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Tomáš Koref

An Empirical Analysis of Legal Reasoning in Czechia

A Tale of Two Courts Revisited

Tectum

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With a Foreword by Prof. Dr. Christoph Burchard, LL.M. (NYU)

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Foreword

The monograph before the reader is the elaborated version of a thesis originally submitted at Goethe-Universität Frankfurt am Main. Tomáš Koref showed both critical engagement with feedback and the rigour required to execute a methodologically demanding empirical study. The initial design was promising; what followed was painstaking work in systematic annotation and conceptual refinement—often easier said than done.

The author addresses a topical and contested question: how to measure judicial formalism in Central and Eastern Europe and how courts reason in the region. The project sits at the intersection of legal theory, empirical legal studies, and computational methods, while also bearing practical significance in jurisdictions where the "anti-formalistic narrative" shapes debates about the judiciary. The study offers a corrective to these debates that is grounded in original data rather than anecdote or normative assertions.

Methodologically, the monograph merits particular attention. Its dual strategy—quantitative analysis of arguments combined with holistic evaluation of decisions—reflects a sophisticated grasp of empirical method and jurisprudential nuance. The novel taxonomy, detailed annotation guidelines, and reported intercoder reliability constitute a substantial contribution.

The findings challenge common wisdom. For 2003–2013, the "Tale of Two Courts" does not hold: both Czech Supreme Courts seem to exhibit comparable levels of formalism. The divergence emerges later, with a marked shift at the Supreme Administrative Court while the Supreme Court remains relatively stable. Notably, both courts rely pri-

marily on case law and teleological interpretation, and only rarely on the text-based arguments often thought to define CEE formalism.

The work demonstrates the author's scholarly maturity in its empirical grounding and analytical precision. It makes a strong contribution to the literature on legal formalism and transitional justice, establishes foundations for large-scale computational analysis, and invites further comparative research beyond the Czech context. The monograph represents rigorous and well-executed legal scholarship on the border of legal theory and empirical legal studies.

Frankfurt am Main, October 30, 2025
Prof. Dr. Christoph Burchard, LL.M. (NYU)
Faculty of Law, Goethe University Frankfurt am Main

Abstract in English

Judges rely on various standards to justify their decisions, including legal text, legislative intent, and constitutional values. Central and Eastern European (CEE) courts are frequently criticized for prioritizing textual interpretation while neglecting more substantive reasoning. For three decades, scholars have framed CEE courts' practices as formalism inherited from the communist era. However, this critique lacks systematic empirical evidence.

This monograph empirically analyzes argumentation practices in Czechia and tests the anti-formalist narrative by analyzing case law from the Supreme Court, allegedly formalistic court with communist past, and the Supreme Administrative Court, new institution cherished for its non-formalistic practices. Using a novel annotation scheme and content analysis of a representative dataset of 272 decisions from 1997–2024, this research provides critical insights into judicial reasoning of Czech apex courts.

Contrary to the prevalent narrative, it reveals that both courts demonstrated comparable levels of non-formalism during 2003–2013. However, in the second period (2014–2024), the Supreme Administrative Court shifted significantly toward non-formalistic reasoning, with a 56 % increase in non-formalistic decisions and a 130 % rise in non-formalistic arguments, while the Supreme Court remained relatively stable. Surprisingly, both courts infrequently used text-based arguments, relying instead on case law, teleological interpretation, and general principles. These findings suggest that legal reasoning of Czech apex courts differs from the common stereotype. Given the courts rarely use linguistic and historical interpretation, their reasoning practices also diverge from traditional definitions of formalism

both in the CEE (where formalism is related to textualism) and U.S. contexts (where formalism is related to textualism and originalism). Additionally, the finding that text based arguments appear scarcely and teleological ones often shows that reasoning practices of Czech apex courts significantly differ from how traditional textbooks describe (and prescribe) legal interpretation.

Abstract in German

Richter stützen ihre Entscheidungen auf verschiedene Auslegungsstandards, darunter den Gesetzestext, den Gesetzeszweck oder verfassungsrechtliche Wertungen. Gerichten in Mittel- und Osteuropa (MOE) wird häufig vorgeworfen, sie würden die Wortlautauslegung überbetonen und substanzielle rechtliche Argumentation vernachlässigen. Seit drei Jahrzehnten charakterisiert die Wissenschaft die Praxis der MOE-Gerichte als einen aus der kommunistischen Ära geerbten Formalismus. Diese Kritik stützt sich jedoch auf keine systematische empirische Evidenz.

Diese Monografie analysiert empirisch die Argumentationspraxis in Tschechien und überprüft die s.g. anti-formalistische These anhand der Rechtsprechung des Obersten Gerichts – das als formalistisches Gericht mit kommunistischer Vergangenheit gilt – und des Obersten Verwaltungsgerichts – eine neue Institution, die für ihre nicht-formalistische Praxis geschätzt wird. Mithilfe eines innovativen Annotationsschemas und einer Inhaltsanalyse eines repräsentativen Datensatzes von 272 Entscheidungen aus den Jahren 1997–2024 liefert diese Forschung zentrale Erkenntnisse über die juristische Argumentation der tschechischen Höchstgerichte.

Entgegen der vorherrschenden These zeigt die Studie, dass beide Gerichte zwischen 2003 und 2013 ein vergleichbares Niveau an Nicht-Formalismus aufwiesen. In der zweiten Periode (2014–2024) entwickelte sich jedoch das Oberste Verwaltungsgericht deutlich in Richtung einer nicht-formalistischen Argumentation, mit einem Anstieg nicht-formalistischer Entscheidungen um 56 % und einer Zunahme nicht-formalistischer Argumente um 130 %, während das Oberste Gericht relativ konstant blieb. Überraschenderweise verwendeten beide

Gerichte selten textbasierte Argumente und stützten sich stattdessen auf Präjudizien, teleologische Auslegung und allgemeine Rechtsgrundsätze. Diese Ergebnisse legen nahe, dass die juristische Argumentation der tschechischen Höchstgerichte vom gängigen Stereotyp abweicht. Da die Gerichte sprachliche und historische Auslegung nur selten verwenden, unterscheidet sich ihre Argumentationspraxis auch von den traditionellen Definitionen des Formalismus – sowohl im MOE-Kontext (wo Formalismus mit Textualismus verbunden ist) als auch im US-amerikanischen Kontext (wo Formalismus mit Textualismus und Originalismus verknüpft wird). Zudem zeigt der Befund, dass textbasierte Argumente selten und teleologische Argumente häufig auftreten, dass die Argumentationspraxis der tschechischen Höchstgerichte erheblich von den in traditionellen Lehrbüchern beschriebenen (und vorgeschriebenen) Methoden der Rechtsauslegung abweicht.

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All remaining errors are mine alone.

Tomáš Koref[2]

1 The author conceived the study, developed its theoretical framework, designed the research questions, conducted the literature review, created the initial annotation scheme and guidelines, prepared the dataset, conducted pilot annotations, coordinated the annotation process, resolved annotation disagreements, curated the dataset and performed the data analysis and interpretation of results.

2 Tomáš Koref is a PhD student at Faculty of Law, Charles University, and at Goethe University Frankfurt am Main. *This study was supported by the Charles University, project GA UK No 185023 and Sylff scholarship.*

To M and N

Introduction

Judges rely on various sources to justify their decisions, such as the legal text, legislative intent, or constitutional values. Scholars often criticize Central and Eastern European (CEE) courts for relying heavily on statutes' wording while neglecting other types of argument. For over three decades, this critique has framed CEE courts' reasoning practices as a product of "communist-era formalism"—a tendency to avoid complex argumentation, such as purposive, moral or political reasoning, by adhering blindly to legal texts.[3] This so-called anti-formalistic narrative often contends that courts in the region have not undergone significant institutional, personnel, nor ideological transformation and continue to

3 The debate is described in more detail in Part I. Bystranowski et al. (2022) argue that judicial reasoning in Poland and other Central and Eastern European (CEE) countries remains influenced by communist history, calling the region "the last bastion of formalism" (p. 1912). They emphasize that formalism sets CEE apart from other Continental legal systems. Similarly, Dixon (2023) highlights that legal culture in Bulgaria, Czechia, Romania, and Slovenia is predominantly formalist rather than functionalist (p. 393). Bencze (2021) notes that Western European courts have moved toward non-formalistic decision-making that incorporates constitutional and European Union (EU) law principles, while formalism remains the dominant approach in CEE (p. 1291). Kosař (2023) critiques formalism in the region, describing it as having reached "excessive levels" and often resulting in "mechanical jurisprudence." Suteu (2023) describes the phenomenon in CEE courts as "vulgar formalism," emphasizing its simplistic and rigid nature (pp. 524–525). Manko (2013) uses the term "hyperpositivism" to describe the persistence of formalism in CEE, attributing it to the continuity of socialist-era organizational structures, personnel, and academia. For example, in Poland, formalism allegedly remains prevalent in both academia and judicial practice (Bystranowski et al., 2022, p. 1912; Manko, 2013). Romania also allegedly continues to exhibit formalist reasoning (Suteu, 2023, p. 525), as do Serbia (Besirevic, 2014) and other former Yugoslav states (Uzelac, 2010). In a recent meta-discussion, Cserne (2020) frames the so-called anti-formalistic narrative around formalism as a "symptom of an inferiority complex" in the region (p. 880).

adjudicate in the same formalistic manner—just as they allegedly did during the late communist era.

The anti-formalistic narrative resonates strongly in post-communist countries, where critics argue that weak judicial transitions and communist-era formalism undermine the courts' ability to enforce EU law and protect fundamental rights (Kühn 2011, Matczak et al., 2010). In states like Czechia, the anti-formalistic narrative has heightened tensions between constitutional and ordinary courts, fueled public distrust towards the judiciary, and influenced the appointment of judges to key institutions like the Czech Constitutional Court (ČT24 2024, Czech Senate 2002). As discussed further in Part 1, these concerns highlight the broad impact of claims that formalistic adjudication remains entrenched in Central and Eastern Europe.

But is the CEE judiciary truly formalistic? We know little about how CEE courts in fact decide cases. The anti-formalistic narrative lacks systematic empirical evidence.[4]

This study addresses the gap by focusing on a case study from Czechia, where the anti-formalistic narrative has the shape what I term *A Tale of Two Supreme Courts*. The tale contrasts the allegedly formalistic Supreme Court (SC) with the "discursive" Supreme Administrative Court (SAC).[5] Scholars claim that the SC is the formalistic court "inherited from communist era". Allegedly, it has retained a traditional, formalistic approach characterized by textualist reasoning that lacks persuasiveness and transparency – just a typical CEE court, one might say. By contrast, the SAC, established during the transition and staffed with a new generation of judges, is applauded for its discursive and more open reasoning (Kosař et al., 2020; Kadlec, 2016). Critics contend

4 Many authors recognize that the anti-formalistic narrative lacks proper empirical evidence. For instance, Komárek (2015) notes that anti-formalistic narrative holds extremely strong claims despite lacking solid empirical grounds (pp. 285, 290), and Bobek (2015) states that the claims about CEE region are not empirically based (besides being normative) and would need to be verified (p. 400).

5 Following authors contrast the two courts: Kühn, 2004, 2005, 2011, 2018; Matczak et al., 2010, 2015; Kosař et al., 2020; Šipulová & Kosař, 2024; Kadlec, 2016; Stehlík, 2014.

that the SC relies on its hierarchical authority rather than engaging in substantive reasoning, mirroring the allegedly formalistic legal culture from the 1980s (Kühn, 2018; Matczak et al., 2015). Simply put, the prevailing narrative holds that the Supreme Court's reasoning has not substantially changed since the communist era and remained deficient, just as its CEE counterparts.

However, just as the general anti-formalistic narrative, this strong condemnation of the SC's reasoning lacks systematic empirical evidence. No systematic study has empirically examined how the SC actually reasons or how its reasoning compares to the SAC's. While some empirical work suggests that the SAC moved away from formalism between 2003 and 2013 (Matczak et al., 2010, 2015), the SC remains understudied. Yet, with no support in proper empirical data, the Supreme Court is portrayed as the formalistic court.

This study fills the gap by addressing three key research questions:

RQ1: How to empirically measure formalism?
RQ2: Has the SC's decision-making been more formalistic than that of the SAC?
RQ3: What types of arguments do the SAC and SC use, and how have their reasoning practices evolved over the last 20 years?

