitutional or EU goals.[21]

The authors mention different causes for the formalistic tradition: communist heritage, uncritical legal education, huge workload, lack of resources or absence of training in legal reasoning.[22]

What's important is that the anti-formalistic narrative, being mixture of empirical and normative claims, rests on an empirical premise that the CEE courts actually reason in a certain way (i.e., formalistically). However, rather scarce empirical evidence exist that could ground the popular condemning stance towards the CEE judiciary.[23] Next, I describe the main empirical studies.

1.2. Formalism in Czechia, Poland, Hungary and the Data: Previous Empirical Studies

The anti-formalistic narrative gave birth to two major empirical studies focusing, among others, on the Czech judiciary.[24] These studies aimed to verify if the formalistic reasoning, allegedly typical of communist judges, persisted in post-communist Poland, Hungary, and Czechia. They covered

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[21] Ibid.

[22] Matczak, Bencze and Kühn, 'Constitutions, EU Law and Judicial Strategies in the Czech Republic, Hungary and Poland' (n 2) 96.

[23] Recently, Mańko acknowledged that the anti-formalistic claims about CEE judiciary rest on rather anecdotal evidence, personal experience and reflection of few important insiders like judges from the top courts. See Rafał Mańko, 'Being Central European, or Some Reflections on Law, Double Peripherality and the Political in Times of Transformation1' in Tomáš Gábriš and Ján Sombati (eds), *Central and Eastern Europe as a double periphery? Volume of proceedings from the 11th CEE Forum Conference in Bratislava, Slovakia 25-26 April 2019* (Peter Lang 2020). Already in 2015, J. Komárek critiqued the anti-formalistic narrative for the absence of empirical evidence. Only recently, some other empirical work on reasoning of CEE judiciary appeared. See Maciej Małolepszy and Michał Głuchowski, 'Argumentation and Legal Interpretation in the Criminal Decisions of the Polish Supreme Court and the German Federal Court of Justice: A Comparative View' (2022) 35 International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique 1797.

[24] Matczak, Bencze and Kühn, 'Constitutions, EU Law and Judicial Strategies in the Czech Republic, Hungary and Poland' (n 2); Matczak, Bencze and Kühn, 'EU Law and Central European Judges: Administrative Judiciaries in the Czech Republic, Hungary and Poland Ten Years after Accession' (n 2).

nearly 15 years of decision-making of administrative courts in 1999-2013. Using a methodology established by Galligan and Matczak, [25] the studies analysed four groups of standards used by courts: Internal (e.g., linguistic interpretation), external (e.g., teleological interpretation), constitutional (e.g., reference to fundamental rights), and EU (e.g., EU conform interpretation).[26] The more internal standards, the more formalistic the decision. The more external, constitutional, or EU standards, the more discursive the decision.

The first study (1999-2004) has not found much discursive reasoning, concluding that administrative judiciaries in Czechia, Poland, and Hungary were formalistic. Despite Czech courts being slightly more discursive, they still had largely relied on formalistic methods, the study concluded.

However, the more recent study (2005-2013) found a shift towards more discursive style of legal reasoning. In Czech context, the study focused mainly on the case law of ghe Supreme Administrative Court, established in 2003. The authors concluded that there is a "visible rise of non-formalist argumentation" by this court, with the purposive argumentation being a "standard exercise of Czech administrative judges". According to the study, the judgments of the Supreme Administrative Court "do approach hard cases in a much more transparent way, using teleological or purposive argumentation routinely" from 2006 onwards.[27] The references to EU standards also increased (most often in tax or duty matters) within Czech judiciary, with the application of pro-EU interpretations being most common. In summary, the study revealed a trend towards more purposive, constitutional, and EU-conforming argumentation in Czech administrative courts' reasoning since 2006 (recon its mainly Supreme Administrative Court).

Interestingly, despite the empirical focus on administrative courts, the authors extended their conclusions beyond administrative judiciary - to the Supreme Court. In particular, they contrasted the new discursive style of the "modern" Supreme Administrative Court with the allegedly formalistic Supreme Court.[28]

[25] Denis Galligan and Marcin Matczak, 'Strategies of Judicial Review. Exercising Judicial Discretion in Administrative Cases Involving Business Entities' (Sprawne Panstwo, Ernst & Young SA, Poland 2005).

[26] Most of the variables used can be found in my list of variables annexed to this essay as I tried to copy the studies as close as possible.

[27] ibid 59.

[28] ibid 58.

1.3. The Tale of Formalistic Supreme Court and Discursive Supreme Administrative Court

In the upcoming part of my essay, I describe what I called the Tale of Two Supreme Courts, the tale of formalistic Supreme Court and discursive Supreme Administrative Court. For more than two decades, the "formalistic Supreme Court", often seen as an example of "unreformed communist judiciaries", has been juxtaposed to the Supreme Administrative Court, modern institution established in 2003 unburdened by a communist legacy. The most recent studies still highlight the different nature and history of the two institutions. The story usually unfolds as follows:

The Velvet Revolution and the fall of communism brought about the creation of two entirely new judicial institutions in the Czech Republic: the Constitutional Court (1993) and the Supreme Administrative Court (2003). Former dissidents and emigrants were appointed to the Constitutional Court, not career judges connected to the previous regime. Neither the Supreme Administrative Court did recruit the career judges of the previous regime but focused mainly on the younger judges and scholars who often who often had foreign education or various professional experience.[29]

In contrast, both institutional and personnel continuity characterize the Supreme Court. As mentioned by Kosař, the Supreme Court "was inherited from the communist era and remained untouched by any substantive personnel change".[30] The authors highlight this as a lack of transition of the Supreme Court since the court "entered the democratic regime with judges who had served under the communist regime and who were strongly influenced by a culture of socialist formalism".[31]According to Šipulová and Kosař, the missing transition persisted, and the communist era judges "did not lose their influence". In 2019, almost 40% of the Supreme Court's justices were former members of the communist party, the highest percentage in the Czech judiciary.[32]

The institutional and personnel continuity has been used as a premise for inferring a continuity of the reasoning tradition. This narrative has been present for more than 20 years including the current

[29] Kosař and others (n 2) 7.

