

Part Three: Results

This part presents two main findings. First, I revisit the Tale of Two Courts, focusing on the comparison of the two Czech Supreme Courts. Then, I show in more detail what type of arguments Czech apex courts use.

3.1 Measuring Formalism: Tale of Two Courts Revisited

Has the Tale of Two Courts Always Held True? Not quite. Does it now? To some extent, yes.

The long-held belief that the Supreme Court (SC) has been formalistic while the Supreme Administrative Court (SAC) has been non-formalistic seems inaccurate. Our analysis reveals that during the SAC's first decade (2003–2013), esp. 2003–2011, both courts were similarly formalistic, with the SAC exhibited even slightly more formalism on some indicators. However, much like Pygmalion's beloved sculpture,⁵⁶ the Tale of Two Courts came to life in the SAC's second period (2014–2024), during which the SAC became significantly less formalistic than the SC.

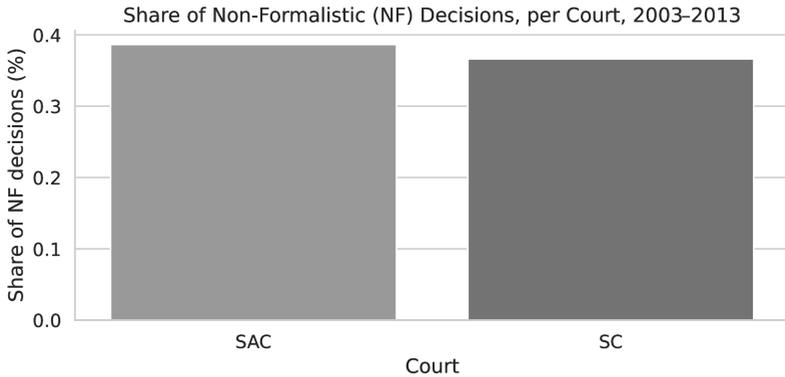
Act I.: Period 2003–2013. Tale of Two Courts Does Not Hold

Our findings for the first decade challenge the Tale of Two Courts. Both courts issued a similar proportion of formalistic decisions, with around two-thirds of decisions being formalistic and one third non-

⁵⁶ The Tale of Two Supreme Court is often proposed by people affiliated with SAC.

formalistic, as shown in the chart below. Both courts issued almost the same proportion of non-formalistic decisions:

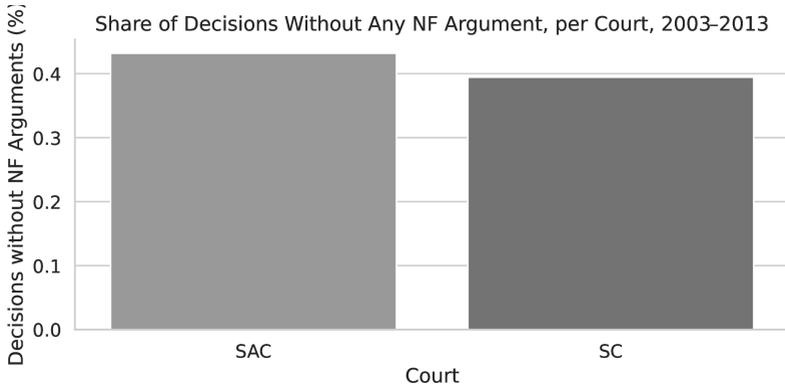
Chart I: Share of Non-Formalistic (NF) Decisions by Court (2003–2013)



Similarly, both courts issued high proportions of decisions that lacked the non-formalistic arguments. As we mentioned, the more such decisions a court issues, the more formalistic it is. Here, the SAC and SC were again basically the same, while SAC leaned marginally more formalistic, issuing 4 % more decisions that relied solely on formalist reasoning or no arguments at all. See the following chart:

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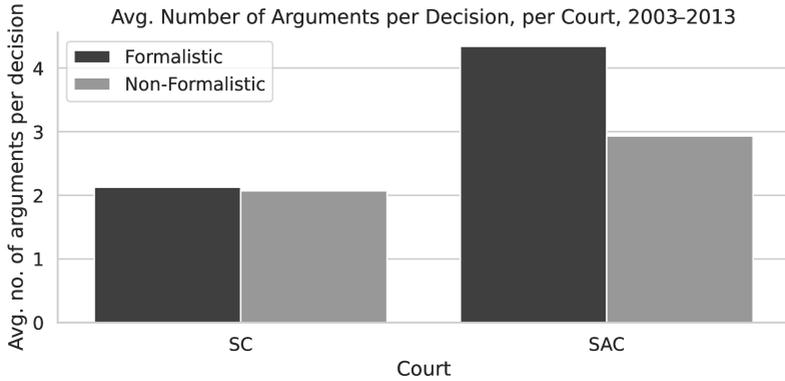
Chart II: Share of Decisions Without Non-Formalistic Arguments by Court (2003–2013)



A closer examination of the argumentation practices reveals that the SAC relied more heavily on formalistic reasoning during this period. Looking at the proportion of formalistic argumentation, 60 % of all arguments that appeared by in the SAC decision-making were formalistic arguments, compared to 51 % in the SC’s decisions. On average, SAC used more than two times more formalistic arguments per decision than SC. This finding further suggests that the SC had not been more formalistic in 2003–2013. Quite the opposite:

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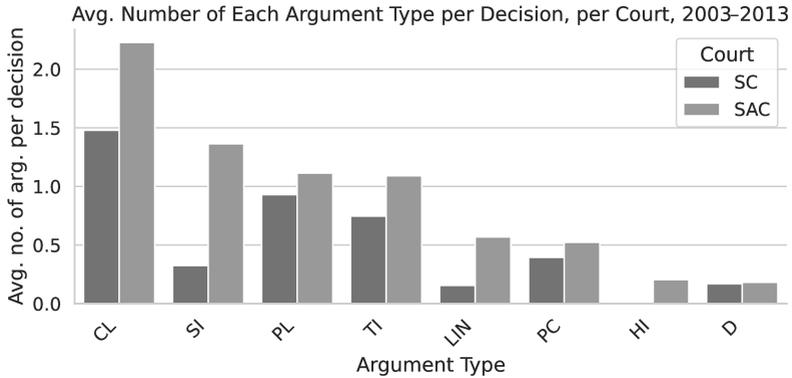
Chart III: Average Number of Formalistic and Non-Formalistic Arguments per Decision by Court (2003–2013)



The only indicator where the SAC appeared less formalistic was the average number of non-formalistic arguments per decision. While SAC included on average 2,9 non-formalistic arguments per decisions, the SC used only 2. Although significant, the much more frequent usage of formalistic arguments made the SAC more formalistic court in this aspect. Following charts shows that SAC relied much more on three formalistic arguments – systematic interpretation, linguistic interpretation and case law:

3.1 Measuring Formalism: Tale of Two Courts Revisited

Chart IV: Average Number of Each Argument Type per Decision by Court (2003–2013)



In summary, SC had been much less formalistic than we thought. Three key indicators—proportion of non-formalistic arguments, proportion of decisions lacking non-formalistic arguments, and the proportion of decisions holistically evaluated as non-formalistic—suggest that the SAC was at least as formalistic as the SC, and sometimes even more so. Although the SAC included more non-formalistic arguments, these were often complemented by a significant number of formalistic arguments, reinforcing its overall formalistic style. These findings align with our earlier pilot studies focused solely on “hard cases” (the cases on the merits published in the official journals) which also showed that both courts had similar reasoning practices during the first decade of SAC. The Tale of Two Courts, therefore, does not hold true for 2003–2013, esp. for the period 2003–2011.