This study adopts an empirical perspective. To address the research questions, our team annotated a representative dataset comprising 272 decisions from the Supreme Court and Supreme Administrative Court issued mainly between 2003 and 2023. This annotated dataset will also serve as the foundation for training an argument mining model using natural language processing. The model aims to analyze the full corpus of approximately 230,000 published decisions from both courts.[6]

I avoid taking sides, refraining from evaluating whether any style of reasoning is inherently good or bad. The anti-formalistic narrative is highly normative and there is a lot of criticisms of the CEE judi-

6 The development and usage of the argument mining model is described in a separate article (Koref et al., Forthcoming) currently under review and on request by the author.

ciary out there.[7] My approach is empirical and analytical. Drawing on Robert Alexy's distinction between empirical, analytical, and normative theories of argumentation (Alexy, 2010; Klatt 2020), the study situates itself within the first two. Empirical theory investigates the use and perception of arguments, while analytical theory examines their logical structure. This study is empirical as it explores the types of arguments employed by the courts and analytical in its development of detailed taxonomy to annotate judicial reasoning. However, it is not normative; it does not evaluate whether certain argument types should be preferred or why.[8]

This study presents four key findings. First, formalism of Czech courts can be analyzed using a dual method of argument quantification and holistic decision assessment. Second, the "Tale of Two Courts", portraying the Supreme Administrative Court (SAC) as less formalistic than the Supreme Court (SC), is significantly inaccurate for the SAC's first decade (2003–2013). During this period, the SAC matched or exceeded the SC's formalism across key metrics: it had similar rates of formalistic decisions, more decisions lacking non-formalistic arguments, and a notably higher proportion of formalistic arguments (60 % vs 51 %). Third, the Tale of Two Courts came to life in the second period (2014–2024), much like Pygmalion's beloved sculpture. SAC issued

7 For rather atypical positive accounts of formalism, see Scalia (2018): "Of all the criticisms leveled against textualism, the most mindless is that it is 'formalistic.' The answer to that is, of course it's formalistic! The rule of law is about form. (…) Long live formalism. It is what makes a government a government of laws and not of men" (p. 25). A minority of Central and Eastern European scholars welcome formalism. For instance, Bobek (2015) finds non-formalistic reasoning suspicious, noting that calls for courts to apply broad principles, values, or policies while ignoring the text of the law have appeared repeatedly after revolutions, such as in fascist Italy, Nazi Germany, and Stalinist Central Europe. He argues that the situation in CEE after 1989 is similar in terms of methods, not substance. Bobek suggests that formalistic reasoning serves as judicial self-restraint, leaving value decisions to the legislature while preserving legal certainty. He further argues that formalist courts might be more resistant to judicial capture in backsliding member states. On terminological side, Bobek prefers the term "textualism" over "formalism", as formalism has allegedly lost its meaning.

8 For a recent enlightening meta-perspective on interpretation fights in the US, see (Watson, Forthcoming).

much more non-formalistic decisions (increase by 56 %), used much more non-formalistic arguments (increase by 130 %), and reduced the proportion of formalistic arguments, while the SC's practices remained relatively stable. Finally, both courts surprisingly rarely use text-based arguments or legislative intent; they mostly rely on case law, teleological interpretation, and general principles instead.

This study delivers the first comprehensive empirical analysis of the Czech Supreme Courts' decision-making. It directly challenges long-established critical claims about their reasoning practices. Additionally, it opens the door to a more nuanced understanding of judicial reasoning in the region. It takes Czechia as case study and empirically tests the widely accepted narrative of formalism of CEE courts—a narrative that questions post-communist reforms, influences judicial nominations, and shapes criticism of the judiciary. The findings also reveal a lot about argumentation practices of both courts, i.e., that both Czech apex courts rely mainly on case law, teleological interpretation, and principles, while textualist and originalist arguments are rare, distinguishing Czech courts from how both the CEE and US scholarship define formalism. By comparing courts with varying levels of continuity with the previous regime, this study also questions the assumption that communist past leads to greater formalism, offering fresh insights into transitional justice and judicial reforms. Methodologically, it introduces a dual approach combining argument quantification with holistic assessments, supported by a novel taxonomy, guidelines and annotation charts. This enables large-scale research using argument mining that we prepare in a separate study. The study also assesses how judicial reasoning of Czech apex court aligns with normative theories of legal argumentation taught at Czech law schools.

This monograph proceeds as follows: Part One reviews the anti-formalistic narrative. Part Two outlines the new methodology to measure formalism in Czechia (and potentially beyond), including a new taxonomy and annotation scheme with guidelines. Part Three presents the findings; there, I revisit the Tale of Two Courts, and clarify what arguments Czech apex courts use. Part Four discusses implications for

legal theory and practice, concluding with recommendations for future research.

Part One: Formalism in Central and Eastern Europe (Related Work)

This section provides a quick introduction to formalism and a literature review of the debate on CEE formalism. After I introduce the theoretical debates on legal formalism as such, I examine key scholarly perspectives on judicial reasoning in the CEE region, focusing on three aspects of formalism: its alleged origins in the communist era, its alleged persistence during democratic transitions, and its ongoing influence in contemporary legal systems. By introducing these discussions, I reveal how the anti-formalist narrative shapes debates on institutional reforms, judicial appointments, and public trust in the judiciary. Crucially, this review highlights emerging critiques of the dominant anti-formalist narrative, particularly its lack of empirical evidence—a gap that this study aims to address.

1.1 Theoretical Debate on Formalism

Weber's Conception of Legal Formalism

Max Weber's analysis of *formal rational legal thought* provides an essential theoretical foundation for understanding legal formalism.[9] Weber developed this concept as the so-called ideal type – a heuristic tool

9 Weber has received impressive epithets such as "Aristotle of our age" (Sica et al., 2023, p. 63) or "Einstein of social sciences" (Raiser, 2008, p. 853).

intended to aid researchers in understanding and explaining different legal systems (Weber, 2013, p. 125).[10]

Weber identifies five key features of *formal rational legal thought* (Weber, 1978, pp. 657–658). In formalistic decision-making,

a) decisionmakers shall apply abstract legal rules to particular facts;
b) each decision must be logically derived from the legal rules;
c) the legal system must be treated as a complete, gapless set of rules;
d) anything that cannot be rationally interpreted in legal terms is irrelevant to the law; and
e) all human actions are viewed as either applying, executing, or violating legal rules.[11]

D. Kennedy adds sixth tenet of *formal rational legal thought* that appears throughout the Economy and Society:

f) decisionmaker is restricted by logical analysis of meaning derived from existing legal norms (Kennedy, 2004, p. 1040).

Weber's conception of formality in law can be further specified. Weber finds following aspects crucial when assessing the formalistic nature of adjudication:

10 Commentators frequently point out that Weber's ideal types should not be mistaken for precise descriptions of reality nor for normative standards (Weber, 2013, p. xxiv). As Guenther Roth explains in his introduction to Economy and Society, these types function as "trans-epochal and trans-cultural" frameworks for comparing legal systems. Weber emphasizes this methodological purpose explicitly (Weber, 2013, pp. 126, 331), although his treatment becomes more nuanced in Economy and Society itself.

11 Weber, 1978, pp. 657–658: "Present-day legal science… proceeds from the following five postulates: first, that every concrete legal decision be the 'application' of an abstract legal proposition to a concrete 'fact situation'; second, that it must be possible in every concrete case to derive the decision from abstract legal propositions by means of legal logic; third, that the law must actually or virtually constitute a 'gapless' system of legal propositions…; fourth, that whatever cannot be 'construed' legally in rational terms is also legally irrelevant; and fifth, that every social action of human beings must always be visualized as either an 'application' or 'execution' of legal propositions, or as an 'infringement' thereof."

a) whether decisions consider only general characteristics or include case particularities,[12]
b) whether decisions rely solely on legal rules or incorporate extra-legal standards.[13]

First dimension concerns the facts. According to Weber, a formalistic judge should only focus on the general characteristics of a case which are defined by the legal system. In other words, legal norms determine which facts are legally relevant (general characteristics) and which are irrelevant (particular characteristics); the more a judge incorporates legally irrelevant facts, the more non-formal her adjudication becomes. To illustrate, consider a legal system that stipulates only two requirements for a valid sale of goods contract: an offer and acceptance. Once these conditions are fulfilled, the contract is deemed valid with no other grounds for invalidation. A non-formalist judge, however, would look beyond, when establishing whether a valid contract was formed; she might investigate the relative value of goods exchanged, the nature of the contracting parties, or the circumstances surrounding the agreement.

The second dimension of formalism concerns the norms used for evaluation. Decision-making becomes more substantive (less formal) when extra-legal norms (political, ethical) and other bases (Weber mentions "emotional bases") influence the evaluation of facts. Continuing the previous example, a judge would decide in a non-formalistic fashion if she invalidated a contract not due to provisions in the legal code but based on external ethical or political principles. For instance, upon observing that the parties involved are a consumer and a corporation, and determining that the compensation is excessively high, she might invalidate the contract based on her policy conviction that only

12 Weber, 1978, pp. 656–657: "Law (…) is 'formal' to the extent that only unambiguous general characteristics of the facts of the case are taken into account."
13 Weber, 1978, p. 656: "Lawmaking and law finding are substantively irrational to the extent that decision is influenced by concrete factors of the particular case as evaluated upon ethical, emotional or political bases rather than general norms."

fair agreements between companies and consumers should be enforceable in a just society.

While Weber does not explicitly separate these two dimensions (general v. particular facts; legal v. non-legal norms), distinguishing between them provides valuable analytical clarity.[14] Thus, a formalistic judge, in Weber's framework, operates within two key constraints: considering only legally relevant facts (ignoring case particularities) and applying only those norms that can be logically derived from the legal system (excluding extra-legal bases like ethical and political norms or emotional considerations).

Contemporary Understanding of Legal Formalism

Contemporary debates about formalism align with Weber's framework.

Schauer's article on formalism from the late 1980s has been probably the most prominent piece written on the topic to date (Schauer, 1988). For Schauer, formalism boils down to the question whether wording of the norms can and shall limit decisionmakers' choices (Schauer, 1988, p. 531).[15] Schauer answers both questions affirmatively: rules can and shall constrain courts. His assertion that "rules get in the way" and constrain decisionmaker's choice of potential reasons echoes Weber's view that formalism is about restricting which aspects and norms judge can consider.[16]

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14 Though the concepts are connected and would usually appear together, a judge might maintain formality in fact-finding (i.e., focusing only on general characteristics) while incorporating non-legal bases in evaluation. For instance, a judge would only establish whether there was an offer and acceptance, but then, after establishing the facts, disregard this completely and decided in a way that she thinks is just.

15 Schauer, 1988, p. 531: "To put it simply, now that we have established that formalism-in the sense of following the literal mandate of the canonical formulation of a rule-is conceptually and psychologically possible, we must ask whether it is desirable.

16 Schauer, 1988, pp. 536–537: "(r)ules get in the way. They exclude from consideration factors that a decisionmaker unconstrained by those rules would take into account." and "What makes formalism formal is this very feature: the fact that taking rules

Many definitions of formalism align with the conceptions of Weber or Schauer (see Grove 2020, 267; Sunstein 1999, 3). Grove defines formalist textualism as "an approach that instructs interpreters to carefully parse the statutory language, focusing on semantic context and downplaying policy concerns or the practical (even monumental) consequences of the case." Sunstein understands formalist strategies to entail three commitments: "(commitment) to ensuring compliance with all applicable legal formalities (whether or not they make sense in the individual case), to rule-bound law (even if application of the rule, statutory or contractual, makes little sense in the individual case), and to constraining the discretion of judges in deciding cases."

Of course, definitions of formalism vary. Different authors come up with different aspects of formalism and the debates on formalism also vary across jurisdictions. For instance, in the United States, the discussion often focuses on the legal realists vs. the formalists debate. In Central and Eastern Europe (CEE), the discussion is often part of the debate on transitional reforms and post-communist legacies, as I describe below. Nonetheless, there is a "family resemblance" in how scholars conceive of formalism: formalism very often concerns the extent to which legal rules (their wording) constrain judicial decision-making and exclude extra-legal considerations.

1.2 CEE as Post-Communist Region with Flawed Judiciary and Formalistic Reasoning Practices

Existing scholarship has identified distinct patterns in communist-era judicial reasoning in Central and Eastern Europe (CEE). According to scholars like Kühn, Bobek, or Manko, the judiciary initially operated under heavy ideological influence during Stalinist times after 1948 and in the 1950s (Kühn, 2011; Manko, 2013; Bobek 2006; Cserne

seriously involves taking their mandates os reasons for decision independent of the reasons for decision lying behind the rule. If it were otherwise, the set of reasons considered by a decisionmaker would be congruent with the set of reasons behind the rule, and the rule would add nothing to the calculus."