[30] ibid.

[31] ibid.

[32] Šipulová and Kosař (n 2).

literature.[33] For instance, Z. Kühn, former Supreme Administrative Court judge and one of the most influential Czech legal scholars, claims that the Supreme Court has maintained a traditional, formalistic approach to legal argumentation that lacks persuasiveness and transparency in decision-making. Instead, according to Z. Kühn, the Supreme Court relies on its hierarchical position of authority. The conclusion is that Supreme Court allegedly stays closer to the cognitive and formalistic ideal of legalistic argumentation which allegedly used to dominate Czech legal academia and practice until the 1990s.[34]

Recently, some papers softened the claim, like J. Wintr claiming that the Supreme Court uses the teleological interpretation,[35] or D. Kosař et al. stating that the Supreme Court actually cites the ECHR which could be considered discursive within the framework of this essay, or even Z. Kühn, to some extent, acknowledging that the decisions became longer in the entire judiciary, not just the Supreme Administrative Court, indicating the formalist conception law might be changing. Nonetheless, neither Wintr's nor Kühn's conclusion, although being important, rest on empirical evidence, and Kühn's softening claim do not refer particularly to the Supreme Court. Kosař's claim concerns only ECHR, not what other standards the Supreme Court uses and how the Supreme Court reasons in cases without the ECHR dimension. Thus, despite some minor changes, the existing literature still considers the Supreme Court to be the formalistic court.

To sum up, the debate on the Czech judiciary still goes for the narrative contrasting the "formalistic" Supreme Court, rooted in communist legacies, with the more modern, discursive Supreme Administrative Court. However, systematic evidence on Supreme Courts has been missing. Therefore, to date, the two questions remain open: how the Supreme Court actually reasons and how has the development of its reasoning tradition differed from the Supreme Administrative Court. It is the question whether there has been any progress in the Supreme Court's reasoning in the last 25 years.

[33] E.g., Kühn, 'The Quality of Justice and of Judicial Reasoning in the Czech Republic' (n 2); Šipulová and Kosař (n 2).

[34] See the references at n 1.

[35] Jan Wintr and Patrik Koželuha, 'Teleological Interpretation in Czech Case Law' (2015) 5 The Lawyer Quarterly 133.

Part Two: Method and Dataset

2.1. Method

To answer the research questions, I followed the methodology of the two previous studies on the CEE judiciary.[36] This methodology had already been used by Matczak and Galligan.[37]

The previous studies considered their approach to be "a quantitative examination of the number of references to specific groups of standards and the number of references to specific standards within groups".[38] The methodology of both the previous studies and my essay could be classified as systematic content analysis, as it consists of 1) systematic case selection, 2) systematic case coding and 3) analysing cases quantitatively. As Hall and Wright put it, the "content analysis is perfectly suited for examining aspects of judicial method", e.g., different reasoning style, and can refute/verify claims about judiciary based on "anecdotal" evidence.[39]

2.2. Systematic Case Selection - Dataset

When preparing the dataset, the selecting process was led by the research question.

First, I was interested in the non-trivial decisions (the reason is that the anti-formalistic narrative claims that the formalism is wrong in the so called hard cases; thus, even if I found ignorance towards external standards, it might not be problematic if it concerned only simple cases; on the contrary, absence of external standards in hard cases is more likely to be troublesome).

Second, I employed a dynamic perspective as I wanted to identify different trends in time (e.g., after important institutional changes like accession to EU in 2004) and to mirror the previous studies.

When preparing the dataset, I pursued purposive sampling, stratified sampling (with following subpopulations – 1999, 2004, 2013, 2022) and (adjusted) randomized sampling.[40] To enable

[36] Matczak, Bencze and Kühn, 'Constitutions, EU Law and Judicial Strategies in the Czech Republic, Hungary and Poland' (n 2); Matczak, Bencze and Kühn, 'EU Law and Central European Judges: Administrative Judiciaries in the Czech Republic, Hungary and Poland Ten Years after Accession' (n 2).

[37] Galligan and Matczak (n 22).

[38] Galligan and Matczak (n 22) 22.

[39] Mark A Hall and Ronald F Wright, 'Systematic Content Analysis of Judicial Opinions' 96 California Law Review 63, 93, 100.

[40] Methodological literature mentions different sampling techniques to be used in content analysis. Hall and Wright mention 4 sampling techniques: (1) true random sampling, best done by a computer-generated list of random numbers; (2) systematic sampling, such as every fifth case; (3) quota sampling, such as all cases up to two hundred per jurisdiction per year; and (4) purposive sampling. See Hall and Wright (n 38). Krippendorf mentions following 8 sampling techniques: (1) random sampling; (2) systematic sampling; (3) stratified sampling; (4) varying probabiity sampling; (5)

meaningful comparison of the Supreme Court with the Supreme Administrative Court, I mirrored the sampling of the previous studies and added the stratified and randomized sampling due to practical reasons. The sampling process can be described as follows:

Purposive Sampling (relevance sampling)

As mentioned above, I focused on the decisions of the Supreme Court on merits published in the official court journal; this sampling was selected due to the perceived relevance of the decisions issued in the journal and their binding force. Furthermore, the previous studies on Czech administrative courts also focused only on the published decisions so I took the same approach to enable meaningful comparison. The underlying idea is not to look at easy cases, where formalistic reasoning might not be problematic, but to look on hard cases, where the formalistic reasoning might (i) infringe a right to a fair trial, (ii) hinder transparency, and (iii) breach rule of law. Thus, the analysed decisions are not representative of a population of all the decisions issued by the Supreme Court, but only those that are considered important by the court.