Act II.: Tale of Two Courts Became Reality in 2014–2024

The “Tale of Two Courts” came to life in the following period. The SAC shifted notably toward non-formalistic decision-making, while the SC’s approach remained similar to first decade. Compared to the previous period, SAC 1) issued much more non-formalistic decisions,

2) used much more non-formalistic arguments, and 3) reduced the proportion of formalistic arguments. As SC did not follow these trends, both courts differed in 3 out of 4 indicators of formalism. Following table illustrates the significant shift:

Table I: Evolution of Courts' Reasoning (2003–2013 → 2014–2023)

Indicator	SAC 2003–13	SAC 2014–24	SC 2003–13	SC 2003–13
Proportion of non-formalistic decisions	39 %	61 %	37 %	40 %
Average number of non-formalistic arguments	2.9	6.7	2.1	2.5
Proportion of formalistic arguments	60 %	51 %	51 %	66 %

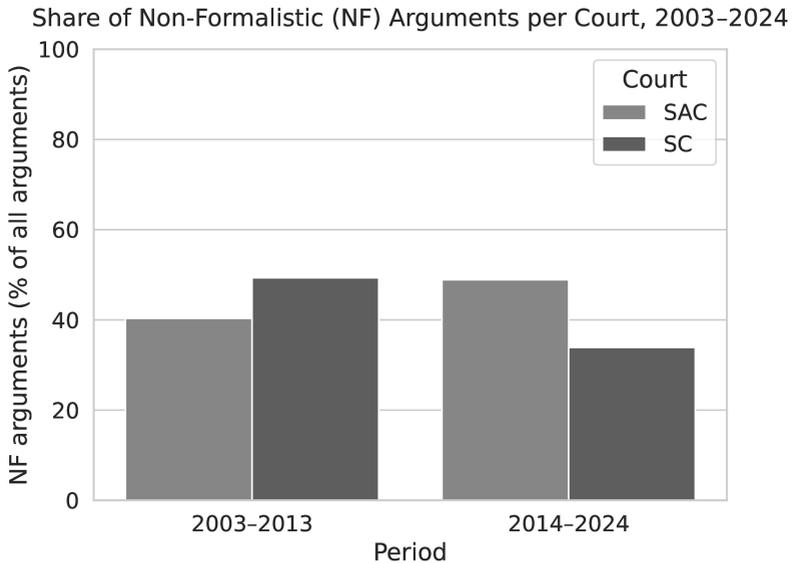
Three out of four indicators of formalism show that SAC clearly moved toward more non-formalistic reasoning—unlike the SC, which did not.⁵⁷ The table shows that non-formalistic decisions became the standard by SAC, with their proportion increasing from 39 % to 61 %, compared to a marginal increase for the SC (basically remaining at 40 %). Additionally, the SAC more than doubled its use of non-formalistic arguments, with the average number per decision increasing by 130 %, while the SC showed only slight change of 22 %. Conversely,

⁵⁷ The table illustrates relative changes within each court over time, addressing a critique raised by Choi (2020): observed differences between courts may result more from variations in the subject matter of the law than from differences in how courts interpret and apply it. For instance, the inherent differences between administrative and civil law could account for varying levels of formalism. By analyzing significant changes within a single court while noting stability in the other, this approach suggests that shifts are more likely due to changes in the SAC's reasoning practices rather than the nature of the applied law. However, as Choi notes, this method mitigates but does not entirely resolve the issue—statutory changes within a particular field, for example, could still affect the results. Consequently, the comparison is inherently limited. Nonetheless, by focusing on intra-court trends, this analysis minimizes the influence of subject-matter differences. See Choi (2020).

