

Explanation of the Project Proposal

1. Summary of previous findings (the state of the art)

Vast literature has been written about extralegal factors that have an impact on judicial decision-making. In the last couple of decades, study of extralegal factors has established itself as an important field of research at the intersection of law and social sciences. Starting with a groundbreaking Pritchett's (Pritchett 1941) study on ideology on the US Supreme Court, numerous papers have dealt with the impact of ideology (Carp & Rowland 1980 or Revesz 1997), external political influences (Segal 1997 or Friedman & Harvey 2003), public opinion (Friedman 2010, Epstein & Martin 2012 or Lim et al. 2015) or even other factors on judicial decision-making (for a comprehensive review see Whittington et al. 2010 and Cane & Kritzer 2010).

Despite the existence of numerous articles and books, the possibilities of the research on that particular topic still has not been exhausted, especially due to the fact that current works deal mainly with the situation in the US and to a lesser degree in Western Europe and do not cover (with few exceptions) the situation in the Central and Eastern Europe at all. The Czech scholarly debate concerning courts and their decision-making processes is still dominated by the traditional doctrinal approach. Judicial decisions are analyzed from doctrinal or normative points of view, while other influences are left to the public to speculate about.

Hence, the literature focusing on extralegal factors in the Czech context is very scarce – both in legal and social science journals. Occasionally, experts expressed their wonder and dissatisfaction with the virtual non-existence of academic literature concerning the research problem covered by this project proposal (Wagnerová et al. 2007, 196), but the situation has not nearly changed within the last couple of years.

In the legal literature, there are only a few articles and one book that could be considered a partial exception from this rule. Chmel authored two articles (or rather one article separated in two parts) concerned with “the politics at the Constitutional Court” (Chmel 2013-1 and Chmel 2013-2). These two articles touch upon the research problems this project aims to tackle. They can be considered a good opening of the debate but far from being exhaustive. As regards public opinion, we can refer to an overview account of the impact of media on judicial decision-making by Stachoňová (2016).

A recent book *Právnícký Olymp* (Kysela et al. 2015) contains portraits of many former judges of the Constitutional Court and tries to describe how the judges' personality may influence their decision-making. But even this book is aimed more at the general public. It relies on interviews with judges (and other relevant actors), but does not apply a rigorous scientific methodology generating new findings.

In social science journals, we can find only one relevant article connected to this research project proposal (Kopeček & Petrov 2016). The article explores the use of petitions proposing the annulment of statutes by members of the Czech Parliament and tests whether judicial review of legislation serves as a tool for the parliamentary opposition. While this is undoubtedly a relevant contribution to a discussion about external political influences on the Constitutional Court's decision-making, it is more concerned with the parliamentary side of the narrative and covers just a small part of our research problem.

Other than that, literature concerning specifically this project proposal's research problem is missing and we can refer only to (a) literature concerned with more general problems (law and politics, law and media) or loosely related problems (judicialization of politics, judicial activism), or (b) journalistic/biographic literature.

As regards the former, we can find literature concerning the impact of media (and by extension public opinion) on society (Jirák & Köpplová 2007, Růžička 2011) or literature on judicialization of politics (Hloušek & Šimíček (eds.) 2004 or Smekal & Pospíšil et al. 2013). Still, these sources are only relevant as a part of theoretical background as they leave the specific problem of the impact of the extralegal factor on judicial decision-making either untouched or only mention it in passing.

The category of journalistic and biographic literature provides important data for this project's research problem, but naturally cannot be considered a systematic scientific inquiry. In this regard, we can point to several biographies of former judges (Baroš (ed.) 2009, Němeček 2010 and 2014) or to a book of interviews with the president of the Constitutional Court (Němeček 2011). With the exception of the book concerned with judge Čermák (Baroš (ed.) 2009), these biographies lacked scientific ambitions; they did not aim to answer any research question but rather to describe the personality of the respective judges and to document their lives. Even the mentioned exception covers only a fraction of the research problem: Baroš (2009) basically explains the connection between Čermák's philosophical work and some of his most important

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decisions. Larger empirical projects based on the systemic data collection and based on the application of transparent and rigorous methodology are missing altogether.