Quota Sampling (stratified sampling)

Analysis includes decisions from years 1999, 2004, 2013, and 2022 (for each year, 40 decisions were analysed), chosen to mirror previous research timelines (1999-2013) and to access the latest decisions available in the official journal (2022).

Adjusted Randomized Sampling

I decided to pursue randomized sampling within the subpopulations of the particular years. However, before I did the randomized sampling (randomly picking 40 decisions from the particular year), I wanted to avoid the overrepresentation of (i.) decisions of only the particular branch, i.e., criminal or civil, and (ii.) decisions of only some senates.[41]

Thus, when randomly choosing the decisions, I proportionately represented the decisions reflecting:

(a) the total amount of decisions on merits issued by particular branch that were published in the journal during the respective year (e.g., in 1999, total of 63 decisions on merits were published in

cluster sampling; (6) snowball sampling; (7) relevance sampling; and (8) census. See Klaus Krippendorff, *Content Analysis: An Introduction to Its Methodology* (Fourth Edition, Sage 2018) 114–134.

[41] As Epstein and Martin mention: "A potential problem with equal probability sampling comes when the researcher has in mind a key causal variable, and worries that the sample will include too few members of one of the values of the variable." Lee Epstein and Andrew D Martin, *An Introduction to Empirical Legal Research* (1. ed, Oxford Univ Press 2014).

the journal of which 11 (17%) cases were criminal cases and 52 (83 %) were civil cases; thus, in 1999, 6 criminal cases and 34 civil cases we analysed) as well as

(b) the total number of decisions on merits issued by particular senate during the respective year that were published in the journal (e.g. in 1999, the total number of civil cases published was 52 and the civil senate no. 21 published 12 cases; thus, in 1999, 8 of the total 34 civil cases we analysed were from the senate no. 21).

After I decided for the particular decisions, I downloaded the decision from the online archive of the official journal. The journals issued since 1956 have been made accessible online at the website of the Supreme Court.[42]

In total, my research assistant and I coded the total number of 160 decisions out of the population of the 1667 decisions of the Supreme Court on the merits published in the journals during the timespan 1999-2022.[43] Since I had only 18 decisions from the criminal branch after the sampling, my essay does not reach any specific conclusions concerning the particular branches.

2.3. Annotation Procedure and Variables

I annotated the court decisions with a research assistant using an Excel table I prepared. This table included all the decisions we looked at and the variables I was interested in.

During the annotation procedure, we filled in all the data in an excel table with all the decisions analysed and all the variables.

The annotation was based on a manual I prepared on a separate testing dataset of 20 decisions of the Supreme Court. When reading through each decision, we focused on the reasoning of the court, i.e., on the part where the court explains why it upheld or rejected an appeal, reading all the way to the end. The beginning of this part is easily detectable both from the heading and the content.

I categorized the variables into four main groups based on the previous research: internal standards, external standards, constitutional standards, and EU standards.[44] According to previous studies, internal standard indicate formalistic style of reasoning, whereas the other 3 groups usually indicate more discursive reasoning style.

[42] https://sbirka.nsoud.cz/

[43] To ensure objectivity, both of us coded same 80 decisions. After we counted the inter-coder agreement, which was high, the research assistant coded another 80 decisions. The results below are based on the coding done by the research assistant.

[44] In the annex, I copied the list of identified variables, including justification of the variable.

My goal was to closely mirror the methodology used in earlier studies to achieve comparability. However, I encountered several challenges due to the lack of detailed methodological descriptions in those studies. I have documented these challenges and the solutions I adopted in an annex. I always tried to align as closely as possible with the established methods while addressing these gaps.

The variables of the four groups of standards (e.g., systemic interpretation, teleological interpretation) were a binary variable that indicated whether a particular standard was used in the reasoning of a court. Similarly to previous studies, standards were marked as present when a particular standard appeared, either directly or indirectly.[45]

2.4. Dataset

This study annotated 160 decisions and found 594 references to 4 groups of standards during the years 1999, 2004, 2013 and 2022.

2.5. Limitations

My study has five main limitations.

First, while it covers a broad timespan, it only reviews 160 decisions, which means the findings might not capture the full picture over time. I tried to avoid any potential misrepresentation by (1) preparing a representative sample and (2) limiting my claims solely to the "hard" decisions, i.e., decisions on merits published in the official journals (i.e., usually cases of importance and binding nature).[46] Thus, this essay only concerns reasoning practices in hard cases. Thanks to the sampling methods used, the dataset shall be representative.[47]

Another limitation is that the study includes only a few criminal cases and doesn't distinguish between criminal and civil cases, which could have different reasoning styles and principles guiding their decisions. This is indeed true but since I was interested about the Supreme Court as a whole (as the claims against Supreme Court are stated against the Supreme Court as a whole), I decided not to focus on a particular branch.

The third limitation involves a potentially problematic comparison with previous studies on the Supreme Administrative Court. The objections might raise a) different subject matter of the courts,

[45] For details, see the annex and Galligan and Matczak (n 22) 22.