2020).[17] Nonetheless, most of the cases allegedly shifted toward textual formalism in the 1970s and 1980s, once the communist regime was established. Kühn (2011) mentions that "in contrast to the Stalinist era, Socialist judges in subsequent decades seldom revealed the policies and principles underlying their decisions" (p. 125). The narrative suggests that judges relied on text as a protective mechanism during the late communism.; formalism allowed them to minimize ideological interference (and often more serious injustices) through strict adherence to the wording of the law.[18]

Formalism is widely recognized as the dominant judicial approach throughout Central and Eastern Europe (Bystranowski et al., 2022; Dixon, 2023; Bencze, 2021), with many scholars attributing it to the enduring influence of socialist-era legal culture (Cserne, 2020; Kosař, 2023; Manko, 2013; Suteu, 2023). This tendency has been variously referred to as "hyperpositivism" (Manko, 2013), "mechanical jurisprudence" (Kosař, 2023), or "vulgar formalism" (Suteu, 2023, pp. 524–525), and is considered especially pronounced in Poland (Rogatka, 2023; Manko, 2013), Czechia (Kühn 2011; Kosař et al., 2020; Jakab et al., 2017), Romania (Suteu, 2023), Serbia (Besirevic, 2014), and much of the post-Yugoslav region (Uzelac, 2010). This leads some theorists to endorse very strong claims suggesting that CEE legal systems might collectively form a distinct "third legal family" alongside common law

17 See, e.g., Sharlet (1999), who notes that under Stalinist Soviet law, the political and arbitrary often prevailed in politically sensitive cases "over the more predictable use of coercion based on an objective interpretation and application of general rules" (pp. 156–157). However, Sharlet clarifies that a large proportion of cases were not "political" and thus remained separated from politicization. See also Kühn (2011), who distinguishes between the first anti-formalist era of the late 1940s and 1950s and the second phase of socialist law in the 1970s and 1980s, which was allegedly formalist (p. 88).

18 Manko states (2013) that "hyperpositivism had (at least) three important advantages for the legal community. First of all, by conceptually separating law from politics and presenting legal interpretation as a technical, not socio-political exercise, it created a safe haven for academics and judges. By stating that they are merely performing their technical and neutral activity, they could avoid difficult political questions". Similarly, see Kühn (2011, p. 150) or Bystranowski et al. (2022, p. 1913).

and Western continental law traditions (Manko et al., 2016). All this because the CEE region is allegedly formalistic.

The concrete reasons for formalism's alleged persistence have been debated. Manko and Uzelac emphasize institutional and personnel continuity of the judiciary, noting that courts retained their pre-1989 structures and judges trained under the communist regime largely remained in office (Manko, 2013; Uzelac, 2010). Very interesting recent research on lustration laws supports this claim; Šipulová and Kosař found that lustration laws in Czechia (allegedly one of the strictest) were rather inefficient on a larger scale (Šipulová and Kosař, 2024). Uzelac further argues that judicial independence contributed to this continuity, as high-ranking judges from the former regime influenced subsequent appointments (Uzelac, 2010). Educational practices are also considered significant – scholars repeatedly highlight the missing courses on legal argumentation and interpretation in traditional legal education, that were not part of communist legal curriculum and remained absent during the transition (Manko, 2013; Kühn, 2011; Bystranowski et al., 2022). Generally, most of the alleged reasons for the formalism in CEE can be traced back the communist past.

1.3 The Anti-formalistic Narrative Matters

The anti-formalistic narrative resonates in the post-communist region. It fuels claims that judicial transitions in the region were weak and unsuccessful (Kühn, 2011, p. 189).[19] Critics also argue that the persistent communist-era formalism makes the judiciaries ill-suited to enforce EU law and its goals (Matczak et al., 2010; Kühn, 2004, p. 567).[20]

19 Kühn (2011) observes: "The ordinary courts in the Czech and Slovak republics—and in most other post-Communist countries—have never acted as one might expect transitional courts would act. With the exception of the constitutional courts, the majority of post-Communist courts continued in their formalist reading of the law. (…) In this way, the simplified version of textual positivism and the ideology of bound judicial decision-making were able to survive" (p. 189).

20 Matczak et al. (2010) argue that Central and Eastern European (CEE) formalism obstructs changes introduced by EU accession (p. 97). Similarly, Kühn (2004)

In Poland and Hungary, illiberal leaders have invoked prevailing "communist legacies" to justify court packing and judicial reforms contributing to democratic backsliding, which makes any alleged communist legacies particularly dangerous (Nalepa, 2021; Sipulová and Kosař, 2024).[21] The former Slovak president blames judicial formalism for public frustration and distrust towards judiciary in post-communist Slovakia and Czechia (ČT24, 2024).[22] The narrative drives conflicts between constitutional and ordinary courts (Kühn, 2011, pp. 200–207); the Czech Constitutional Court repeatedly declared excessive formalism a violation of fundamental rights (Constitutional Court, 2012*)*.[23]

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states, "(…) it is inevitable that new European judges coming from the post-communist realities would face a number of problems in the enforcement of European law and that the level of enforcement of European law might differ significantly from that in the old Member States" (p. 567). For a nuanced view, see Bobek (2008), who notes that while CEE judges sometimes use purposive reasoning, they often resist the teleological interpretation and *effet utile* applied by the Court of Justice of the European Union (CJEU). This resistance is allegedly influenced by historical distrust rooted in communist-era formalism, which served as a defense against Party-imposed judicial policies (pp. 14–17).

21 For Poland, see Nalepa (2021), who notes that "Jaroslaw Kaczyński has, on numerous occasions since his party became the dominant force in parliament, used the unfinished decommunization project as a pretext for weakening the judicial branch" (p. 282). For Hungary, Sipulová and Kosař (2024) observe that "Orbán initially advocated large-scale reforms and court-packing plans initiated in 2011 using de-communization rhetoric." This experience makes any alleged postcommunist legacies potentially dangerous.

22 See Čaputová's comments on formalism and judicial courage (ČT24, 2024) at https://ct24.ceskatelevize.cz/clanek/svet/prosazovani-pravdy-prekazi-formalismus-justice-a-nedostatek-odvahy-rika-caputova-57181 (timestamp 16:05–18:02, accessed November 22, 2024).

23 In its annual bulletin, the Constitutional Court notes that it repeatedly faces objections regarding ordinary courts applying excessive formalism. It highlights several cases where such formalism violates fundamental rights, particularly the right to a fair trial (*Ročenka Ústavního soudu* [Annual Bulletin of the Constitutional Court], 2012, pp. 60, 89–92). A simple search through the Constitutional Court's database reveals 183 decisions (out of 5,251) that overturned previous rulings due to formalism. The search was filtered for decisions on the merits (*nálezy*) overturning prior rulings (*výrok vyhověno*) where the term "formalismus" appeared only in the "legal sentence" or "abstract." A random check of 15 such decisions confirmed that 100 % of them overturned prior rulings due to formalism (database search conducted November 22, 2024). For more details, see Ročenka Ústavního soudu [Annual Bulletin of the Constitutional Court], available at: https://www.usoud.cz/fileadmin

The narrative also influences judicial appointments to most important institutions (Czech Senate, 2002).[24] As such, the claim that CEE courts are formalistic has had an impact on judicial reforms, EU expansion, fundamental rights adjudication, and judicial appointments. Despite its importance, the narrative lacks sufficient evidence, as discussed in the next subchapter.

1.4 Critique of the Anti-formalistic Narrative and Empirical Evidence

Two major critiques challenge the dominant narrative about CEE legal formalism: a normative and empirical critique.

First, Bobek (2015) argues normatively that text-based reasoning serves as valuable judicial restraint, warning that purpose and value-based interpretation risks politicizing courts – similar to experiences in fascist Italy and Stalinist CEE. As I discuss below, our empirical findings show that such calls for more text-based reasoning are substantiated, as the Czech apex courts use text-based reasoning surprisingly scarcely, very scarcely in fact.

Second, scholars question the narrative's empirical foundations. Komárek (2015), Cserne (2024), and Mańko (2013) note that claims about CEE formalism rely primarily on anecdotal evidence. As Manko mentions, the main source of evidence is often the experience of a few

/user_upload/ustavni_soud_www/prilohy/ROCENKA_2012_FINAL_na_web.pdf (accessed November 22, 2024).

24 For instance, former President Václav Havel noted that he nominated Justice Eliška Wágnerová to the Czech Constitutional Court because she embodies a non-formalistic approach to judicial decision-making. During the 3rd session of the Czech Senate on March 14, 2002, he stated, "The law must never again serve crime or shield it simply because there is too little courage to confront its malicious intent, flawed wording, or harmful consequences. Cowardice or resignation must never again be clothed in the noble guise of blind adherence to the law. Routine, mechanical application, and automatic execution of justice should be replaced by human judgment—one that understands the law as an imperfect tool for safeguarding human dignity and fostering decent social coexistence" (Czech Senate, 2002). Retrieved from https://www.senat.cz/xqw/xervlet/pssenat/htmlhled?action=doc&value=11921 (accessed November 20, 2024).

influential insiders, like elite judges, rather than systematic research. Similarly, Cserne (2020) adds that "(m)uch of the literature is 'theoretical' in the sense of non-empirical or quasi-empirical, relying on intuitions and anecdotes, rather than solid data". This empirical weakness, combined with a tendency to mix descriptive and normative claims, undermines reliable conclusions about judicial reasoning patterns in the region. Thus, Cserne (2024) concludes that "empirical analysis is in its early stages" and highlights that one could advance the debates about CEE by "operationalizing formalism properly".

Two major empirical studies have examined formalistic reasoning in post-communist Poland, Hungary, and Czechia. These studies analyzed administrative court decisions (1999–2013) using Galligan and Matczak's annotation scheme, which categorized interpretative standards as internal, external, constitutional, or EU-based. The first study (1999–2004) confirmed predominantly formalistic reasoning across all countries, with Czech courts showing slightly more discursive tendencies, but still considered formalistic. The second study (2005–2013) revealed some shift toward discursive reasoning, particularly in the Czech Supreme Administrative Court, marked by increased use of purposive arguments and EU-conforming interpretations. Notably, while these studies focused exclusively on administrative courts, their authors criticized Czech Supreme Court as formalistic despite not including it in their empirical analysis.

While these studies represent a great pioneering effort and a valuable contribution, they also have several shortcomings. First, they focus solely on administrative courts, which account for a smaller proportion of judicial decisions—particularly in countries like Czechia, where civil and criminal courts generate far more rulings (more than fifty times more).[25] Second, the authors extrapolate their findings to non-admin-

25 For instance, in 2023, Czech administrative courts collectively issued around 10,000 decisions, with roughly 4,200 of these coming from the Supreme Administrative Court. By contrast, civil and criminal courts produced about 500,000 decisions (nearly 900,000 if payment orders and related instruments are included), while the Supreme Court alone issued approximately 6,500 decisions. For detailed data, see the official databases of the Supreme Court (https://www.nsoud.cz/Judikatura/ns_

istrative courts, even though they did not examine them. Third, they do not document the annotation process in detail, leaving key issues—such as the precise coding scheme for different types of arguments and the level of intercoder agreement—unaddressed; it cannot be verified whether the findings hold. Fourth, the studies only focused on argument types, which may be insufficient for fully capturing formalism, as I discuss below. And lastly, the two studies appeared ten (or more) years ago and thus covered decisions only till 2013; more recent developments remain unknown.

Other studies on CEE formalism relied on unrepresentative datasets, e.g. 300 decisions from one single year from criminal law (Bystranowski et al., 2022; Malolepszy and Gluchowski 2023) or basically lack any empirical evidence.

1.5 A Tale of Two Supreme Courts: Reasoning Practices in Czechia

The anti-formalistic narrative has been very strong particularly in Czechia. There, it has the shape of what I called the Tale of Two Supreme Courts, i.e., 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, a modern institution established in 2003 unburdened by a communist legacy. The most recent studies still highlight the different reasoning practices and genealogy of the two institutions. The story usually unfolds as follows:

The Velvet Revolution and the fall of communism brought about the creation of entirely new judicial institutions in the Czech Republic: namely, 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

web.nsf/WebSpreadSearch) and the Supreme Administrative Court (https://vyhledavac.nssoud.cz/), as well as the Czech Ministry of Justice's statistics (https://msp.gov.cz/web/msp/statisticke-udaje-z-oblasti-justice).

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 had foreign education or various professional experience (Kosař et al., 2020).

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" (Kosař et al., 2020). 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" (Kosař et al., 2020). 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 (Šipulová and Kosař, 2024).