To sum up, the research on the impact of extralegal elements on judicial decision-making in the Czech Republic has been largely overlooked. There exist just a few articles in legal or social-science journals that are concerned with this project's research problem and even those (1) leave most of the problems untouched and (2) are methodologically not completely convincing, therefore they can be considered only a kick-off for the academic debate. Moreover, there is an exceptionally wide knowledge and literature gap in the area which this project is aiming to fill. The whole project can therefore be considered a pioneering and innovative effort in the burgeoning field of law & politics which is still largely undiscovered in the Czech scholarly writing.

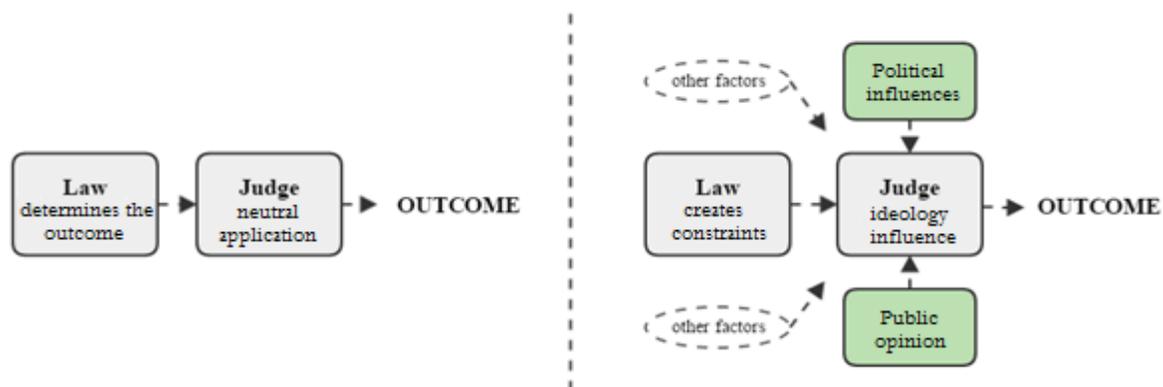
2. Summary and aims of the project, including its timeframe and outputs

2.1. Topic selection and theoretical background

This project proposal is based on the presumption that legal decision-making is a deterministic application of rules and that judges are not mere umpires that apply rules in a deterministic way, as claimed by CJ Roberts (Posner 2008). On the other hand, the project proposal does not accept the radical realist notion that judicial decision-making is based solely on judges' maximization of their preferences and that law is just a "fig leaf" covering the real reasons of a decision (Frank 1930, 101). The theoretical debate has recently continued in the clashes between the rationalistic strategic (e.g. Epstein & Knight 1998) and behavioral approaches (e.g. Spaeth & Segal 2001) confronted also with Posner's theories of judicial behavior (Posner 2008, 19 et seq.).

Thus, the theoretical starting point of this project is found between the aforementioned extreme positions. It can be described as follows. Judicial decision-making is not "law all the way down" and it cannot be explained and fully understood in purely legalistic terms – as extralegal factors like public opinion, political pressure, ideology (and other psychological aspects of a judge's personality) have also some effect on judicial decision-making. This view is supported by numerous studies (*see* the literature in Part 1) and has been nicely summed up by Gibson (1983, 9): decisions judges render "are a function of what they prefer to do, tempered by what they think they ought to do, but constrained by what they perceive is feasible to do."

Still, law creates constraints on judges which are arguably much more pronounced in continental rather than in common law jurisdictions (even though the exact effect of law on a judicial decision-making remains a matter for discussion). The effect of the legal constraints and the room for judges' discretion are not constant. In "easy cases", law clearly determines the result, but in "hard cases" in which the outcome depends on consideration of abstract principles and where judges (as a matter of fact) enjoy broader discretion, law ceases to play its determining role. In this "maneuvering room" of discretion, the effects of extralegal factors are much more significant than in easy cases. This theoretical model may be visualized as follows (judge as "neutral arbiter" left; "our" model right):



The MUNI research team therefore builds on the assumption that the Czech Constitutional Court as a special apex court that (1) is legally constrained "only" by the (often relatively vague) constitutional norms and principles, (2) decides a lot of "hard cases" and (3) finds itself under exceptional political and public scrutiny, is an ideal subject for a study how extralegal factors such as ideology, politics and public opinion impact on its decision-making. The research is thus limited to the Czech Constitutional Court and "hard cases" that are tentatively defined as cases whose outcome is not unambiguously determined by law.