[46] The total number of all the Supreme Court's decisions on the merits issued between 1999-2022 and published in the official journal is 1667.

[47] According to publicly available tools for sample calculation, the confidence level with a population of 1600 decisions and a sample of 160 decisions is 90% with the margin of error ca 6,5%. See https://www.qualtrics.com/blog/calculating-sample-size/.

b) different methodologies used in the studies, and c) different types of decisions analysed.[48] However, the different subject matter should not pose a problem since I am verifying existing claims about the Supreme Court based on this comparison. Regarding the different methodology, I used the same steps described in previous studies, tried to mirror them as closely as possible and addressed potential issues in the annex. As for the difference in decisions, both studies focused on decisions published in journals, which are considered important by the courts and likely represent hard cases. Thus, the comparison is both possible and meaningful. Besides, even if the comparison did not work, the paper would still stand as it brings new insights on the reasoning practices of the Supreme Court even without the comparative aspect (i.e., it is important to know whether the Supreme Court ignores statutes' purposes or constitutional values notwithstanding whether it does so more or less than the Supreme Administrative Court).

Finally, my premise that a shift towards more discursive reasoning means progress can be contentious. It is arguable that more discursive reasoning doesn't necessarily mean better legal decision-making. However, since the stance that discursiveness means progress is the prevailing stance towards reasoning in CEE, I decided not to problematize it in this paper.

Part Three: Results and Discussion

The following part describes the trends in the Supreme Court's s reasoning. The key results are described by the following table which will be described further below:

Table 1 – Absolute number of references in 1999-2022 and frequency in references in %

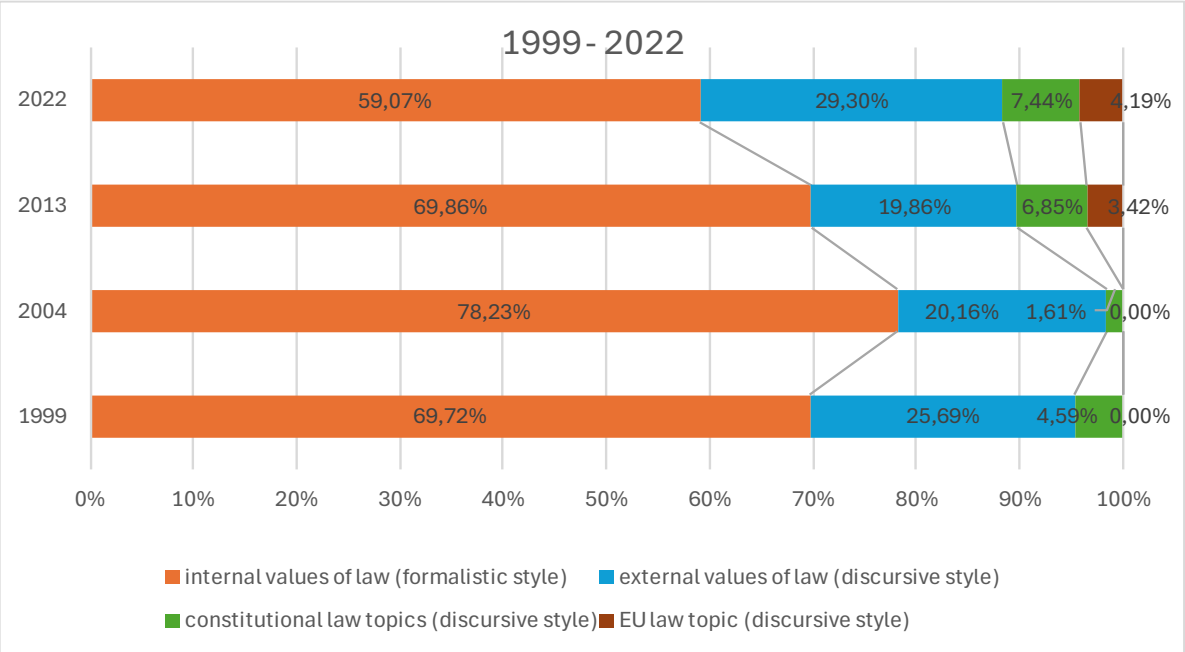
Year	Int.	%	Ext.	%	Noc.	%	EU	%	Total
1999	76	69,72%	28	25,69%	5	4,59%	0	0,00%	**109**
2004	97	78,23%	25	20,16%	2	1,61%	0	0,00%	**124**
2013	102	69,86%	29	19,86%	10	6,85%	5	3,42%	**146**
2022	127	59,07%	63	29,30%	16	7,44%	9	4,19%	**215**
All	**402**		**145**		**33**		**14**		**594**
%	**67,68%**		**24,41%**		**5,56%**		**2,36%**		**100,00%**

[48] Concerning the different type of decisions, Supreme Court decides less frequently on the merits than the Supreme Administrative Court. For instance, in 2013, the Supreme Court issued 6302 decisions out which only 1189 (ca 19 %) were on the merits whereas Supreme Administrative court issued 3583 decisions out of which 2009 (ca 56 %) were on the merits, Therefore, the analysed Supreme Court's decisions on the merits might be claimed to be somewhat "harder" or more unique.

3.1. There Has Been Legal Progress in the Reasoning of the Supreme Court

The Supreme Court has moved towards more discursive reasoning in its important rulings over the past two decades. This shift represents a progress when compared to previous practices. Following chart shows this shift:

Chart 1 – Frequency of references to the groups of standards in 1999, 2004, 2013, 2022



Since 2004, there has been a decrease of frequency of references to internal standards (mainly case law, doctrine, and systemic interpretation) – a decrease by ca 10 % in 2013 and 20% by 2022. Despite the absolute figures remaining relatively stable (especially in 2004-2013), the change in the proportion of internal standards compared to other standards indicates a move away from purely textual interpretation by the Supreme Court in hard cases.