The notion of institutional and personnel continuity has often been taken to imply a consistent pattern of legal reasoning, suggesting that the Supreme Court—an older institution composed largely of the same judges—continues to adjudicate in much the same formalistic style that allegedly prevailed in the 1970s and 1980s (Kühn, 2004, 2005, 2011, 2018; Matczak et al., 2010, 2015; Kosař et al., 2020; Šipulová & Kosař, 2024; Kadlec, 2016; Stehlík, 2014). This narrative has persisted for over two decades and remains visible in contemporary scholarship. For instance, Z. Kühn—a former Supreme Administrative Court judge—argues that the Supreme Court maintains a traditional, formalistic method of legal argumentation, relying on its hierarchical authority rather than clarity or persuasive reasoning. According to this perspective, the Supreme Court allegedly aligns more closely with a "strictly formalistic ideal that dominated Czech legal academia and practice until the early 1990s."

Recently, a few studies have slightly softened the earlier assertion that the Supreme Court is overwhelmingly formalistic. For instance, Wintr and Koželuha (2015) argue that the Supreme Court occasionally

employs teleological interpretations, and Kosař et al. (2020) highlight the Court's references to the European Convention on Human Rights (ECHR)—a practice that might be deemed non-formalistic in this study's framework. Even Kühn (2018) acknowledges that judicial decisions overall have become lengthier, not only at the Supreme Administrative Court, suggesting a gradual shift away from rigid formalism. However, Kühn's more recent observations do not focus specifically on the Supreme Court, and neither Wintr's nor Kühn's conclusions rest on systematic empirical data. Likewise, Kosař et al. (2020) address the Court's approach to ECHR standards rather than its reasoning in the far greater volume of cases that do not involve ECHR issues. Consequently, despite these slight revisions to the original claim, the prevailing view in the literature continues to regard the Supreme Court as adhering to a primarily formalistic style of adjudication.

To conclude, much of the current discourse continues to contrast the "formalistic" Supreme Court—reportedly shaped by communist-era legacies—with the more discursive and modern Supreme Administrative Court. Yet, systematic evidence on the Supreme Court's actual reasoning has been lacking. Consequently, three key questions remain unanswered: how best to measure formalism, how Czech apex courts differ, and what types of arguments have SC and SAC been using over the last 20 years.

This monograph draws on prior scholarship but seeks to remedy certain methodological shortcomings. It makes five main contributions: (1) it sets forth an explicit methodology, including detailed annotation guidelines and intercoder agreement measures, (2) it grounds its annotation scheme more firmly in legal argumentation theory and the core tenets of formalism (see Part Two), (3) it introduces a mixed approach that quantifies formalistic arguments and provides a holistic assessment of each decision (see Part Two), (4) it employs a more representative sampling strategy, allowing broader conclusions, and (5) it enables large-scale analysis by enabling argument-mining study (with argument mining models currently being developed based on a dataset annotated for this monograph). These advances aim to provide

more reliable evidence about judicial reasoning patterns in Czechia and the region.

Part Two: Formalism in Theory, on the Ground and in Between (What Formalism Is, How It Manifests and How to Catch It in the Wild)

This chapter develops a framework for empirical investigation of claims about legal reasoning in the CEE. It focuses on distinguishing and measuring formalistic and non-formalistic judicial reasoning. Based on a thorough literature review, I first identify five core tenets of formalism as described in the literature on the CEE formalism. I then establish empirical indicators that bridge these theoretical features with real world judicial decisions, revealing how formalism manifests in practice. For instance, I identify the presence of text-based argumentation as a core tenet formalism and then, based on the legal argumentation theories, describe that the notion "text-based argument" covers, e.g., linguistic interpretation which appears, e.g., when a court explicitly refers to ordinary meaning, syntax or a dictionary.

Afterwards, I suggest a twofold measurement approach to formalism: analyzing the frequency of formalistic arguments and evaluating decisions holistically as formalistic/non-formalistic.[26]

This original methodology results in a novel annotation scheme, completed with detailed guidelines and flow charts for analyzing judicial decisions. The framework addresses limitations of previous studies on formalism in the CEE. And most importantly, it lays groundwork for the quantitative analysis and its results (Chapter 3).

26 I am thankful to Ivan Habernal for this idea of including holistic assessment.

2.1 What CEE Formalism Means and How it Manifests

This study empirically examines the anti-formalist narrative using content analysis, a core method in empirical legal research (Hall and Wright, 2006; Ovádek et al., 2025).[27]

Detemermining whether a court is formalistic requires the following:

1. **Defining Formalism:** Establish a clear definition of what formalism is and, generally, how it could manifest.
2. **Creating Annotation Guidelines:** As Ovádek et al. (2025, p. 8) emphasize, it is essential to identify indicators that connect abstract concepts (e.g. formalism) to observable facts (e.g. judicial decisions). Guidelines require detailed criteria to guide the annotation process, ensuring consistency and reliability. The aim of our guidelines was to to very concretely describe (incl. real world examples) how formalism and different argumentation practices manifest in judicial decisions.
3. **Training Annotators:** Equip annotators with the skills to identify and classify relevant arguments, including what to look for in court decisions.
4. **Data Collection and Sampling:** Gather a representative dataset of court decisions through a sampling procedure.
5. **Annotation of Decisions:** Apply the guidelines to annotate the collected decisions.
6. **Analysis:** Interpret the annotated data to assess the prevalence and nature of formalism in judicial reasoning.

2.1.1 Defining CEE Formalism: Five Core Tenets

First comes the definition of formalism. When scholars claim CEE judges are formalistic, what precisely do they mean? Is "formalism"

27 Ovádek et al. call the elaborated version of content analysis I pursue in this study expert coding. They describe similar steps as I do. See Ovádek et al., 2025.

more than an insult?[28] Does it carry any descriptive content that can be empirically verified? Formalism concerns courts and their decision-making, but how does formalistic judgment typically look like?

Definitions of formalism vary. This study verifies claims about CEE judicial practices and thus tries to investigate formalism as described by the CEE legal scholarship. Although there is no "Bible of CEE formalism", current literature reveals some consistency in identifying five distinctive features of formalistic judicial decision-making. I call them *five core tenets of CEE formalism*:

Formalistic courts in the CEE would

1. rely heavily on a limited set of arguments derived from statutory text,[29]
2. focus on most locally applicable rule, not broader principles,[30]
3. usually exclude "external standards" in reasoning, like efficiency, justice, moral and political reasoning[31] or teleological interpretation,[32]
4. dismiss cases on formal grounds to avoid analyzing them on the merits,[33]
5. provide insufficient reasoning for their decisions.[34]

28 Bobek (2015) argues that the term "formalism" is often used merely as a pejorative label. Similarly, Schauer (1988) observes that there is "scant agreement on what it is for decisions in law, or perspectives on law, to be formalistic, except that whatever formalism is, it is not good" (pp. 509–510). However, Schauer (1988) convincingly demonstrates that formalism has a descriptive content that can be clearly identified and, in some contexts, may even be worth pursuing.

29 See Matczak et al., 2010, p. 86; Matczak et al., 2015; Bystranowski et al., 2022, p. 1911; Jakab et al., 2017, p. 222; Cserne, 2020, p. 881; Kühn, 2011.

30 See Matczak et al., 2010, p. 87; Matczak et al., 2015; Bystranowski et al., 2022, p. 1911; Mańko, 2013, p. 7; Cserne, 2020, p. 881; Bencze, 2021; Kühn, 2011, p. 209.

31 See Kühn, 2004, p. 557; Matczak et al., 2010, p. 86; Bystranowski et al., 2022, p. 1913; Malolepszy and Gluchowski, 2023.

32 See Kühn, 2004, pp. 544, 558; Jakab et al., 2017, p. 222; Malolepszy and Gluchowski, 2023, p. 1798; Kühn, 2011, p. 210.

33 See Mańko, 2013, p. 6; Bystranowski et al., 2022, p. 1913; Foric et al., 2020, p. 6; Uzelac, 2010, p. 383.

34 See Kühn 2004, 557; Suteu 2023, 527, Kühn, 2011, 204.

Let me put the five core tenets (mainly the first three) in the context of existing interpretive theories both outside and inside the region:

German debate focuses on the interpretative canons. It traditionally distinguishes four interpretation methods: linguistic, systemic, historic, teleological (Alexy, 2010; Möllers, 2020). Besides, German authors have traditionally distinguished two theories of interpretation: subjective theory leaning towards the will of the legislator and objective theory leaning towards the purpose of the law (Möllers, 2020). Linguistic and systemic interpretation could be considered formalistic, while historic and teleological non-formalistic. Both subjective and objective theory of legal interpretation would be considered non-formalistic by this study.

Czech debate oscillates between authors preferring so called linguistic and systematic interpretation on one hand,[35] or teleological interpretation on the other.[36] Authors preferring linguistic and systematic interpretation would be considered formalists, authors opting for more teleological interpretation non-formalists.

35 For instance, scholars like Gerloch or Tryzna. See Gerloch, Tryzna et al., 2012, Gerloch 2021. Wintr (2019) mentions "However, the serious problem is, among other things, the disagreement of the legal community on these rules of priority. In particular, two basic approaches clash here, one of which, in the apparent clash between a linguistic-systematic interpretation and a teleological interpretation, prefers the one and the other the other."

36 For instance, scholar like Wintr (2019), Melzer (2011) – quite interestingly, the younger generation of legal scholars.

The US debate on statutory interpretation typically differentiates textualism,[37] purposivism, originalism and pragmatism.[38] Roughly speaking, the formalistic reasoning, as understood by this study, includes textualist reasoning and excludes purposivist, originalist and pragmatist reasoning.[39]

Thus, the core tenets of CEE formalism match with debate on interpretation both in Czechia and the CEE. They also match the debate on formalism in the US, which defines formalism very similarly to the first three core tenets described in the CEE literature.[40] This makes our

37 For the definition, see Eskridge et al. (2022), who describe the methodology of "new textualism," as advocated by Justice Antonin Scalia and popular at the U.S. Supreme Court, as focusing on "the text, the whole text, and nothing but the text." They outline three core tenets of how modern textualists understand meaning: "(1) understood by the ordinary person, (2) applying standard rules of semantics, definitions, and grammar, (3) at the time the statute was enacted" (pp. 1612–1613). Similarly, Watson (2022) explains that "textualism limits the set of admissible arguments in hard cases: it confines judges to considering what a reasonable reader would have been most likely to infer that the legislature intended to assert rather than what the legislature 'really' intended to assert or which reading of the statute best advances its purpose or maximizes social welfare" (p. 46). Textualism is the dominant argumentation theory of the Supreme Court. For empirical studies, see, e.g., Krishnakumar (2023)

38 For the overview of the approaches, see Watson (Forthcoming).

39 As I will elaborate below, CEE formalism is distinct in its exclusion of originalism, categorizing historical interpretation as a non-formalistic argument. This contrasts with the U.S. context, where formalism is often characterized by a combination of textualism and originalism. For constitutional interpretation in the U.S., Thomas C. Grey notes that "the formalist approach to American constitutional law over the last half century has been embodied in the linked ideas of textualism and originalism" (Grey, 2014, p. 4). Similarly, Stiglitz and Thalken highlight that contemporary formalism emphasizes both textualism and originalism (2024).

40 Grove (2020) characterizes "formalistic textualism" as an interpretive approach that prioritizes statutory language while deliberately downplaying policy concerns and practical consequences. Similarly, Stiglitz and Thalken (2024) distinguish between formal and grand reasoning, where formal reasoning treats law as a closed, mechanical system that excludes political, social, and economic considerations, while grand reasoning explicitly engages with these broader factors. Solum (2014) presents ideal types of formalism and realism as follows: "A perfectly formalist judge would decide entirely on the basis of the authoritative legal materials," while "a perfectly realist judge would decide entirely on the basis of policy preferences" (p. 2490). Solum further argues that this dichotomy reflects a deeper normative dispute about the proper role of authoritative sources in judicial decision-making—formalists

methodology useful for empirical research of legal reasoning in other CEE states and beyond.[41]

Ideally, after establishing the core tenets, one could prepare annotation guidelines and start analysing the case law. Since most tenets concern argumentation, pursuing further steps might seem like a straightforward task: simply read the decisions and quantify the types of arguments courts use. However, empirical analysis of Supreme Courts' argumentation is complicated for two main reasons.

First, despite most tenets of formalism concern argumentation (e.g., usage of text-based arguments), the scholarship on CEE formalism typically lacks detailed explanations necessary for annotation. For instance, the literature on CEE formalism lacks clear criteria what text-based argument is and when to consider it present in the judgment. Without such specification, reasoning practices remain unmeasurable.