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2.2. Aim of the project

The project therefore aims to explore and analyze the impact of the aforementioned extralegal factors (ideology of a judge, political influences and public opinion) on the Constitutional Court's decision-making. In order to fulfil it, the MUNI team needs to approach the topic in a multidisciplinary fashion (*see* Part 4).

By conducting an extensive and methodologically diverse research, the team's objective is to close the vast knowledge and literature gap (*see* Part 1); the need to close this knowledge and literature gap is especially strong in light of the high importance (both from the academic and public perspective) of the research problem (*see* Part 3).

As regards the broader academic and public context, the project (through its outputs) aims to start a rich academic debate about the research problem itself as well as about the possible approaches to judicial decision-making and about the methods of conducting a research in this area.

In this regard, the team is going to start this debate not only through the publications and workshops. At the end of the project, a complete dataset of the relevant Constitutional Courts decisions and significant parts of other datasets (questionnaires, interviews, unless a promise of anonymity would preclude this) will be made publicly available for other researchers' use.

2.3. Phases of research

The first phase of the research project focuses on identifying key variables, defining the concepts and on the data collection. The data will be gathered by multiple means, especially from primary (judgments) and secondary textual sources; judgements will be gathered from Constitutional Court's databases. Moreover, interviews with judges of the Constitutional Court (both past and present) as well as with other relevant actors (assistants of judges etc.) shall bring valuable insights. The institutional affiliation of Ladislav Vyhnánek (assistant of judges at the "2nd" and the "3rd" Constitutional Court) provides a considerable comparative advantage to the project as it provides a smooth access to data and opinions via consultations and interviews.

In the second phase of the research, after the finalization of the datasets, the data will be analyzed and the team will start preparing publications. Conference and working papers will be written first. After the feedback (including the feedback from international partners), articles and books will be written and submitted. The research framework can be specified in detail as follows:

Year 1: Elaboration on analytical framework and precise research design, study of the literature, starting the data collection; start of the discussing the research design with international partners, first submission article discussing the general methodological issues.

Year 2: Continue of data collection, including in-depth interviews, finalization of data sets, data cleaning, analysis of collected data, statistical modelling, preparation of articles and their first submissions.

Year 3: Evaluating and integrating the feedback, publication of articles, finalization of the book manuscripts; presentations of the results of the project.

2.4. Risk management, contingency plans and progress monitoring

The main tentatively identified risk is connected to the willingness of the judges, law clerks and politicians to participate in the interviews (*see* Part 4.). However, this risk is minimized by the fact that Ladislav Vyhnánek has worked at the Constitutional Court since 2008 and also by the fact that Monika Stachoňová has already conducted similar interviews. As a contingency plan – we can replace a potentially unwilling interviewee as we plan to interview just a sample of these actors (*see* Part 4.).

The progress monitoring will be safeguarded primarily by interim GAČR reports. The team will also hold regular meetings – the fact that all team members work in Brno helps significantly in this regard. Another external feedback and progress monitoring will be provided by the workshop, the conference and also by research seminars held at the Faculty of Social Science, where the team will regularly present their progress.

2.5. List of planned publications and publication strategy

The dissemination of the project outcomes is projected as follows: 2 article in law or social science journals with impact factor; 1 article in law or social science SCOPUS journal; 4 additional articles in Czech law and social science peer-reviewed journals; 2 books in the Czech language (one edited book and one monograph); 2-3 working papers; 2-3 conference papers (e.g. ECPR, ICON-S or similar venue dealing with issues of law and politics).

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The first paper will focus on the methodological problems connected to the research of extralegal factors in the Czech context. After receiving feedback on the proposed methodology, the team will start preparing the articles “on the merits”. To safeguard additional feedback (on feedback, *see also* Parts 5 and 6), the team will organize a workshop in spring 2018 with the participation of relevant actors (judges, senators).