3.1 Measuring Formalism: Tale of Two Courts Revisited

the proportion of non-formalistic arguments decreased in the SC's decisions (49 % → 34 %) and increased in the SAC's (40 % → 49 %):⁵⁸

Chart V: Share of Non-Formalistic (NF) Arguments among All Arguments by Court (2003–2024)



⁵⁸ The divergent trends become even more evident when case law is excluded from the category of formalistic arguments—a distinction some scholars argue is particularly significant in the context of CEE formalism (see Part 2). Without including case law, the SC's average use of formalistic arguments increased significantly, compared to just a 6 % increase by the Supreme Administrative Court (SAC). Similarly, the proportion of formalistic arguments (excl. case law) decreased by 44 % for the SAC but rose by 11 % for the SC. This suggests that, in the second decade, the SAC primarily increased its reliance on case law rather than other formalistic arguments. In contrast, the SC expanded its use of both case law and other formalistic arguments, with the most notable increases observed in linguistic interpretation and systemic interpretation.

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The most significant changes concern the increased usage of teleological interpretation and practical consequences:

Chart VI: Average Number of Teleological Interpretation (TI) Arguments per Decision by Court (2003–2024)

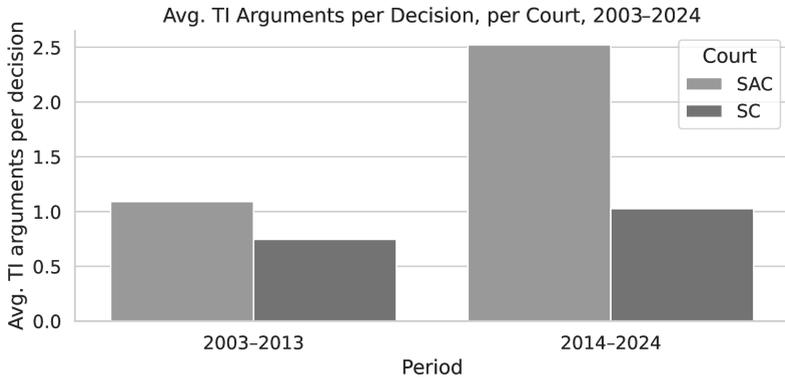
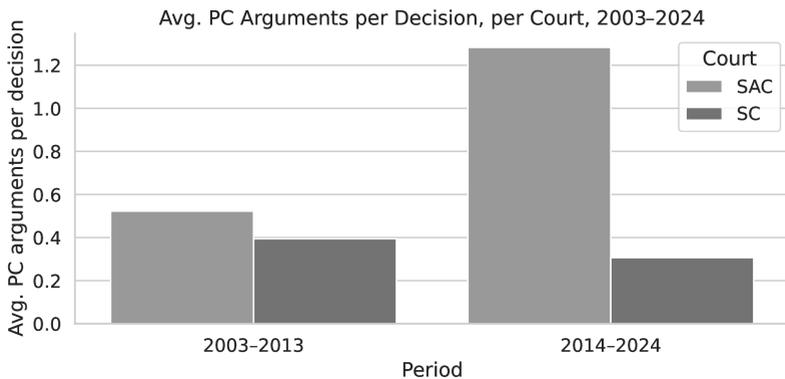


Chart VII: Average Number of Practical-Consequences (PC) Arguments per Decision by Court (2003–2024)



Despite the dramatic increase of non-formalistic reasoning by SAC, basically all non-formalistic arguments remained relatively stable by the SC, as can be seen from following table:

3.1 Measuring Formalism: Tale of Two Courts Revisited

Table II: Evolution of Courts' Usage of Argument Types (2003–2013 → 2014–2024)

The table shows the average frequency of argument type per decision.