Second, simply counting arguments proved insufficient. In our pilot studies, we noticed that context significantly matters; measuring argument frequency alone provides an incomplete picture of judicial formalism. Consider a Supreme Court decision that criticizes lower courts for excessive formalism or insufficient reasoning—such a decision might contain many references to statutory text or case law yet be fundamentally non-formalistic in its nature. Moreover, the last two tenets—dismissal on formal grounds and insufficient reasoning—cannot be captured through argument counting alone. These complexities demand a methodology that goes beyond simple quantification of arguments.

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advocate for their primacy, while realists promote an instrumentalist approach that allows policy considerations to override the plain meaning of statutes or the doctrine of stare decisis (pp. 2490, 2492).

41 The debate on formalism in Central and Eastern Europe (CEE) is marked by distinctive features shaped by the region's historical and socio-political context. What sets the CEE discourse apart is not necessarily the concept of formalism itself, but its framing: formalism is often regarded as a legacy of the communist era, its persistence seen as evidence of unfinished judicial reform, and the debate intertwined with the broader regional effort to confront and reconcile with the past. While these historical and political dimensions are crucial to understanding the debate, this study does not center on these aspects.

Thus, we needed to develop a new strategy to measure formalism. We came up with a dual approach. First, we developed a new annotation scheme and guidelines to analyze the frequency and distribution of different argument types, classifying them as either formalistic or non-formalistic. Second, we supplement this method by also holistically evaluating each decision with binary variable formalistic/non-formalistic, considering the context of the decision and the five core tenets of formalism.

2.1.2 New Taxonomy of Arguments for Empirical Analysis of CEE Argumentation Practices

The first way to bridge the gap between the core tenets and real world decisions is through argument types (MacCormick and Summers 2016). Legal theory traditionally uses argument types like historical interpretation, variously called "argumentation schemes", "patterns of arguments" (Walton et al., 2021) or "argument forms" (Alexy, 2010), to analyze and evaluate judicial reasoning. For instance, categorizing some set of propositions as historical interpretation enables one to assess strength and weakness of such argument (e.g. look whether explanatory note fundamentally differs from enacted provision due to a "rider") and to provide/debunk counter-arguments (e.g. to argue that the will of the legislator is/is not a chimera). Argument types enable lawyers to better understand and analyze decisions (Walton et al., 2021).

Using argument types for empirical research of formalism offers distinct advantages over binary formalistic/non-formalistic coding of sentences or paragraphs pursued by recent study on formalism by Stiglitz and Thalken (2024).[42] It better reflects how legal theorists analyze argumentation, provides more detailed information on using traditional interpretation methods (e.g. that Czech apex courts very scarcely refer

42 Stiglitz and Thalken analyzed SCOTUS decisions by coding individual paragraphs with the variable "formalistic" and "grande," subsequently using this annotated dataset to train an argument mining model (Stiglitz and Thalken, 2024).

to the will of legislator) and benefits from well-established description of the argument schemes provided in the numerous literature on legal argumentation.

To annotate the decisions, we created a new taxonomy of arguments. Our taxonomy draws on three established taxonomies in legal argumentation theory: Alexy's theory of legal argumentation, Walton, Macagno and Sartor's taxonomy, itself a compilation of common and civil law argument taxonomies, and MacCormick and Summers' taxonomy based on a comparative study of statutory interpretation across nine jurisdictions. Based on these sources and the legal argumentation literature from the CEE context, we classify arguments into eight argument types:

I. **Formalistic Argument Types**
   1. **LIN** – Linguistic Interpretation
   2. **SI** – Systemic Interpretation (incl. CCI Constitutional Conforming Interpretation and EUCI EU Law Conforming Interpretation)
   3. **CL** – Case Law
   4. **D** – Doctrine

II. **Non-formalistic Argument Types**
   5. **HI** – Historical Interpretation
   6. **PL** – Principles of Law and Values (incl. CV – Constitutional Values, Rights, Principles and EUP – EU Values and Principles)
   7. **TI** – Teleological Interpretation
   8. **PC** – Practical Consequences

A comparison with existing taxonomies is enclosed in the annex.

Research design affects results and so does our taxonomy. One of the key research design decisions is how to classify case law. The easiest answer would be to consult the core tenets of CEE formalism, but they do not concern case law directly. Some authors argue that CEE judicial formalism is characterized by an "ideology of simple law," sug-

gesting CEE formalism excludes case law (Kühn, 2004; Manko, 2013).[43] This perspective would suggest classifying case law as either neutral or non-formalistic type of argument. However, we find important, that case law also functions similarly to statutes, serving as an authoritative source of law generated within the legal system and constraining interpretive alternatives. Given that case law constitutes a significant portion of arguments—approximately 40 % of all arguments and 66 % of all formalistic arguments if classified as formalistic (see Part Three)—the decision on how to classify it heavily influences the results. In this study, we classify case law as a formalistic argument.[44]

Second, inflation of categories might cause inflation of presence of such category. For example, when a court references multiple constitutional principles in a single passage, the taxonomy determines whether this counts as one non-formalistic argument or multiple separate arguments. Previous studies that differentiated various fundamental rights into distinct categories would likely count multiple arguments, potentially inflating the non-formalistic score (Matczak et al., 2010; 2015). The same applies to any other argument type. To avoid such "inflation" and maintain theoretical validity, we aligned our taxonomy closely with the core tenets of formalism and the three established argumentation theories. Annex A includes a comparative table showing what our taxonomy shares with existing taxonomies and how it differs.

The third research design issue concerns linguistic interpretation. In a nutshell, the question is whether to distinguish between the application and interpretation of law. Courts often apply the law without explicitly reasoning about possible interpretative alternatives. In many cases, they just apply the law rather than interpreting it. But when they do so, courts likely rely on the text of the law as their primary reference, raising the question of whether such applications should be considered and annotated as linguistic interpretation. If we consider

43 See, Kühn (2004): "Because any persuasive sources of law are beyond the ken of socialist scholars and judges, precedent is rather weightless. 'We have no precedent in our system of law, we are not common law judges,' is a typical answer to any objections made to the traditional refusal of precedent." (p. 560).

44 Similarly, see, e.g. (Matczak et al., 2010; 2015).

such practices as linguistic interpretation, this will significantly inflate the frequency of linguistic interpretation, as virtually every decision would include at least one instance, often much more, given that courts routinely apply multiple statutes (e.g., procedural and substantive laws). To address this, we marked linguistic interpretation only when courts referred to standards like meaning of words, definitions, phrasing, or syntax, although the threshold was quite low.[45]

Annotating court judgments is challenging, even for domain experts (Habernal et al, 2023; Lüders 2024). Determining whether an argument type is present and identifying its category often involves interpretation. This requires analyzing context, language, the proposition's role in the text, its connection to prior sections, and the presence of argument type features. Ambiguity in decisions frequently demands clarification, one could say interpretation (of the court's interpretation). Since at least two annotators must independently agree on the presence or an absence of an argument type, the process relies heavily on expert knowledge, rigorous training, detailed guidelines and experts solving disagreements (Braun, 2024).

To tackle this issue, we created detailed annotation guidelines that include both a coding scheme and clear instructions defining each argument type and when to identify it. These guidelines were built through a step-by-step process: we started with established argumentation theories (Alexy 2010; MacCormick and Summers 2016; Walton et al., 2021), added insights from German and Czech legal scholarship to reflect Central European perspectives (Möllers 2020; Wintr 2019), tested and improved them on over 200 pilot decisions from Czech Supreme Courts (SC and SAC), and then verified the developments against the original theoretical sources. We went through these stages multiple times over several months before coding the MADON dataset.

We provide such guidelines in Annex B. For each argument type, our guidelines usually focus on five key elements to better guide the

45 See our annotation guidelines in the annex B. Basically, any reference to "wording", "text" or phrase that "the text is clear" would very likely be considered linguistic interpretation.

annotators: the argument's core (such as purpose in teleological interpretation), subcategories (like travaux préparatoires within historical interpretation), typical phrases, so called "Triggers" (such as using the term "wording" which indicates linguistic interpretation), commentaries including tips for annotations, and examples (both borderline and typical). To enhance intercoder reliability, we developed decision flow charts to guide annotators through the annotation process. Given that existing studies share very little about how they annotated decisions (Matczak et al., 2010; 2015), the guidelines themselves are a contribution to empirical investigation of legal reasoning. We used this document heavily when annotating the decisions.

2.1.3 Holistic Assessment as Complementary Method to Measure Formalism

As mentioned above, quantifying arguments does not suffice for empirical research on formalism and argumentation.

During the pilot studies, we discovered that measuring argument frequency alone provides an incomplete picture of judicial formalism. Some decisions, while predominantly using formalistic arguments, appeared non-formalistic when evaluated holistically against the core tenets of formalism and considering the entire decision, its context, the facts of the case, and procedural history. For instance, although the decision no. 33 Cdo 1746/2022–235 of the Czech Supreme Court was rather short and relied on 1 linguistic, 2 case law arguments and 1 teleological argument, it was still considered non-formalistic, because the teleological argument was crucial.[46]

46 The court determined that paying individual invoices cannot be considered an acknowledgment of the rest of the debt invoiced through other invoices. The court held that interpreting invoice payments as acknowledgment of other invoices would contradict the purpose of the legal provisions governing debt acknowledgment. According to the court, this provision aims to help creditors specifically in situations where a single invoice is only partially paid (and not when one invoice is fully paid while others are not), with the acknowledgment applying only to the unpaid portion of that same invoice. Although the court also referred to the wording and

Besides, we encountered decisions criticizing lower courts for excessive formalism which contained mainly formalistic arguments (typically case law), yet their overall approach was rather non-formalistic.

Furthermore, we repeatedly observed that arguments carry different weights in judicial reasoning.[47] A decision might reference a fundamental principle only once or twice in a crucial paragraph while containing numerous formalistic arguments in less important sections addressing procedural matters. Similarly, the clarity of arguments varies significantly—some are explicitly stated while others are barely present and must be inferred based on context. This complexity is further illustrated in cases where courts reference statutory provisions that themselves incorporate non-formalistic arguments like principles, raising questions about whether such reasoning should be classified as formalistic or non-formalistic. Besides, some principles have a formalistic nature, like the so-called concentration principle, that strictly limits parties from bringing new evidence in the later stages of the proceedings. Thus, quantification does not suffice.

These observations led us to develop a complementary holistic assessment method. Building on existing research on formalistic reasoning,[48] we created a framework that considers multiple parameters both general and specific to Central and Eastern European legal contexts. When evaluating whether particular decision is formalistic, our annotating team evaluated the following aspects: types of arguments used; their frequency; clarity and explicit presence of arguments; weight of arguments; and whether the court critiqued previous courts for formalistic reasoning. While holistic assessment relies on the quantific-

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some case law, it did not really put emphasis on these arguments and focused on the purpose of the interpreted provision.

47 Similarly, Choi highlights the varying significance of arguments as a limitation in his research, which examined argument types by identifying key terms associated with them. He notes, for instance, that "legislative history might be a decisive factor in a court's ruling, even though it is only mentioned once. Or it could be mentioned several times, even though the court ultimately decides the case on other grounds" (Choi, 2020, p. 389).

48 Alberstein (2012) argues that formalism can be assessed using various parameters, though each parameter can often point to different direction.

ation of arguments (e.g., determining whether a decision contains more or fewer formalistic arguments), it also requires evaluating additional factors, such as to what extent the court relies on the argument or what preceded the appeal to the Supreme Court. Most importantly, the annotators had also taken into account the five core tenets of formalism and the context of the case. An example of formalistic decision is included in the Annex F.

Our holistic assessment seems to be reliable and fruitful. We achieved a Cohen's kappa coefficient of 0.65 on the overall category formalistic/non-formalistic, indicating "substantial agreement" among annotators despite the complexity of the assessment.[49] This success yields two significant findings for future empirical research. First, research assistants can be effectively trained to achieve sufficient inter-coder agreement on complex holistic assessments of formalistic/non-formalistic reasoning. Second, we found a strong correlation between decisions with higher frequencies of non-formalistic arguments and holistic non-formalistic assessments, suggesting that while the dual approach provides valuable validation, the relationship between argument types and overall formalism remains strong.

2.1.4 Summary

Both approaches necessitate a clear definition of formalism, a well-structured taxonomy of arguments, detailed annotation guidelines, and a team of domain experts for the annotation process. The taxonomy and guidelines should align with current theories of legal argumentation. We provide these in the annex.