Simultaneously, my analysis found a rapid increase in references to constitutional and EU standards during the period 2004-2022. This trend indicates a greater consideration of constitutional values and EU law, complemented by nearly a 10% rise in references to external standards over the same period. When referring to external standards, the Supreme Court predominantly engaged with legal principles and the purpose of particular provisions.

Case law of the Czech Constitutional Court might be one of the possible explanations for the move away from a more "formalist" approach. As Z. Kühn argues, the Constitutional Court has consistently pushed for a less formalistic approach, encouraging the Supreme Court to consider

also other factors rather than the linguistic interpretation, such as the purpose of the provisions, general principles and the constitutional framework. [49]

Another important factor initiating further change since 2014 might have been the enactment of the new civil code, one of the most important pieces of legislation after 1989 effective from 01.01.2014. The code stipulates in its general provisions the obligation to interpret the provisions both in accordance with the fundamental rights and with respect to the purpose of the provisions (among other standards).

The leadership of Chief Justice Iva Brožová might also be a relevant factor. Iva Brožová headed the court during the crucial period of 2002-2015 when the current trends started taking shape. And as she recently emphasised, her aim was to change the reasoning tradition:

"I wanted to change both the established positivism, i.e. adherence to the literal text of the law, and the formalism characterized by the overestimation of procedural rules." [50]

Despite the fact that the Chief Justice does not have any formal competence to direct a reasoning style of the other members of the court, her informal pressure might have played an important role in forming the Supreme Court's reasoning tradition.

The changes also corelate with important institutional changes that took place around the 2004 when Czechia joined the EU which very likely influenced the frequency of EU standards and potentially other discursive standards (e.g., purpose, principles or constitution).

3.2. Reasoning Patterns of Supreme Court and Supreme Administrative Court in Hard Cases Had Been Similar in 1999-2013

The tale of two courts is overstated; my analysis found that the supposed divergence between the Supreme Court and the Supreme Administrative Court is largely unfounded in hard cases. Already the previous chart shows the very opposite: Significantly similar development exists in reasoning practices of the Supreme Court and the Supreme Administrative Court.

Let me briefly reckon that the former studies showed the trends towards discursive reasoning in the Supreme Administrative Court's case law between 2004-2013. The studies concluded that that there had been a major shift in the Czech administrative justice and described judges of administrative courts (mainly Supreme Administrative Court) as "often trying hard to deal with all

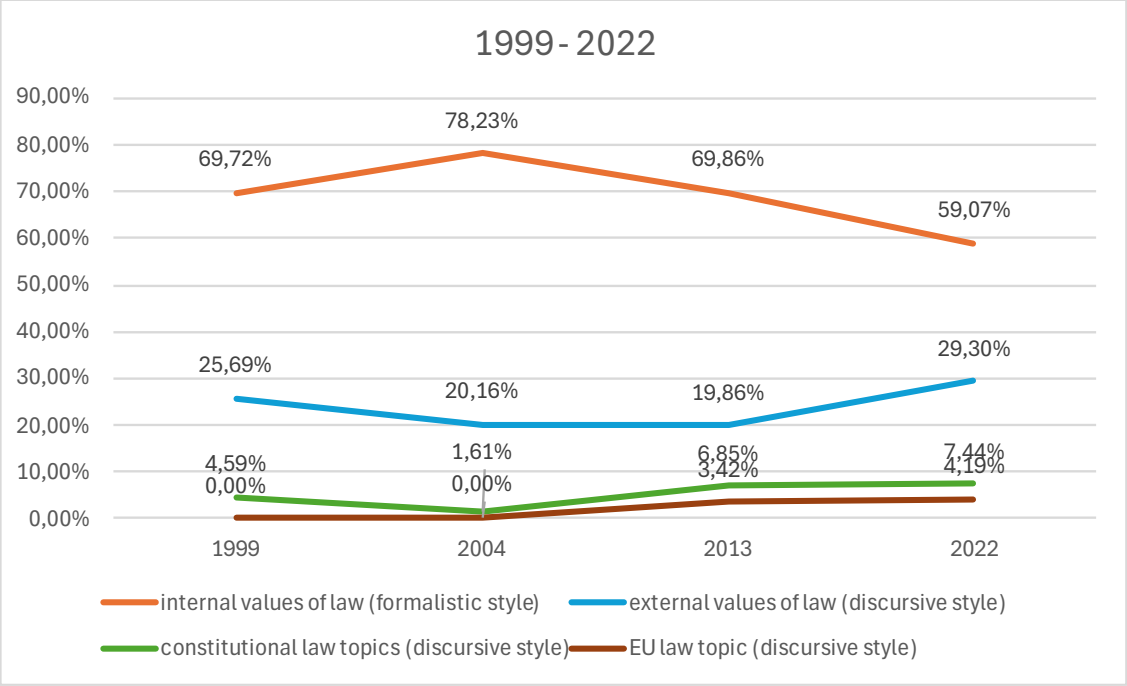
[49] Kühn, *The Judiciary in Central and Eastern Europe* (n 2) 203–207.