Argument Type	SAC 2003–2013	SAC 2014–2024	SC 2003–2013	SC 2014–2024
Linguistic Int.	0,6	0,7	0,2	0,4
Systemic Int.	1,4	1,2	0,3	0,7
Case Law	2,2	4,8	1,5	3,4
Doctrine	0,2	0,3	0,2	0,4
Historical Int.	0,2	0,7	0,0	0,2
Principles	1,1	2,2	0,9	1,0
Teleological Int.	1,1	2,5	0,7	1,0
Practical Cons.	0,5	1,3	0,4	0,3

Nonetheless, both courts became less formalistic in one aspect. Supreme Court decreased its proportion of decisions without non-formalistic arguments and so did SAC. The percentage of SAC decisions on the relying solely on formalistic reasoning decreased to 24 %, down from 43 % in 2003–2013. The SC saw a slight reduction as well, with decisions lacking non-formalistic arguments falling from 39 % to 33 %. These trends suggest a movement away from strict formalism at both courts.

Besides, the average number of all arguments per decision increased by both courts. By SAC, this was mainly caused by the massive increase of non-formalistic arguments, but also by formalistic arguments.

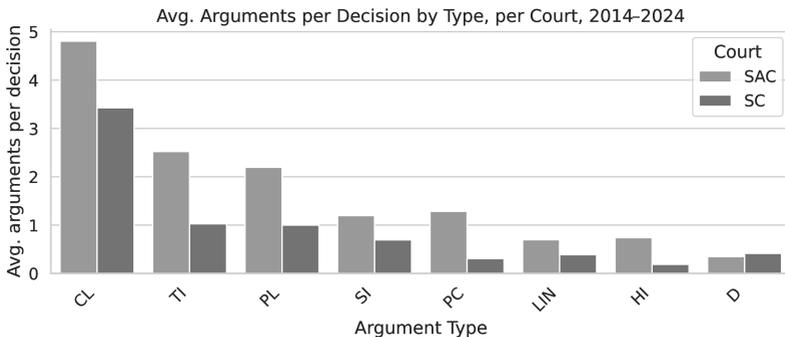
To sum up, the SAC shifted significantly toward non-formalistic reasoning in the second period. It has been issuing much more non-formalistic decisions, increasing non-formalistic arguments, and reducing the proportion of formalistic arguments, while the SC has remained largely unchanged. The Tale of Two Courts became close to reality.

3.2 Both Courts Mainly Use Case Law and Teleological Interpretation, Not Wording

This subchapter partially leaves the issue of formalism and describes the reasoning practices of Czech Apex Courts in more detail, focusing on particular types of argument.

Three types of arguments have been dominant by both courts during both periods: case law, teleological interpretation, and principles of law (incl. values). Teleological interpretation remains the most frequently used non-formalistic argument and is the most predominant canon among the four traditional interpretation methods (besides linguistic, systematic, historical). In fact, linguistic and historical interpretations play a minimal role at both courts, with only a few references to ordinary meaning or the will of the legislator. Following charts show the current reasoning practices of the two courts:

Chart VIII: Average Number of Arguments per Decision by Type and Court (2014–2024)



In terms of U.S. debate on statutory interpretation, Czech courts align primarily with purposivism; neither textualism nor originalism appears to be a prominent approach to statutory interpretation in Czechia. From the perspective of German scholarship, the Czech Supreme Court, especially SAC, strongly reason in accordance with an objectivist theory of interpretation.

3.2 Both Courts Mainly Use Case Law and Teleological Interpretation

The chart also again highlights significant discrepancies, particularly in the use of teleological interpretation, principles, and practical consequences. This demonstrates that, although the argumentation practices of both courts are similar in terms of the proportion of some argument types (e.g., Principles and Values argument type accounts for 16% of all arguments by SAC and for 13% by SC; Teleological Interpretation accounts for 18% by SAC and for 14% by SC), the average numbers of arguments per decision significantly differ.