49 A value of 0 indicates agreement by chance. According to Landis and Koch (1977), values between 0.21 and 0.40 are considered fair, 0.41 to 0.60 moderate, 0.61 to 0.80 substantial, and 0.81 to 1.00 almost perfect (Landis & Koch, 1977).

2.2 Further Methodology and Data

2.2.1. Czech Institutional Context

Before going into methodology, three key aspects need to be clarified to better understand the Czech Supreme Courts: 1) the structure of the Czech judicial system, 2) how Supreme Courts operate and 3) what is the role of Czech Supreme Courts within the system.

Firstly, Czech judiciary is dual-tiered, comprising the Constitutional Court (as separate "system") and the ordinary court system. The ordinary court system is hierarchically structured. Two courts remain at the top: the Supreme Court (Nejvyšší soud), hearing criminal and civil matters, and the Supreme Administrative Court (Nejvyšší správní soud, established in 2003), hearing administrative matters. Beneath these supreme courts, the hierarchy includes High Courts (vrchní soudy), Regional Courts (krajské soudy), and District Courts (okresní soudy).

Secondly, the Supreme Court serves as the highest court of appeal for civil and criminal matters in Czechia; similarly, Supreme Administrative Court is the highest court of appeal for administrative matters. The Supreme Court is comprised of two branches: the Civil Part and the Criminal Part.

Third, the Supreme Courts ensure uniformity of law. They mainly focus on legal questions, not determinations of facts. Both Supreme Courts hear extraordinary appeals, which are essentially appeals against rulings of lower courts. The role of the Supreme Courts is to remove and prevent inconsistencies in how lower courts interpret and apply law.

2.2.2 Dataset

Concerning sampling, the methodological literature identifies various sampling techniques for use in content analysis. Hall and Wright (2008) outline four primary techniques: (1) true random sampling, typically achieved through computer-generated random numbers; (2) systematic sampling, such as selecting every fifth case; (3) quota

sampling, which involves selecting a specific number of cases per category, such as up to two hundred cases per jurisdiction per year; and (4) purposive sampling, where cases are chosen based on their relevance to the study. Krippendorff (2018) expands on these methods, detailing eight sampling techniques: (1) random sampling, (2) systematic sampling, (3) stratified sampling, (4) varying probability sampling, (5) cluster sampling, (6) snowball sampling, (7) relevance sampling, and (8) census sampling.

We annotated a dataset of 272 decisions of Supreme and Supreme Administrative Court.[50]

The dataset consists of 272 judicial decisions from the Supreme Court and Supreme Administrative Court, spanning the period from 1997 to 2024, with a focus on decisions made between 2003 and 2023. To ensure a representative sample, stratified sampling was employed, balancing cases across time periods, court agendas (civil, criminal, and administrative), and types of cases (procedural and on the merits).

The temporal dimension of the stratified sampling was structured around ten time periods spanning 1997 to 2024, with civil cases beginning in 1997, criminal in 2000 (reflecting the availability of decisions) and administrative cases in 2003 (reflecting the establishment of the Supreme Administrative Court in 2003). The stratified sampling mostly followed three-year intervals (1997, 2000, 2003, 2006, 2009, 2012, 2015, 2018, 2021, and 2023/2024), with target quotas ranging from 25 to 31 decisions per period to maintain temporal balance.

The sampling further ensured approximately equal distribution between procedural decisions (usnesení) and decisions on the merits (rozsudky), which constitute 49.45 % and 50.18 % of the dataset respectively. By design, decisions on the merits are overrepresented in the dataset (in contrast to the population), which may partially limit repre-

50 Using online available calculators, such sample of 272 shall be representative given the population size is ca 230.000 (with the confidence level of 90 %, margin of error 5 %). See, e.g., https://www.calculator.net/sample-size-calculator.html?type=1&cl=90&ci=5&pp=50&ps=230000&x=Calculate. Of course, all this depends on the sampling process. The issue of representativeness will disappear once we manage to develop the argument mining model.

sentativeness but was intended to avoid a situation in which the dataset would be dominated by procedurally insignificant dismissals.

This sampling ensured proportional representation across the Supreme Court's civil branch (122 cases), criminal branch (58 cases), and the Supreme Administrative Court (90 cases).

Within these subpopulations, randomized sampling was used to prevent overrepresentation of specific judges or benches.

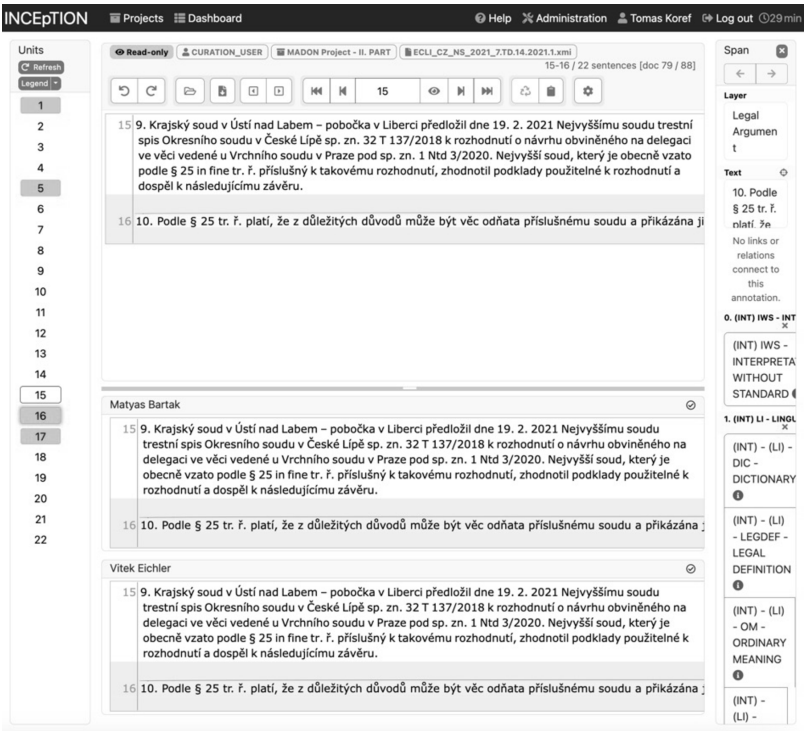
This stratification by court branch, time period, and decision type combined with randomization within each stratum, was designed to become a close representation of the relevant population of approximately 230,000 decisions of both Supreme Courts. I provide detailed overview of the dataset in Annex E.[51]

2.2.3 Annotation Process

The systematic annotation of Czech judicial decisions was conducted between July and September 2024, building on a pilot study from early 2024 that analysed 160 decisions and helped refine the methodology. We employed four law students from the Faculty of Law as research assistants. All of them had some background in legal theory and argumentation.

On the technical level, we used INCEpTION as our annotation software. Inception also calculates the intercoder agreement and enables solving the disagreement in a curation mode. This is an example of a single short decision with four annotations in paragraphs 1, 5, 16 and 17:

51 This document was prepared by research assistants under my supervision. I pursued all the sampling.



The process was divided into four phases:

1. Introduction (Week 1): Project orientation and interface familiarization
2. Training (Weeks 2–6): Training annotation of 80 decisions with reviews ca 4 times a week.
3. Coding (Weeks 7–12): Annotation of 272 main dataset decisions with reviews 2–3 times a week.
4. Finalization (Week 13): Resolution of disagreements and finalization of dataset.

Methodological Decisions and Solutions

We chose paragraph-level annotation over sentence-level. Sentence-level coding produced very low Krippendorf unitized Alpha scores. From the perspective of our research question, we were not so much interested in where a particular argument exactly ends, but more about whether a particular argument is present. Thus, this decision should not negatively influence the results.

Each argument type would be counted only once per paragraph, even if multiple instances within one paragraph appeared. However, one paragraph could include two different argument types. For example, if a paragraph cited five cases and referenced two explanatory notes, we would code it once for case law and once for historical interpretation. We hypothesize that this approach reflects how legal theorists typically analyze argumentation: focusing on argument types rather than counting individual citations within one single sentence or paragraph. When an argument type appeared repeatedly in different parts of the decisions, we annotated it as present multiple times. When courts referenced previous arguments with phrases like "with regard to above," we included these references only when the specific arguments were clearly identifiable.

We excluded rejected arguments. For instance, when a court discussed competing interpretations (e.g., court noted that historical interpretation suggests outcome X, linguistic interpretation points to outcome Y, and court ultimately decided for X rejecting linguistic interpretation), we would only annotate the accepted argument (historical interpretation in this case).[52] For more details on how we approached rejected arguments, see our guidelines.

We followed Braun's recent recommended practices for legal dataset annotation (Braun, 2024). This included maintaining detailed records of the annotation team (law students as annotators, PhD candidate in legal argumentation as arbiter, and legal practitioners as consulting experts for minority of complicated cases), ensuring at least two

52 Similarly, Krishnakumar, 2020.

independent annotations per decision, and automatically measuring as well as documenting intercoder agreement using INCEpTION. Disagreements were resolved through "arbiter review" or a combination of arbiter review and "forced agreement" for complex cases, typically for the holistic label. Simple arbiter review meant that independent arbiter (usually me) checked the disagreement and decided it according to guidelines. The combination arbiter review and forced agreement meant that annotators were required to discuss their disagreements and propose potential solutions, accompanied by justifications for their choices. The arbiter then reviewed both the suggested solutions and their justifications. In some instances, annotators could not reach consensus even after consultation, while in a minority of cases, they agreed on solutions that appeared to deviate from the annotation guidelines. In these cases, the arbiter retained authority to override the annotators' consensus based on the established guidelines, while taking into account the annotators' reasoning.

The project included over 1,000 hours of annotations, annotating ca 350 decisions (272 after excluding training cases). The dataset of 272 decisions contains 9,183 paragraphs that include 1,913 legal arguments in total.

As mentioned above, we measured intercoder agreement to ensure reliability of our annotations. While most categories showed good agreement, Linguistic Interpretation, Systematic Interpretation and Practical Consequences categories demonstrated lower reliability. This shows the inherent complexity of legal document annotation. Annotation of legal documents is generally considered complicated and the intercoder agreement is often lower.[53] The intercoder agreement is described in the Annex D. Disagreements were solved by the process described above.

53 See Braun (2024), who compared intercoder agreement in existing annotated legal datasets and found that average Krippendroff's alpha is 0,677, average Fleiss' kappa being 0,675.

Quantification of formalism

To measure courts' formalism, we needed certain indicators that link formalism as abstract concept to real world practices and outcomes of the courts (Ovádek et al., 2025). When developing these indicators, we relied on following hypotheses derived from the core tenets of CEE formalism:

1. Formalistic courts will use formalistic arguments more often.
2. Even when court uses some non-formalistic arguments, a court can still be formalistic if formalistic arguments disproportionately dominate
3. Formalistic courts issue more decisions that completely exclude non-formalistic arguments.
4. Formalistic court issues more decisions holistically evaluated as formalistic.

Based on these hypotheses, we implemented four key indicators to measure formalism:

1. The average number of formalistic and non-formalistic arguments per decision.
2. The proportion of formalistic to non-formalistic arguments.[54]
3. The proportion of decisions that rely exclusively on formalistic arguments or include no arguments (i.e., exclude non-formalistic arguments).
4. A proportion of decisions holistically evaluated as formalistic and non-formalistic.

According to our formalism indicators, a court is considered more formalistic when it demonstrates more formalistic arguments per de-

54 We believe this indicator addresses the concern raised by Choi (2020): as decisions become longer, the average number of arguments may increase simply due to their length. Without considering the relative proportions of argument types, one might overestimate a court's reliance on formalistic arguments. By focusing on the proportion of formalistic to non-formalistic arguments, our approach highlights the balance between these groups rather than merely capturing an absolute increase in one type.

cision, fewer non-formalistic arguments per decision, a higher proportion of formalistic arguments overall, more decisions relying exclusively on formalistic arguments, or a higher proportion of decisions holistically evaluated as formalistic.

2.3 Limitations

This study has five main limitations:

First, while the dataset spans a broad timeframe, including decisions from 1997 to 2024 (primarily 2003–2023), it consists of 272 annotated cases. Although I employed stratified and randomized sampling to ensure representativeness across time periods, court agendas, and case types, the limited sample size means that the findings should be interpreted as tentative, especially given the study's role in developing argument mining models that will enable large scale analysis of all the decisions ever published (230k). Nonetheless, the dataset shall be representative and provides a meaningful snapshot of judicial reasoning practices.

Second, comparing the Supreme Court and Supreme Administrative Court poses challenges due to their differing agendas and appellate procedures. While the courts deal with distinct subject matter, I aimed to mitigate these issues by also focusing on relative comparisons over time. Besides, I tried to disprove the claims that already engaged in the comparison. Moreover, even if the comparative aspects were removed, the study provides valuable insights into the reasoning practices of each of the two Supreme Courts on its own.