[50] See ttps://advokatnidenik.cz/2021/03/05/zasluhy-ivy-brozove-na-poli-nezavislosti-soudni-moci-jsou-zasadni-a-neocenitelne/, accessed on 28 March 2024. Iva Brožová claimed the same already in 2002, see ibid 227–228.

alternatives of the interpretation", the nature of reasoning being substantive with common references to constitutional values. Conversely, the Supreme Court was depicted as adhering more closely to a traditional, formalistic legal argumentation style, a characteristic dominant in the Czech judiciary until the 1990s. According to Kühn, the decisions of the Supreme Court "retain their legalistic façade, the judge presents his view as if he or she were a subsumption automaton, without showing reasons why they chose one premise over another"; this claim survived in the Czech debate and has not been rejected to date.

However, the data from 2004 to 2013 reveal a parallel increase in discursive reasoning within both courts, with a significant "tempo" towards discursiveness on the side of the Supreme Court from 2013 onwards. Like the Supreme Administrative Court, the Supreme Court saw a decline in references to internal standards between 2004 and 2013, alongside a significant increase in references to EU and particularly constitutional standards (from ca 2 % in 2004 to ca 7 % in 2013):

Chart 2 – Frequency of references to the groups of standards in 1999, 2004, 2013, 2022



Thus, already in 2013, the tale of two courts has been imprecise, if not wrong. Following table shows the comparison in more detail:

Table 2 – Frequence of references to specific groups of standards in 2013

	Supreme Court	Supreme Administrative Court [51]
Internal	69,86 %	65,5 %
External	19,86 %	23 %
Constitutional	6,85 %	4 %
EU	4,19 %	7,5%

These figures show very similar frequency of references to internal standards and discursive standards (combination of external, constitutional and EU standards) of both courts. Within the group of discursive standards, the Supreme Court's frequency of references to constitutional values was almost double the Supreme Administrative Court in 2013, while the references to the EU law remained lower in case of the Supreme Court.[52]

In the period of 1999-2013, the Supreme Court and administrative courts show similarly rare references to the will of legislator. This has been found already in the previous study from 2015, where the authors mentioned that the Czech administrative judge had referred to the will of the legislator three times less than her Polish colleague. Neither the Supreme Court referred to the will of the legislator (with only 3 decisions out of 120 with such reference before 2013).

While there are overarching similarities in the trends of the legal reasoning between the Supreme Court and the Supreme Administrative Court, some differences also existed. The differences concerned specifically internal standards, doctrinal references, and references to legislative intent.

The most important difference concerns the number of hard cases decided solely on the internal standards. The authors of the previous studies concluded that there had been a great decrease in the hard cases decided solely on the internal standards in the period 2005-2013 in the Czech administrative judiciary. While the administrative courts decided 41,8% of the cases based solely on the internal standards in 1999-2004, they did so only in 17,2% of the cases in the period 2005-

[51] The values are based on the chart 3 presented in Matczak, Bencze and Kühn, 'EU Law and Central European Judges: Administrative Judiciaries in the Czech Republic, Hungary and Poland Ten Years after Accession' (n 2) 60. The values might slightly differ as the charter does not indicate exact values.

[52] My underlying assumption is that the SAC deals with more cases with EU law aspects, such as tax, customs or asylum matters, and thus naturally refers to the EU law more often.

2013.[53] In contrast, the Supreme Court maintained a relatively consistent approach during the same periods, with basically same frequency of decisions (ca 40 %) based solely on internal standards both in 2004 and 2013.[54] In this sense, the Supreme Court indeed was more formalistic. Only recently (2022), the number of cases decided solely based on internal standards has followed similar trend in case of the Supreme Court and decreased substantially, as only 20% of cases were decided solely on internal standards in 2022.

Another divergence concerns references to doctrine. The authors of the previous study concluded that the administrative courts had referred to doctrinal work only limitedly (only 3,5% of the judgments referred to doctrinal works in the period 2004-2013). Quite on the contrary, my study found that the Supreme Court has incorporated doctrinal work in its case law. Already in 1999, ca 13% of the decisions referred to doctrinal works at least once, with an increase to ca 28% in 2004, 38% in 2013, and hight increase to 60% by 2022.

The likely explanation is the interruption of administrative judiciary in Czechia after 1948. It wasn't until 1989 and the democratic changes that the administrative courts were reestablished with the creation of the Supreme Administrative Court in 2003; and not just the judicial protection, but also scholarship on the protection of public individual rights was limited before 1989. In contrast, legal science in civil law and particularly criminal law showed some continuity, i.e., it did not disappear in the period 1948-1989. Thanks to this difference, the civil and criminal doctrine could have possibly provided a foundation upon which the Supreme Court could more confidently draw after 1989. Given this explanation, I anticipate that current case law of Supreme Administrative Court includes much more frequent references to the doctrine.

Regarding the last main difference, i.e., frequency of references the will of legislator, both the Supreme Court and administrative courts traditionally refrained from referencing travaux préparatoires as mentioned above. However, this stance has evolved recently, with ca 28% of the Supreme Court's decisions in 2022 referring to legislative intent, indicating an increasing openness to consider the legislature's objectives in interpreting laws.

It can be summarized that both the Supreme Court and the Supreme Administrative Court show several similar trends in the period between 1999 – 2013: the frequency of references to internal values decreased while the frequency of differences to constitutional standards and EU standards

[53] Matczak, Bencze and Kühn, 'EU Law and Central European Judges: Administrative Judiciaries in the Czech Republic, Hungary and Poland Ten Years after Accession' (n 2) 65.

