Part Four: Discussion, Implication and Future Research

The findings of this study challenge several long-standing assumptions embedded within the dominant anti-formalistic narrative about Czech and CEE courts.

The findings of this study reveal that during the first decade of the Supreme Administrative Court's (SAC) existence (2003–2013), its reasoning practices were remarkably similar to those of the Supreme Court (SC), esp. till ca 2011. This evidence challenges the long-standing narrative that contrasts the two courts as fundamentally different in their approach to legal reasoning. Contrary to the prevailing assumption that the SAC has basically always been a bastion of non-formalistic practices, the data show that both courts relied heavily on formalistic reasoning during this period. In some respects, the SAC exhibited even greater formalism than the SC, particularly in its frequent use of formalistic arguments such as case law and systematic interpretation.

This similarity in reasoning between the courts is particularly striking given their differing institutional histories. While the SC is often depicted as a relic of the communist era, rooted in formalistic traditions, the SAC has been celebrated as a product of post-communist reform, staffed with a new generation of judges and free from the institutional legacies of the past. The findings disrupt this dichotomy, suggesting that institutional history alone does not fully determine a court's reasoning style.

Besides, the practices of Czech Supreme Courts raise questions about the nature of "Czech formalism" as defined in the CEE or the U.S. contexts. Unlike the CEE stereotype of formalistic lawyers focused on text-based arguments and, according to many, dismissive of

precedent, Czech courts clearly embrace case law as a critical source of reasoning and scarcely use text. Although the reliance on case law reminds of statutory precedents in the US, Czech Supreme Courts do not align well with U.S. formalism either; US formalism often emphasizes textualism and originalism, and both of these theories of interpretations are notably scarce at both of the Czech highest courts.[60]

Interestingly, Czech courts' reliance on case law resembles some of the US practices. In US, case law plays an important role not just in common law, but also in statutory interpretation.[61] In fact, many authors claim that statutory precedents (previous cases interpreting existing statutes) shall be followed more strictly than standard precedents (i.e. case law forming the body of law distinct from statutory law called common law).[62] This leads some US authors to differentiate common law and civil law models, where the civil law lawyers consider precedents less important for their interpretation, e.g., less than doctrinal

60 One way to consider Czech courts as textualist could be through their frequent reliance on case law. Some authors argue that using precedent to define the meaning of statutes is compatible with textualism. For instance, "many textualists have turned to the first category of precedent: relying on past cases in determining the meaning of statutory terms and phrases. I argue that this practice can be defended on textualist principles" (Grove, 2024, p. 662). However, others disagree, emphasizing that such reliance often conflicts with textualist principles (Grove, 2024, p. 647 and the literature cited therein). Moreover, Czech courts do not appear to focus on the textual meaning when citing previous cases. If they did, they would likely use phrases such as "ordinary meaning" or "wording," which would also be annotated as linguistic interpretation in our analysis.

61 L. Solan emphasizes that much of the work of the federal judiciary is statute-based and heavily reliant on case law: "When federal judges interpret statutes, the opinions often assume the tone and argument structure of common law judges, relying on case law as a principal form of argumentation" (Solan, 2016, p. 1169). Similarly, A. Coney Barrett observes that both the Supreme Court and appellate courts place considerable weight on statutory precedents: "The Supreme Court has long given its statutory precedent super-strong effect, and the courts of appeals have followed suit" (Barrett, 2005).

62 P. Strauss highlights that precedents hold the "strongest" force in statutory interpretation (Strauss, 1999, p. 233). Similarly, B. Kalt notes, "So that is the conventional understanding: strong stare decisis for statutory cases; weaker for common-law and constitutional cases" (Kalt, 2004, p. 279).

work.[63] Our evidence suggests the opposite is true; Czech civil law judges do not undervalue previous cases in statutory interpretation. Our evidence clearly shows that the practicing judges consider case law extremely relevant for their argumentation, much more than doctrinal work or the text of the statute. Thus, civil law judges in Czechia do rely on case law when interpreting statutes, and they do so a lot. In fact, they seem to be quite similar like their US counterparts at first sight,[64] but more quantitative research is needed.[65] The findings challenge traditional distinctions between common law and civil law approaches. It suggests a convergence in reasoning practices as noticed by many scholars before. This research question calls for further comparative study.