Another limitation lies in the possibility that judicial opinions do not fully reflect the real reasons behind decisions. Courts often engage in post hoc justification, which, of course, might (and often will) differ from the actual decision-making process. However, since critiques of formalism focus on the reasoning articulated in written opinions, this

study remains valid as it evaluates reasoning practices as presented.[55] Besides, the reasoning provided in decisions matters because it is the main output of judiciary for the parties to the dispute, the public and the scholarship.

Additionally, the study addresses only certain conceptualizations of formalism, as defined in existing literature. Formalism is a contested concept, and indicators of formalism vary. By narrowing the scope to a specific definition, the study ensures better reliability and validity, even though the findings might be supplemented be other operationalization of formalism in the future. The definition used reflects prominent scholarly debates, and this ensures the research contributes to the ongoing discourse on formalism in judicial reasoning.

Finally, the study encountered challenges with inter-coder reliability for certain argument types, particularly Systematic Interpretation and Practical Consequences. While this highlights the inherent complexity of annotating legal documents, substantial agreement was achieved in six out of nine categories, and disagreements were resolved through expert review. This approach aligns with best practices in legal dataset annotation, as outlined by, e.g., Braun (2024), ensuring that the findings remain robust despite these challenges.

Notwithstanding these limitations, the study provides a significant contribution to understanding formalism in judicial decision-making and offers a foundation for future research in this area.

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55 The question of whether arguments genuinely influence judicial decisions or serve as mere "window dressing" for public and professional audiences requires a different methodological approach. For instance, Abbe R. Gluck and Richard A. Posner conducted interviews with 42 federal appellate judges, exploring the role of arguments in statutory interpretation and decision-making. Their findings suggest that linguistic canons are often used as "window dressing," applied after a judge has already reached a conclusion. However, they note that determining the extent of this phenomenon remains challenging: "Linguistic canons especially, as opposed to policy canons, seem to be of this 'window dressing' variety" and "The question of how much work the canons are really doing and how much is mere 'show' (or cover for the common law tools they wish to deploy) is difficult to resolve" (Gluck & Posner, 2018, pp. 1330, 1353). Similarly, Spamann et al. used experimental methods, monitoring the computer activity of 299 judges with diverse backgrounds, to analyze the role of precedents in judicial decision-making.

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.

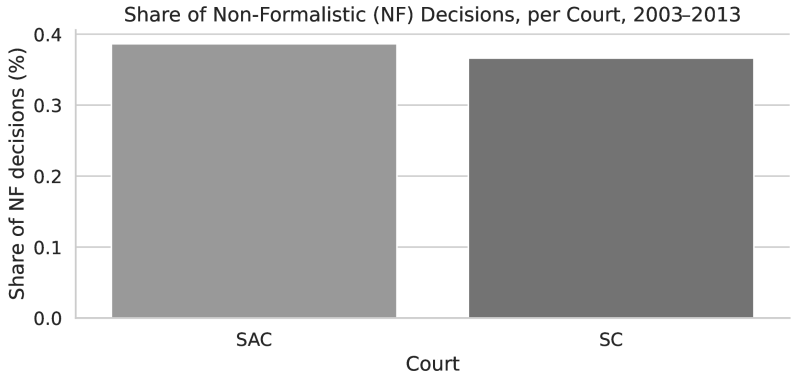
Act I.: Period 2003–2013. Tale of Two Courts Does Not Hold

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.

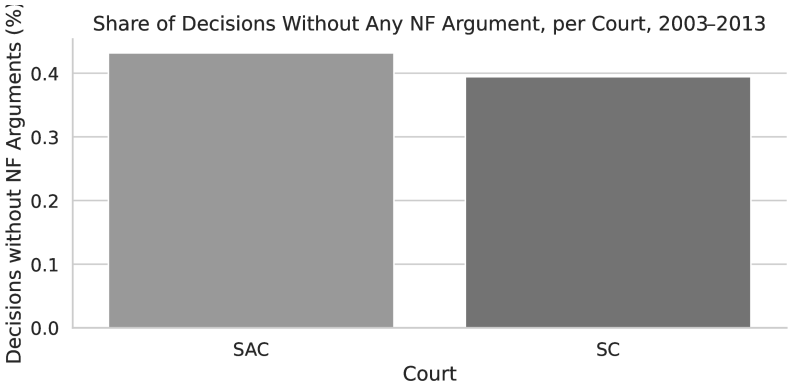
formalistic, as shown in the chart below. Both courts issued almost the same proportion of non-formalistic decisions:

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



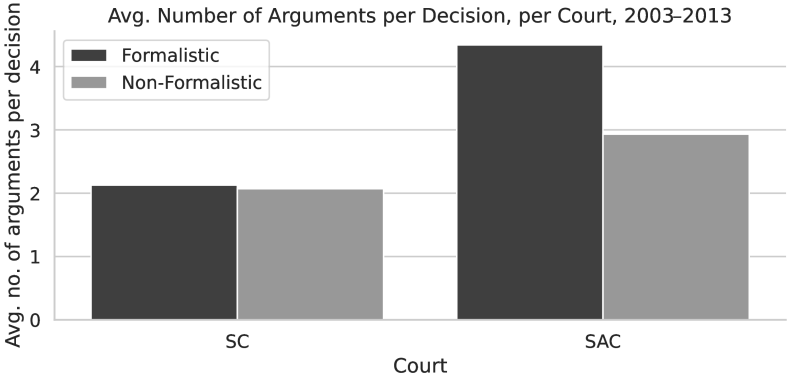
Similarly, both courts issued high proportions of decisions that lacked the non-formalistic arguments. As we mentioned, the more such decisions a court issues, the more formalistic it is. Here, the SAC and SC were again basically the same, while SAC leaned marginally more formalistic, issuing 4 % more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

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



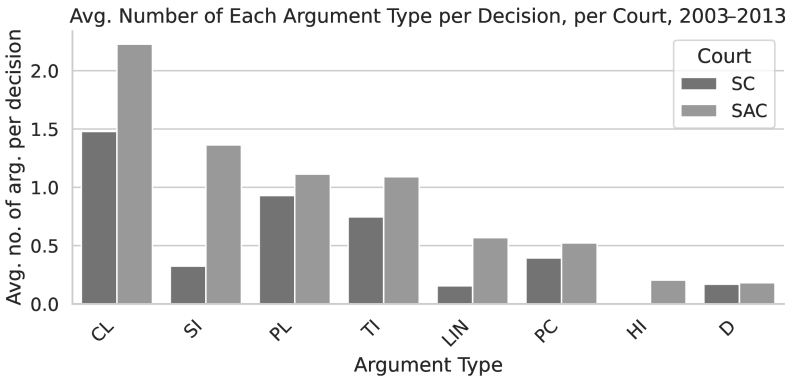
A closer examination of the argumentation practices reveals that the SAC relied more heavily on formalistic reasoning during this period. Looking at the proportion of formalistic argumentation, 60 % of all arguments that appeared by in the SAC decision-making were formalistic arguments, compared to 51 % 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:

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:

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)

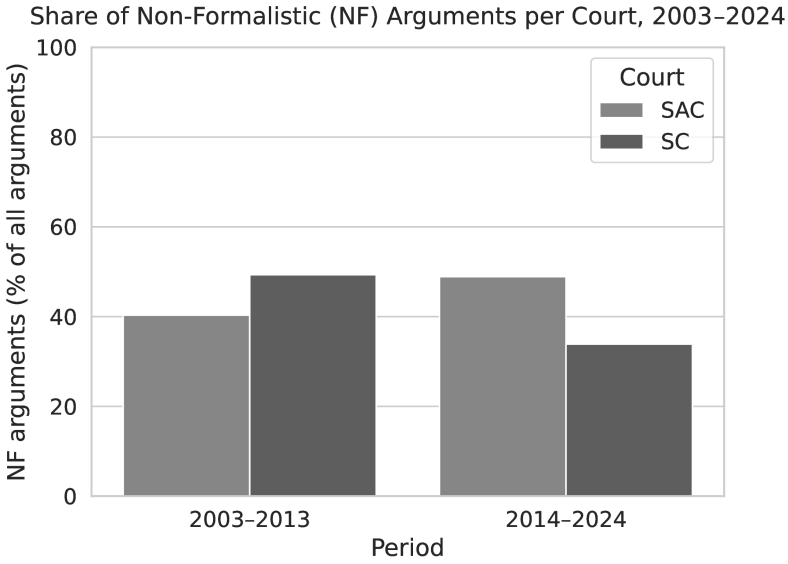
Indicator	SAC 2003–13	SAC 2014–24	SC 2003–13	SC 2003–13
Proportion of non-formalistic decisions	39 %	61 %	37 %	40 %
Average number of non-formalistic arguments	2.9	6.7	2.1	2.5
Proportion of formalistic arguments	60 %	51 %	51 %	66 %

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).

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.

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)

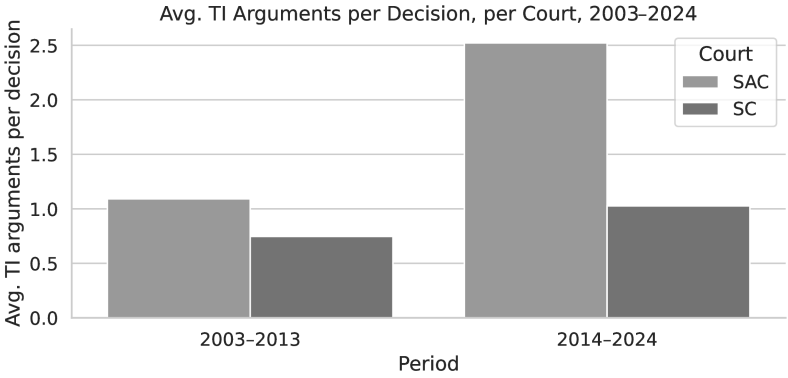
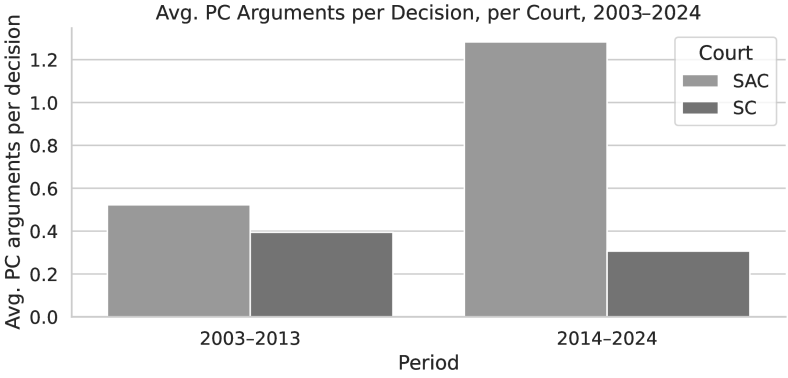


Chart VII: Average Number of Practical-Consequences (PC) Arguments per Decision by Court (2003–2024)



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:

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.

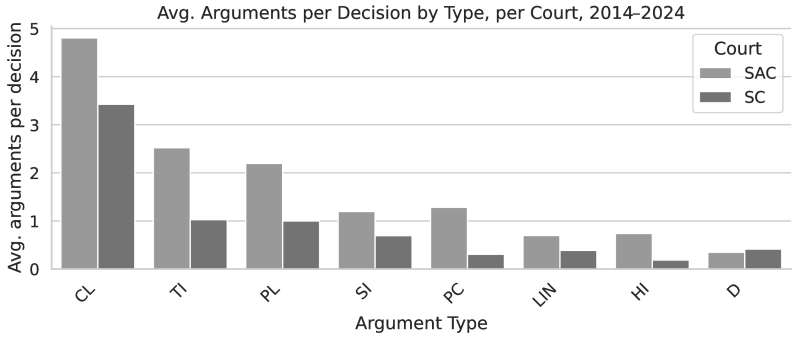
To sum up, the SAC shifted significantly toward non-formalistic reasoning in the second period. It has been issuing much more non-formalistic decisions, increasing non-formalistic arguments, and reducing the proportion of formalistic arguments, while the SC has remained largely unchanged. The Tale of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

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-

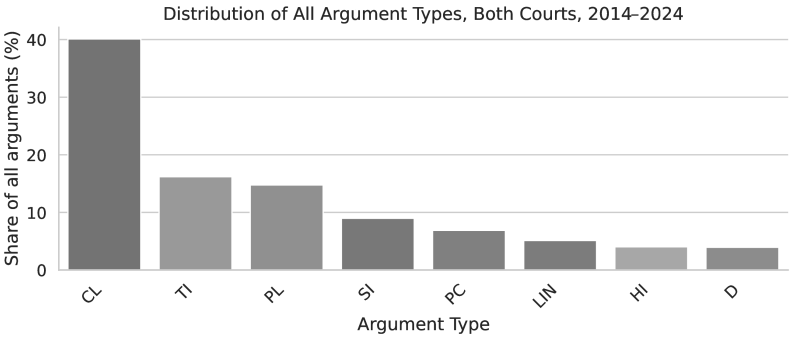
making. Contrary to some findings in the older literature,[59] a large majority of decisions in fact cites case law, with both courts frequently referencing it multiple times. Teleological interpretation appears in 65 % of SAC decisions and 43 % of SC decisions in 2014–2023. Courts also very often use 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.