Following table shows proportion of decisions that contain at least one type of argument:

Table III: Proportion of Decisions Containing At Least One Argument Type in % (2003–2023)

Argument Type	SAC 2003–13	SAC 2014–24	SAC Change (pp)	SC 2003– 13	SC 2014– 24	SC Change (pp)
Linguistic Int.	29.5	30.4	+0.9	14.1	25.3	+11.2
Systemic Int.	38.6	30.4	-8.2	23.9	26.7	+2.7
Case Law	47.7	78.3	+30.5	67.6	84	+16.4
Doctrine	13.6	26.1	+12.5	9.9	17.3	+7.5
Historical Int.	11.4	21.7	+10.4	0	8	+8.0
Principles	40.9	52.2	+11.3	42.3	46.7	+4.4
Teleological Int.	43.2	65.2	+22.0	36.6	42.7	+6.0
Practical Cons.	27.3	39.1	+11.9	22.5	22.7	+0.1
Absence of F arg.	36.4	17.4	-19.0	21.1	10.7	-10.5
Absence of NF arg.	43.2	23.9	-19.3	39.4	33.3	-6.1
Absence of arg.	25	15.2	-9.8	12.7	9.3	-3.3

The table confirms that argument types such as case law, teleological interpretation, and principles are consistently used in a substantial number of decisions, showing their centrality to judicial reasoning in Czech apex courts. Their frequent appearance, already noted above, is not merely the result of repeated references within single decisions but reflects their consistent and widespread inclusion in judicial decision-

making. Contrary to some findings in the older literature,⁵⁹ a large majority of decisions in fact cites case law, with both courts frequently referencing it multiple times. Teleological interpretation appears in 65 % of SAC decisions and 43 % of SC decisions in 2014–2023. Courts also very often use this argument more than once in one decision to justify their rulings.

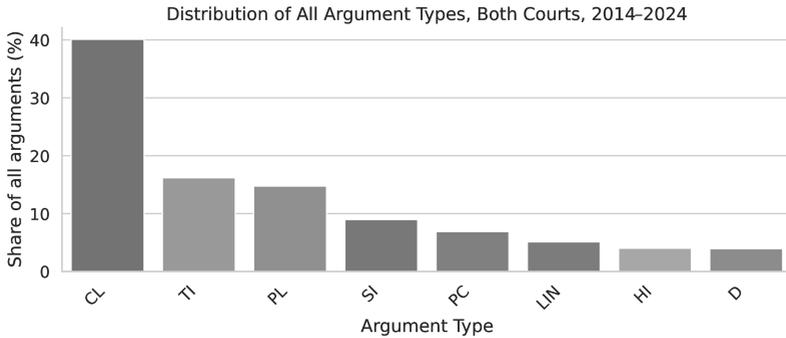
On the other hand, historical interpretation and doctrinal reasoning remain relatively infrequent. Most importantly, linguistic interpretation—often presented as a necessary component of every interpretation—is surprisingly rare, being absent in 85 % of SC and in 70 % of SAC decisions in 2003–2013. Although the linguistic interpretation started to appear slightly more in the second period by both courts (30 % of decisions by SAC and 25 % by SC), a very significant majority of decisions simply continues not to rely on linguistic interpretation at all.

In fact, it is very surprising to see how little emphasis the wording of statutes receives in the courts' argumentation. Our research deliberately excluded mere citations of statutes as instances of linguistic interpretation, so the study does not claim that Czech courts ignore statutes—of course they apply them. However, when engaging in legal interpretation, they seem less interested in exact wording, ordinary meaning, or syntax, relying instead on previous case law to support their conclusions. See the graph showing the distribution of arguments at both Czech apex courts during last 10 years:

59 See Kühn (2011, p. 214), who notes that “the culture of citations in both legal writings and judicial decision-making diminished” in Central and Eastern Europe. While it is true that references to doctrine are relatively rare, particularly in the Supreme Court’s decisions, case law was already cited regularly by Czech courts during the 2003–2013 period and played an important role in judicial reasoning.

3.2 Both Courts Mainly Use Case Law and Teleological Interpretation

Chart IX: Distribution of All Argument Types (Both Courts Combined) (2014–2024)



As mentioned, Czech apex courts most often rely on case law, principles and teleological interpretation.