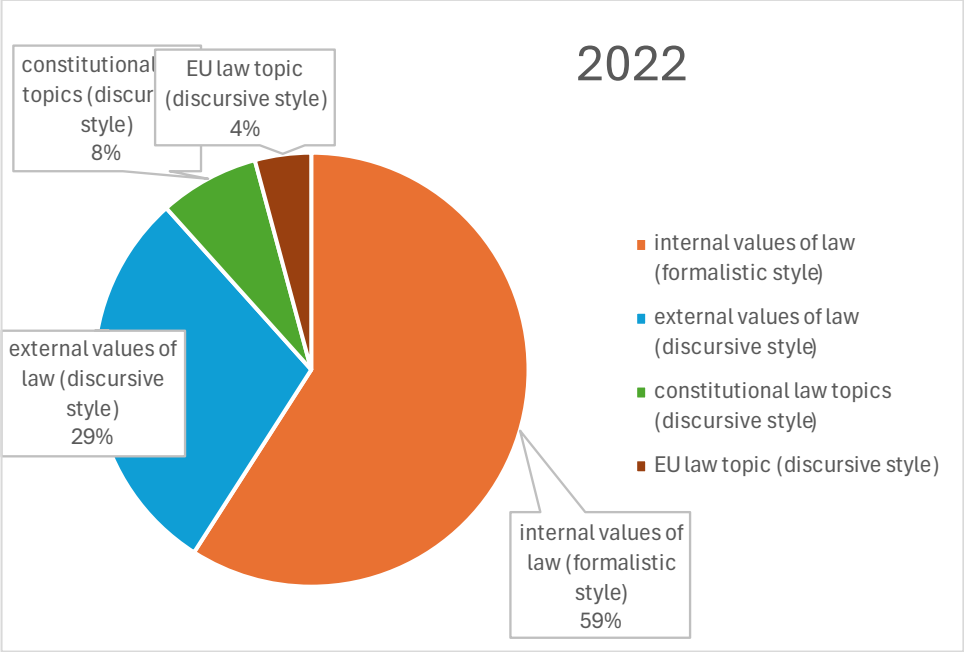
[54] The reason why the frequency of references to discursive standard could have been still quite high in 2013 is that the Supreme court refers to different kinds of standards in one single decision.

increased. Although some rather minor differences existed that make Supreme Court slightly more formalistic than Supreme Administrative Court in this period, the most important finding is that the Supreme Court has become more discursive in the hard cases already in 2013, just as the Supreme Administrative Court; the reasoning patterns of the two courts were not completely divergent, as is often claimed, but rather similar.

3.3. Empirical and Normative Claims about Current State of Supreme Court's Reasoning Seem to Be Overstated

Comparisons aside, I also found that the claims about the Supreme Court's reasoning seem outdated after analysing the case law from 2022. The court is more discursive than have been thought.

Chart 3 – Frequency of references to the groups of standards in 2022



Looking at the most current state, the shifts towards more teleological and principal reasoning is clear. As mentioned, the frequency of references to discursive reasoning is ca 40%. On top of that, one finds that 55 % of the decisions issued by the Supreme Court in 2022 referred to the purpose of law at least once and 58% of the decisions referred to the principles of law at least once.

As mentioned above, the rate of cases determined exclusively by internal standards has been significantly reduced to only 20%. This decrease shows an important shift in the Supreme Court's approach, with a notable preference for employing also other (i.e., discursive) standards in 2022, especially the purpose of the law, general principles, and the fundamental rights.

3.4. Discussion and Conclusion

Looking into how the Czech Supreme Court has been justifying its hard decisions, my study challenges some of the common criticisms. Despite what many scholars have said – that the Supreme Court is overly formalistic and stuck in its ways, I've found evidence that points to quite the opposite. The court has been increasingly using a broader set of standards in hard cases, like principles, purpose, and references to constitutional and EU laws. This move towards more discursive style of reasoning is important, showing that the court might be much more "up to date" than many would suggest.

While my findings are challenging, they're based on a limited sample and cover a broad span of time. This is of course true and potentially limiting the conclusions, but since we do not have any other data, this study still is an important contribution to the debate. However, I do agree that there's a real need for more thorough empirical research, possibly using advanced methods like natural language processing and argument mining. Such technology could analyse thousands of decisions to really get a sense of how the court reasons (including easy cases).

My findings have another layer – the CEE context. The anti-formalistic narrative present in CEE show similar patterns as the condemning claims towards the Supreme Court: it is very strongly normative while being very scarcely empirically founded. The prevailing narrative suggests something's off with the CEE judiciary, implying that courts in the West are somehow doing the reasoning better. This claim is problematic for three reasons. First, we do not know much about how courts in CEE reason (as shown by this study). Second, we do not know much about how courts in other European countries reason. And third, there is no common theoretical framework that could make the comparisons and evaluations meaningful. Thus, empirical research needs to be pursued and a common theoretical framework needs to be developed for useful comparison. Evaluating and condemning should be the last step of this process, not the first one.

To sum up, the main takeaway is threefold. First, the Supreme Court's reasoning has demonstrably improved since 1999, shifting towards more discursive and less formalistic tradition in hard cases. Second, the main reasoning patterns in hard cases of the two top Czech courts had become similar in the period 2004-2013. Third, the prevailing tale of the two courts does not have evidence in the Supreme Court's current case law in hard cases; on the contrary, the court has recently referred to principles or purpose of the law in majority of its newly published decisions. This calls for a re-evaluation of the criticisms directed against the Supreme Court, urging us to take a new look at how the Supreme Court operates and how we generally think about the courts' reasoning within the CEE context.