63 See, for example, L. Solan, who contrasts the approaches of common law and civil law judges in statutory interpretation. Solan argues that common law judges rely heavily on precedent, whereas civil law judges emphasize legislative purpose or intent: "It is the unconstrained reliance on precedent—rather than the consideration of purpose or intent—that distinguishes how common law and civil law judges interpret statutes" (Solan, 2016, p. 1168). He further observes that "American judges are unrelenting in their citation of earlier decisions as a reason to construe a statute one way or the other. Civil law judges are generally not wedded to this approach" (Solan, 2016, p. 1169). Similarly, P. Strauss highlights that in civil law systems, case law is valued for its reasoning but remains subordinate to doctrine. This contrasts with the U.S., where precedents "have more status than the force of their reasoning conveys" (Strauss, 1999, pp. 234–235, 254). Strauss also notes that, in civil law systems, "the text remains the challenge," rather than previous decisions (Strauss, 1999, pp. 234–235, 254).

64 Our findings on the Czech Supreme Courts resonate with L. Solan's observations about U.S. judges' practices in statutory interpretation: "(Judges) often rely on earlier judicial statements to justify just about every aspect of every argument in every case, from how a court construed a word of ordinary English decades ago to the assessment of historical fact set forth in an earlier case" (Solan, 2016, pp. 1169, 1172). Similarly, Zeppos reported that in U.S. Supreme Court decisions on statutory interpretation, case law was cited in 93 % of cases, making it the most frequently referenced authority, surpassing others such as travaux préparatoires (Zeppos, 1991, pp. 1093–1094). Although these comparisons are rough and may lack precision, they raise an intriguing question for comparative law research.

65 Authors such as Zweigert and Puttfarken caution against directly comparing statutory interpretation in civil and common law systems. They argue that "the proper object of comparison for the civil law methods of code interpretation is not the common law system of statutory interpretation but rather the methods of legal reasoning from precedents" (Zweigert & Puttfarken, 1979, p. 709).

Additionally, the scarcity of linguistic interpretation challenges domestic theories of interpretation. The traditional legal theory textbooks (often criticized as formalistic) usually advocate linguistic and systematic interpretation as "standard methods of interpretation". They suggest that teleological and historical methods should be only reserved for special circumstances. Nonetheless, the data suggest that Czech courts do not obey. They could reflect what is the ordinary meaning of the phrases used in statutes, how an ordinary person would understand them, they could discuss the particular phrasing or look for definitions, but they don't (at least most of the time). The courts mostly use teleological reasoning and rely on case law or principles.

Towards the end of my monograph, let me add one heretical remarque.[66] I believe that due to the omnipresent critique of formalism, the CEE actually (and paradoxically) lacks a theoretically robust and sophisticated account of textualism or formalism. This gap includes an absence of clarity on what textualistic arguments entail, when such arguments should prevail, and how meaning itself should be understood in application of law—whether through the lenses of logic, philosophy of language, corpus linguistics, or sociological studies. The lack of a developed theoretical framework manifests itself in the fact that judges actually do not use linguistic interpretation.

I do not mean to defend a simple version of formalism. It is, of course, true that the statutory text does not often suffice to resolve legal disputes; however, the critical questions remain unanswered: when does this insufficiency arise, what does it imply, and how should courts resolve such situations while upholding legal certainty and respecting the separation of powers?

Without addressing these foundational issues, the critique of formalism risks remaining superficial, reducing it to a straw man argument rather than engaging with the more substantive theoretical and practical questions it raises. Additionally, the legal theory does not provide

66 Similar to Bobek's position (2015).

practice with appropriate tools that could serve the practitioners to enhance legal certainty and limit the judicial discretion.

Future research

Building on the findings of this study, future research should aim to deepen our understanding of judicial reasoning through both large-scale analysis and comparative perspectives. Such research is under way. By applying argument mining techniques to the annotated dataset developed here, we already trained the models capable of examining all decisions of Czech apex courts that have been ever issued and published (ca 230k). This approach will provide insights into reasoning trends on a scale previously unattainable.

Additionally, comparative research is crucial for situating Czech judicial practices within a global context. Currently, there is a lack of data for direct comparisons between post-socialist states and countries like the USA, Germany, Italy, or France. Yet, Western courts appear to share certain "formalistic attributes," such as prioritizing text-based arguments or framing conclusions as deductively necessary without exploring interpretative alternatives (McCormick 2016). However, these parallels and distinctions remain to be empirically examined and substantiated, potentially with the use of this study.