Concerning the more specific research problems (i.e. impact of ideology, political influences and public opinion), the research will be conducted simultaneously, as there is no need to conduct the research of the specific problems in any specific order, and the data for the dependent variable will be the same for all of them. After the end of data collection and analysis, the team will work on papers/articles based on the role division (*see* Part 7.). Most papers will first be presented as conference/working papers and submitted for publication after incorporating the feedback. Some of the papers will be presented at the panel organized by the team at a conference in autumn 2018; others will be presented at domestic or international conferences.

As regards publication strategy, we aim to publish two articles in journals with impact factor (East European Politics & Societies and EuConst). The first article will focus on political influences on the Constitutional Court's decision-making and the second will summarize overall findings of the project. As a backup strategy, other journals with IF such as (ICL Journal, Review of CEE Law) may be used.

Remaining research questions (public opinion, ideology and judicial decision-making) will be dealt with by articles published in Czech peer-reviewed journals. We aim to publish in the most prestigious law and political science journals [Právnik, Jurisprudence, Časopis pro právní vědu a praxi, Politologický časopis (SCOPUS), SEPS]. A relatively high number of the Czech publications is motivated by the desire to effectively introduce the topic to the Czech academic/expert community.

Both books (a monograph and an edited book) will be published with MUNI Press as open-access. Open access to the main findings of this project is vital for MUNI team in order to reach the broadest audience possible and thus fulfil one of the project's main objectives, i. e. stimulating a discussion on extralegal factors in the Czech context.

Visualized timeline of the project:

	Spring 2017	Autumn 2017	Spring 2018	Autumn 2018	Spring 2019	Autumn 2019
1. Conceptual Framework						
Detailed research design						
Design of interviews						
Study of the secondary literature						
Consultations with international partners						
2. Data collection and analysis						
Data collection						
Interviews						
Creation of the dataset						
Data analysis						
Consultations with international partners						
3. Dissemination of outcomes						
Workshop						
2 Articles in Czech journals						
Conference						
2 Articles in Czech journals						
2 IF Articles and 1 SCOPUS Article						
2 Books						

3. Justification of the project

The project proposal is based on a combination of **three main (and complementary) justifications**. **Firstly**, the research problem is very relevant from the academic perspective. **Secondly**, it concerns issues of public and political importance. **Thirdly**, despite its importance, very little scientific attention has been paid

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to the research problem in the Czech context – that is why the project has enormous potential to bring an innovative insight into the Czech academic discussion on the role and functioning of courts.

1) The research problem is **highly relevant from the academic perspective**. As mentioned in Part 1, research of extralegal factors and their impact on judicial decision-making has gradually become an established subdiscipline in both law and social sciences. This is especially true as regards the top courts (supreme courts and constitutional courts) that fulfil an undeniable role in law-shaping and that are arguably less constrained by legal factors than lower courts. Foreign experience shows that **such research is methodologically feasible and that it can produce important results**.

2) This point is closely connected to the second justification. The question of existence (and importance) of some extralegal factors influencing the Czech courts' (and especially the Czech Constitutional Court's) decision-making is **an important political and public issue**, closely connected to the debate concerning relevant political-constitutional concepts like the legitimacy of judiciary transparency, separation of powers or rule of law.

The most relevant of those related issues is the **legitimacy of judiciary**, which is – especially in continental Europe – often connected with the notion of judges as experts that interpret and apply democratically adopted laws (unlike politicians). Existence of extralegal factors influencing judicial decision-making may challenge this view of a judge “as a neutral arbiter” and may even influence the broader public and political discussion about the legitimacy of judiciary, selection of judges or administration of justice.

To illustrate this practical aspect of the project – there is an ongoing debate in the Czech Republic concerning political pressures in the process of (re)appointment of the constitutional judges and especially concerning the role of the Senate that confirms/denies the nominees. A thorough analysis of the political context of (re)appointment of constitutional judges and its impact on the respective judges' decision-making can show: (1) whether and to what extent the political context of appointment indeed has an impact on the decision-making process, (2) what does its importance depend on or (3) how do the judges themselves reflect the political context in their opinions. So far, the discussion in this regard has been based largely on intuitive understanding and anecdotal evidence. The team on the other hand asserts that before discussing how to reflect (politically, socially or legally) extralegal factors that influence the Constitutional Court's decision-making, it is necessary to collect and analyze relevant data: in other words, it is necessary to conduct a systematic rigorous inquiry. This leads us directly to the third point.

