YOUNG ACADEMICS

European Legal Theory 5

Tomáš Koref

An Empirical Analysis of Legal Reasoning in Czechia

A Tale of Two Courts Revisited

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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-

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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

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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

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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.

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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

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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.*

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