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.

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.

Summary

This monograph presents four key findings. First, formalism can be analyzed using a dual method of argument quantification and holistic decision assessment. Second, the "Tale of Two Courts", portraying the Supreme Administrative Court (SAC) as less formalistic than the Supreme Court (SC), is significantly inaccurate for the SAC's first decade (2003–2013). During this period, the SAC matched or exceeded the SC's formalism across key metrics: it had similar rates of formalistic decisions, more decisions lacking non-formalistic arguments, and a notably higher proportion of formalistic arguments (60 % vs 51 %). Third, the Tale of Two Courts came to life in the second period (2014–2024), much like Pygmalion's beloved sculpture. SAC issued much more non-formalistic decisions (increase by 56 %), used much more non-formalistic arguments (increase by 130 %), and reduced the proportion of formalistic arguments, while SC's practices remained relatively stable. Finally, both courts surprisingly rarely use text-based arguments or legislative intent; they mostly rely on case law, teleological interpretation, and general principles instead.

The monograph advances our understanding of judicial reasoning in Czechia and CEE and provides tools to study it further.

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Appendix

Annex A. Annotation Scheme Compared to Existing Argument Taxonomies

This Study	**Equivalent in Existing Taxonomies**		
Koref	**Alexy 2010**	**Walton et al. 2021**	**McCormick et al. 2016**
LIN (Linguistic Interpretation)	Canons of interpretation (semantic argument)	Ordinary and Technical Meaning arguments; Eiusdem Generis and Noscitur a sociis arguments	Arguments from ordinary meaning; Arguments from technical meaning
Incl. A Contrario	Special legal reasoning	A Contrario argument	N/A
SI (Systemic Interpretation)	Canons of interpretation (systematic argument)	Systematic Argument; Economic Argument (excludes interpretations corresponding to older/hierarchically superior law or making expressions redundant)	Context-harmonization arguments
Incl. CCI – Constitutional Conforming Interpretation	N/A	Argument from Coherence of the Law	N/A
Incl. EUCI – EU Law Conforming Interpretation	N/A	Argument from Coherence of the Law	N/A
CL (Case Law)	Use of precedents	Authoritative Arguments	Arguments invoking precedents

D (Doctrine)	Dogmatic argumentation	Authoritative Arguments	Arguments of logical-conceptual type drawing implications from recognized general legal concepts
HI (Historical Interpretation)	Canons of interpretation (genetic argument and historical arguments)	Psychological Argument; Historical Argument (limited to legislator's will)	Arguments attributing specific intended meanings to legislative language; Historical Argument (limited)
Incl. Rational Lawmaker	Canons of interpretation (teleological argument) – concerns rational aims, not real aims of legislator (p. 241)	Absurdity argument (reductio ad absurdum, grounded on assumption of legislator's reasonableness)	N/A
TI (Teleological Interpretation)	Canons of interpretation (teleological argument); Special legal reasoning: analogy, a fortiori, argument ad absurdum	Teleological (Purposive) Argument; Analogia Legis Argument; a fortiori; Absurdity Argument	Arguments from statutory purpose; Arguments based on statutory analogies
PL (Principles of Law and Values) (incl. moral reasoning)	Part of general practical reasoning, of which legal argumentation is a special case	Argument from General Principles; Equitative Argument (concerning values or justice)	Arguments appealing to general legal principles; Arguments based on substantive reasons independent of authoritativeness
Incl. CV – Constitutional Values, Rights, Principles	N/A	Argument from General Principles	Arguments appealing to general legal principles
Incl. EUP – EU Principles and Values	N/A	Argument from General Principles	Arguments appealing to general legal principles

PC (Practical Consequences)	Canons of interpretation (historical argument – learning from consequences of past interpretative decisions, p. 239); Empirical argumentation	Equitative Argument (within category "argument from consequences")	Arguments based on substantive reasons independent of authoritativeness (moral, political, economic, or social considerations)
N/A	Empirical reasoning (excluded as focus was legal reasoning, not fact-finding)	N/A	N/A
N/A	N/A	Ancillary Argument from Completeness of the Law (excluded as ancillary and partially covered in SI)	N/A
N/A	N/A	Argument from Classification (we included only explicit definitions under LIN, not every subsumption under legal norms)	N/A

Annex B. Annotation scheme and extract from guidelines with examples

Classification	Category	Example
Formalistic	**Ling. Int.**	This category included references to ordinary meaning, dictionary, syntax and grammar, legal definitions or a contrario arguments. For instance: “In addition to the above, the Supreme Administrative Court adds that the wording of Section 87e(1)(i)(1) of the Act on the Residence of Aliens is very unambiguous and leaves no room for a different interpretation."
	Sys. Int.	This category included references to collision rules (e.g. lex superior derogat legi inferiori), rules that exception are to be interpreted narrowly as well as interpretation conforming with constitution or EU law. For instance: “Since the provisions of Section 281 of the Criminal Procedure Code do not contain special provisions for decisions pursuant to Section 288(3) of the Criminal Procedure Code, the general provisions on the subject matter and local jurisdiction of the court (Sections 16 to 22 of the Criminal Procedure Code) apply.”
	Case Law	This category included any reference to previous case law. For instance: “These considerations and conclusions are, among other things, based on the interpretation of a similar issue made in the judgment of the Supreme Court dated October 23, 2007, file no. 29 Odo 1310/2005."
	Doctrine	This category included any reference to doctrinal work. For instance: “It is therefore possible to conclude that for resolving issues not explicitly regulated by the Tax Code, even in the declaration of assets according to § 177 para. 1 of the Tax Code, the provisions of § 260a

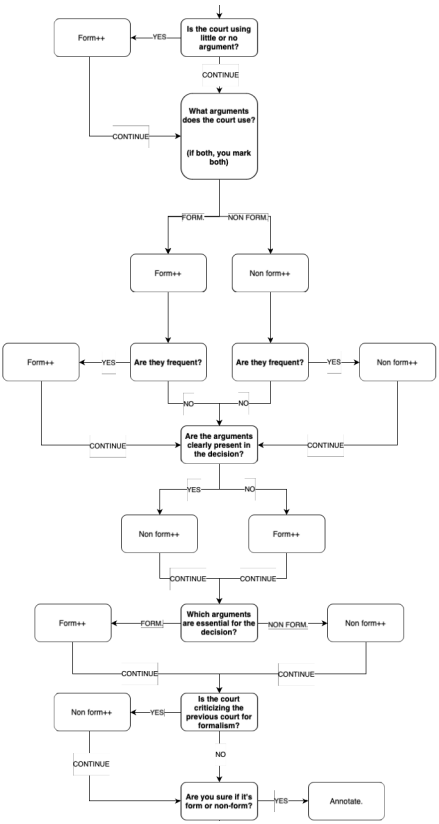
		to § 260h of the Civil Procedure Code regarding the declaration of assets shall be used (similarly Baxa, J. et al. Tax Code. Commentary, Prague: Wolters Kluwer CR, a.s., 2011, p. 1122)."
Non-formalistic	**Hist. Int.**	This category included references to explanatory notes, stenographic records circumstances of the law's enaction. For instance: "During the discussion in the Chamber of Deputies, this amendment was moved to § 131 paragraphs 1 and 2 of the draft Administrative Code. However, the Senate adopted an amendment to delete these provisions, reasoning that conducting administrative proceedings in another municipality is impracticable in practice and that officials deciding on matters of their employer must not violate the law (cf. stenographic record of the 15th Senate session of May 20, 2004, 4th term, and Senate Resolution No. 445, www.senat .cz)."
	Principles and values	This category included references to general legal principles (legal certainty), domain principles (prohibition of retroactivity in criminal law) and constitutional or EU principles incl. fundamental rights and freedoms. For instance: "It must then give a convincing, complete and comprehensible statement of the reasons for its decision in accordance with the general principles of administrative procedure."
	Teleological Int.	This category included references to the purpose, analogy, teleological reduction, ad absurdum argument and a fortiori argument. For instance: "Since the object of the offence of general danger by negligence is, among other things, the interest of society in the protection of human life and health, its concurrence with the offence of grievous bodily harm by negligence is excluded."

	Practical Consequences	This category included references to the impact on addressees, society, other entities or procedures. For instance: "A limitation period in recovery proceedings applied by analogy to assessment proceedings would impermissibly set very wide time limits for the assessment of customs duties"

Full guidelines are available on-line.[67]

67 https://drive.google.com/drive/folders/1iSq-v5OY-_nz3qIHvtyrOba0IDzpY4kP

Annex C. Flowchart example (excerpt)



Annex D. Intercoder agreement

	Part I	Part II
1.LI	0,54	0,28
2.SI	0,35	0,42
3.CL	0,95	0,94
4.DO	0,94	0,90
5.HI	0,68	0,80
6.PL	0,76	0,65
7.TI	0,63	0,65
8.PC	0,20	0,21
Overall	0,65	

All values are calculated using Krippendorff's unitized alpha, except for the *Overall* label, which is calculated using Cohen's kappa.

Annex E. Overview of dataset

1. DISTRIBUTION BY COURT BRANCH

Court Branch	Number of Decisions	Percentage
Supreme Court (Civil)	124	45.59 %
Supreme Court (Criminal)	58	21.32 %
Supreme Administrative Court	90	33.09 %
Total	272	100 %

Type of Decision	Number of Decisions	Percentage
Usnesení (Rulings)	135	49.45 %
Rozsudky (Judgments)	137	50.18 %

3. TEMPORAL DISTRIBUTION BY COURT BRANCH

Year	Civil	Criminal	Administrative	Total
1997	13	—	—	13
2000	13	12	—	25
2003	13	6	12	31
2006/7	13	6	12	31
2009	11	6	10	27
2012	11	4	10	25
2015	13	6	12	31
2018	12	6	12	30
2021	13	6	10	29
2023/24	12	6	12	30
Total	124	58	90	272

Annex F. Example – Formalistic Decision

(translated via Claude and DeepL and adjusted)

26 Cdo 597/2015

Decision

The Supreme Court of the Czech Republic decided by the chairman of the panel JUDr. Zbyněk Poledna in the enforcement case of the entitled party O2 Czech Republic a. s. with its registered office in Prague 4, Za Brumlovkou No. 266/2, Company ID 60193336, represented by JUDr. Jana Kubištová, CSc., attorney with office in Prague 7, Trojská No. 69/112, against the obligated party Ing. J. J., for 124,569.10 CZK with accessories, conducted at the District Court in Tachov under file no. 11 Nc 4703/2007, on the appeal of the obligated party against the resolution of the Regional Court in Pilsen dated August 16, 2013, ref. no. 13 Co 355/2013–34, as follows:

The appeal proceedings are terminated.

Brief reasoning (§ 243f paragraph 3 of the Civil Procedure Code):

The Supreme Court of the Czech Republic terminated the proceedings on the appeal of the obligated party against the resolution of the Regional Court in Pilsen dated August 16, 2013, ref. no. 13 Co 355/2013–34, pursuant to the provision of § 243c paragraph 3, second sentence of Act No. 99/1963 Coll., Civil Procedure Code, as effective until December 31, 2013 (cf. Art. II point 2 of Act No. 293/2013 Coll., amending Act No. 99/1963 Coll., Civil Procedure Code, as amended, and certain other laws) – hereinafter referred to as "Civil Procedure Code", without examining the fulfillment of the condition of mandatory representation of the appellant in the appeal proceedings (§ 241 of the Civil Procedure Code), as the appeal was explicitly withdrawn in full by the appellant's submission dated January 5, 2015.

The reimbursement of costs of the appeal proceedings is decided under a special regime (§ 87 et seq. of Act No. 120/2001 Coll.).

No remedy is admissible against this decision.

In Brno, February 17, 2015

JUDr. Zbyněk Poledna

chairman of the panel