3) Despite the importance of the research problem and the need for its scientific elaboration, the team has identified **enormous gaps in the current research**, caused arguably by the low interaction between legal and social-science fields in the Czech Republic. As stated above, scholarly literature concerning the extralegal factors influencing the decision-making of the Czech courts is almost non-existent and that applies even to the Czech Constitutional Court (*see* Part 1). This project aims to close this gap and start a relevant academic debate and thus address the previously mentioned justifications.

4. Research problem, questions and methods of solution

4.1. General research design

The basic project design could be described as follows.

It is based on the **theory** (*see supra* Part 2) that – within the constraints created by law – judges as decision-makers enjoy certain *de facto* discretion and that use of their discretion might be affected by some extra-legal factors, such as their **ideology** (or more broadly personality), **political influences** and **public opinion**.

As regards ideology and public opinion, we refer to the conventional meaning of these concepts, although suitable proxies will have to be found in order to operationalize these variables (*see methodology infra*). Political influences can be defined – as understood in this project proposal – as influences related to separation of powers and political/strategic aspect of judicial decision-making. Specifically, the „political influence“ part of research would deal with more concrete independent variables like “possibility of reappointment of a judge”, “ideological affinity of the sitting legislative body” (cf. Friedman & Harvey 2003) or “ideological affinity of the legislative body that adopted a challenged piece of legislation”.

These three factors are identified as **3 basic independent variables**. Other independent variables might be included in particular studies if it becomes obvious they need to be accounted for. For example, a study concerned with the impact of judge's ideology on his/her decision-making needs to account *inter alia* for

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panel effects (cf. Kim 2009), even though in the Czech Republic, the influence of judge rapporteur – rather than the panel – seems to be dominant (Vyhnánek 2013). Due to the low volume of information on the research problem in question in the Czech Republic, the project involves a large explorative component which does not prevent discovery of other important elements in judicial decision-making. However, the core of the research will be focused on the 3 basic independent variables which were identified as crucial by existing literature on the subject. It will be assessed in accordance with information of their age, gender and other relevant control variables which will bring broadened view and the valuable context for the research.

When operationalizing independent variables, the MUNI team can rely on the rich scientific and methodological debate in the USA and in Western Europe. Though some specifics need to be accounted for, e.g. in the case of **ideology** of a judge, one cannot simply “borrow” the proxy variable used in the United States like the party of the appointing president or the Martin-Quinn score (<http://mqscores.berkeley.edu/>), but the considerations can be creatively adapted to the Czech context. The team will create a score analogous to the Martin-Quinn score in the case of the Czech constitutional judges, although not only on a simple liberal/conservative axis (as it does not suit) the Czech political reality, but rather on a more complex two axis scale (similar to “political compass”: <http://www.politicalcompass.org>) that accounts both for the left/right (economic) division and the liberal/conservative (social) axis. Also, “political support” in the Senate may be used instead of a political party of the appointing president. A similar approach might be taken with regard to the other variables as well, so that operationalization of the variables (finding suitable proxy variables) does not present an insurmountable challenge.

The project will then explore the effect (its existence and size) of these independent variables on **dependent variables**. The operationalization of these dependent variables will differ in particular studies, but in most cases we will study the impact of extralegal factors on (1) a judge's vote or (2) the overall outcome of the case or (3) reasoning of the opinion (depending on a particular study's focus and the methods used). The relationship between these variables will be examined from several points of view and with the use of multiple methods (for a more detailed account, *see infra*).

4.2. Research problem and research questions

The basic research problem can be described as **the impact of judges' ideology, political influences and public opinion on the decision-making of the Czech Constitutional Court**.

It follows that the most general research question of this project is: Do extralegal factors like ideology, external political influences or public opinion influence judicial decision-making? And if yes, to what extent?

This main research question can be divided into bundles of more specific research questions (though the list is not exhaustive):

1) As regards ideology: Does a particular judge's ideology have an impact on his/her voting in a specific set of cases (for example social rights, criminal law, privacy cases, civil liberties)? Do panel effects/deliberation have an impact on the size of the effect? As regards areas where ideological impacts are traceable, is the “ideological nature” of the decision-making process reflected in the reasoning of the opinion/dissenting opinions?