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Annex

Table 3 – List of variables, variants and comments (justifications)[55]

Branch			Civil/Criminal	X
Senate identification			Identification	X
Decision identification			Identification	X
Result			Uphold/Dismiss	X
Year			1999/2004/ 2013/2022	X
	Internal valules of law	Linguistic interpretation	1 or 0	Based on the previous studies, we encountered this variable very broadly. We marked the variable as present, among others, in the following situation "According to § 15, the consumer means…". Thus, in fact, every decision was found to use the linguistic interpretation.
		Systemic interpretation	1 or 0	Any reference to the system or the rules of priority (e.g. "lex specialis derogate legi generali") were considered as systemic interpretation. We did not mark the variable as present in cases were the court simply referred to two or more provision without further reflection.
		Rational lawmaker assumption or	1 or 0	Here, we marked the variable as present when the assumption or the "a contrario" argument of the equivalent was present. The

[55] The table omits variables that were not found in any of the decisions.

		argument "a contrario".		variable was present only two times.
		Consistency of the legal system	1 or 0	We looked for consistency or an equivalent. This variable appeared only once.
		Case law	1 or 0	We marked the variable as present when the court cited a particular decision of another court. Similarly to previous studies, we included references to Constitutional Court case law and excluded references to CJEU which were marked as EU references.
		Doctrine	1 or 0	We marked the variable as present when the court cited any scholarly legal literature.
	Values external to law	Lawmaker intention	1 or 0	We marked the variable as present when the court referred to the lawmaker's intention, will or when it mentioned the travaux préparatoires or circumstances when the law had been enacted.
		Principles of law	1 or 0	We marked the variable as present when the court referred to at least one singe principle. We excluded references to principles of interpretation. We also excluded references to the principle of proportionality if it

				was mentioned with regards to constitutional law or EU law.
		Public interest	1 or 0	We marked the variable as present when the court referred to interest like national health etc.
		Social change	1 or 0	We marked the variable as present when the court referred in its argumentation to any changes in the society.
		Economical change	1 or 0	We marked the variable as present when the court referred in its argumentation to any changes in the economy.
	Constitutional law topics	Proportionality principle	1 or 0	We marked the variable as present when the court referred to proportionality in constitutional law context (we included references to so called "rationality" test which is an alternative to proportionality test used by the Czech courts regarding some fundamental rights). We excluded proportionality mentioned in EU law or clearly sub constitutional matters.
		Principles protecting business	1 or 0	We marked the variable as present when the court referred fundamental rights protecting businesses. This variable was present only once

		Principles protecting private property	1 or 0	We marked the variable as present when the court referred fundamental rights protecting property. This variable was present only twice.
		Constitutional values, rights, principles	1 or 0	We marked the variable as present when the court referred to any constitutional right or public interest or provision of the Czech constitutional framework (mainly constitution and the charter of fundamental rights). We excluded references to proportionality principle, principles protecting business, principles protecting private property, pro-constitutional interpretation and direct applicability of constitution.
		Pro constitutional interpretation	1 or 0	We marked the variable as present when the court explicitly mentioned that the sub-constituional law needs to be interpreted in some way because of the constitutional framework.
		Direct application of constitution	1 or 0	We marked the variable as present when the court explicitly mentioned that the constitution is directly applicable. This variable was present only twice.
	EU law topic	Reference to EU/community acts and principles	1 or 0	We marked the variable as present when the court referred to any EU/EC provisions (primary and secondary sources,

				recommendations), decisions, documents or principles. We excluded the pro-EU/EC interpretation.
		Interpretation consistent with community law	1 or 0	We marked the variable as present when the court explicitly mentioned that the sub-constituional law needs to be interpreted in some way because of the EU law or principals.
		Proportionality in community/EU	1 or 0	We marked the variable as present when the court referred to proportionality in EU law.
		Case law of ECJ	1 or 0	We marked the variable as present when the court referred to any case law of the ECJ.

Table 4 – List of encountered problems during annotation and solutions chosen

Description of the problem	Solution:
Previous studies did not clearly specify when they had considered the variable to be present.	Based on the previous studies, I made the list of all the variables and rationale why they were included. When annotating the decisions, we tried to reflect the rationale as much as possible.
Previous studies did not clearly specify whether repeated reference to a particular standard in one decision shall be counted as one or two references to	I assumed that the previous studies approached the variables as binary, i.e., when more case law was cited, we only indicated case law only as present, i.e., we indicated 1. [56]

[56] There are two reasons for this assumption. First, when I assessed ca 15 decisions of SAC from the period 1999-2014 I found out that the average number of references would be more around 15 or even more (the decisions sometimes had more than 40 references), not 4,85 as indicated by the authors of the previous studies. Second, Mlynarik in his master's thesis (supervised by Kühn, co-author of the previous studies) analyzing Supreme Administrative Court's case law in the period 2003 – 2011 explicitly mentioned he had used the binary variables "like previous study of Kühn" and reached similar results concerning the 4 groups of standards like Kühn. See Václav Mlynařík, 'Empirická Analýza

the particular variable (e.g., the court refers to 3 different past decisions in different parts of the reasoning).	
The category of indirect reference to linguistic interpretation as described by previous studies is too broad. The issue is that every decision includes statements like this: "in accordance with article § 14, the entrepreneur should…"	I decided to count every decision as having a linguistic interpretation as all the decisions referred to at least one particular paragraph.
Previous studies do not state whether they included a reference when the judge refuted the particular standard (e.g., when a court states what is the teleological interpretation and then rejects it based on systemic method of interpretation).	We included such references as I considered it important that the court explicitly mentions some standards. The amount of such variables was less then 5.
The previous studies first named 5 groups of variables (internal, external, constitutional, EU) and then mentioned the particular variables within each group (e.g., case law, linguistic interpretation). However, they formulated the list of variables as demonstrative examples.	Although the variables were not formulated as an exhaustive list, I supposed that the previous studies mentioned the most important and most common variables. I did not add any variables that would not be mentioned by the previous studies.

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