2) As regards political influence: Is there a correlation between political support of a judge in the Senate confirmation and his/her voting? More specifically, is there a correlation between the *political support* of a Constitutional Court judge in the Senate, tentatively identified by looking at senators speaking and voting in favor/against a particular Constitutional Court candidate, and his/her *voting* in some sets of politically relevant cases (social rights, rights of defendants, privacy)? In the case of judicial review of legislation, do political affiliation of the petitioner and political composition of the Parliament have an impact on the outcome of the case? Does the possibility of reappointment of a constitutional judge have an impact on the respective judge's voting in politically salient cases?

3) As regards public opinion: Does public opinion have an impact on the judge's voting? How do the judges perceive public opinion: are they aware of it; and if so, how do they handle it? How does media coverage influence the Constitutional Court' decision-making (for possible methodology, cf. LIM et al. 2015)? Is the public opinion's impact reflected in the reasoning of the judgements?

In the particular studies based on empirical methodology, we will test null hypotheses (i.e. that the specified extralegal factors are not present) based on the aforementioned research questions. Complementary studies based on legal methods (analysis of reasoning) will not include hypotheses testing.

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4.3. Methodology

The research problem is a very complex one and cannot be approached by purely doctrinal legal methods. It is also apparent that each of the aforementioned research (sub)questions is solved best by a different method (or their combination). The MUNI team's approach will therefore be based on **a combination of legal and empirical (both qualitative and quantitative) methods**, which – used together to complement each other – will be able to maximize the potential of the project (Epstein & Martin 2014). Use of the mixed methods will enable **triangulation** that shall contribute to the persuasiveness of conclusions (Creswell 2015).

In order to clarify this rather abstract notion, the MUNI team can refer to an inspirational example of a co-operation between Barry Friedman, Lee Epstein and Andrew Martin. These scholars used different but complementary methods in order to maximize their understanding of public opinion's influence on the decision-making of the US Supreme Court. Friedman (2010) – employing legal and qualitative methods – argues in his book that public opinion has a great impact on the decision-making of the US Supreme Court. Epstein & Martin (2012) then used quantitative methods in the effort to validate basic claims about the effect of public opinion on the Court and even to explore the causality (rather than a mere correlation).

Similarly, the MUNI team aims to combine all the aforementioned methods in order to explore the research problem from many possible angles and in order to make up for each of the respective method's weaknesses. For example, that quantitative methods are generally more suitable for “large n” studies while qualitative methods are better equipped to serve in “small n” studies (George & Bennett 2005).

At the same time, the team will not exclude legal/doctrinal methods; these will be used mostly to analyze the reasoning of judgments in „small n” to shed light on the (possible) difference between “what judges do”, “what judges say” and “what judges say they do”. Besides command of legal methods, the authors' legal background offers them a comparative advantage when it comes both to research design and data analysis. Good knowledge of the texture of law and the context of Constitutional Court's decision-making is necessary to discover/account for relevant variables, to locate relevant data etc.

Our vision of the methods' combination may be demonstrated on the “**public opinion**” part of research:

1) The team would conduct in-depth semi-structured interviews with judges, their assistants, former judges and senators; around fifteen judges or former judges (i.e. almost a half of the living judges/former judges) are supposed to be interviewed, the same is the supposed number of interviewed assistants and senators. The samples of interviewees will be handpicked, but the selection will be based on the team's pre-understanding that will allow for a representative sample selection. The smooth access to all of these groups is expected due to the institutional affiliation of team member Ladislav Vyhnánek, who has been assistant of former and present judges of Constitutional Court; also, Monika Stachoňová has already successfully conducted semi-structured interviews with Constitutional Court's judges. The questions of this qualitative research interviews would focus on the actor's conceptualization of the relationship between the independent variables (public opinion, ideology, political influences) and the dependent variables (judge's vote/reasoning/outcome of the case, *see also supra*); The gathered data can be used both inductively to identify common feelings of judges towards the extralegal factors and to provide hints about further elements which influence judges' decision-making, in addition to the three identified as the most important ones (qualitative method A);

2) The team would employ the process tracing method in a “small n” study of politically salient cases of the Constitutional Court, selected on the basis of media coverage (qualitative method B) to discover main factors influencing the outcome of the case (George & Bennett 2005) and also analyze the reasoning of judgements in those cases in order to find out if (and how) they reflect public opinion (legal method);

3) The team would conduct a quantitative empirical “large n” study of the same topic (quantitative method). In this regard, the team would measure the correlation between year-by-year evolution of public opinion on the political compass (*see supra* general research design) and year-by-year evolution decision-making of the Constitutional Court (for this method and other approaches cf. Epstein & Martin 2012).

The results of the respective sub-researches can be published together in order to paint a complex picture of the problem. We aim to proceed analogously in the remaining parts, but due to limited space, we can only provide a very condensed account. The results of the semi-structured interviews will be employable even in the remaining two main parts of the research as the questions will cover all the independent variables. Their analysis would again be (analogously to the outlined example) complemented by process tracing and legal

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methods (an analysis a small n set of judgements' reasoning). Concerning quantitative methods, we plan to employ regression analysis in all main proposed research areas (ideology, politics and public opinion).

The quantitative study concerning public opinion has been outlined above. As regards political influence, one of the proposed papers would explore the correlation between the *political support* of a Constitutional Court judge (tentatively identified by looking at senators speaking and voting in favor/against a particular candidate) in the Senate and her *voting* in some sets of politically relevant cases (social rights, rights of defendants, privacy). Another possible approach to researching the impact of political (separation of powers) factors would be based on measuring the correlation between ideological affinity of the sitting legislator/legislator that adopted the challenged legislation and the Constitutional Court readiness to strike down legislation (cf. Friedman & Harvey 2003). In the ideology part of the research, we would measure the correlation between our adapted version of Martin-Quinn score (independent variable) and a judge's voting in a specific set of cases like social rights, economic policy, privacy rights etc. (dependent variable).

5. International cooperation (Cooperation with foreign institutions)

The project focuses on the Czech Republic so that international co-operation is not *stricto sensu* required to fulfil the aims set in this project proposal. Still, the team believes that international co-operation – especially in a field where Czech literature has hardly started developing – is vital to safeguarding the research's success.

Therefore, the team plans to use the opportunities provided by the recently established Judicial Studies Institute (led by David Kosař) at the MUNI's law faculty, which was established under the auspices of David Kosař's ERC StG grant. Besides providing the team with additional institutional support, the co-operation with Center will enhance the team's possibility of getting top international expert feedback and advice, as the Center will co-operate with top European research institutions, such as PluriCourts (Oslo), iCourts (Copenhagen) or Max Planck Institute (Heidelberg). Moreover, the Center will host permanent international researchers. In the project's first year, two team members will participate in the ECPR Joint Sessions; in the second year, we plan to attend an international conference (ICON-S).

6. Institutional background

With regard to the **institutional background**, it should be stressed that Masaryk University (MUNI), the second largest university in the Czech Republic, is one of the most important teaching and research institutions in the Czech Republic and a highly-regarded CEE institution. Research is one of its top priorities. MUNI has been involved in 65 FP7 projects (including one ERC Grant), and has been awarded 21 HORIZON2020 projects (including two ERC Grants).

The **MUNI research team** consists of scholars (lawyers and social scientists) from the **Faculty of Law** and the **Faculty of Social Science**. MUNI's Law Faculty is considered one of the best in CEE and has been ranked Czech No.1 law school for 4 consecutive years (2011-2014) and again in 2016. The **Department of Constitutional Law and Political Science** is widely considered the top department in the field; it employs a balanced mix of young academics with first-class international education and more experienced academics, including three judges of the Constitutional Court. The Faculty of Social Science is one of the newest and most dynamic parts of MUNI and participates in several international projects with other European universities and institutes (Utrecht, Venice EIUC). Both of these faculties have been involved in a number of successful projects of international importance (e.g. National populism in Visegrad countries, EP Generation, Political parties and representation of interests). Furthermore, MUNI is located in Brno: the seat of the Constitutional Court (as well as the Supreme Court and the Supreme Administrative Court, where some former judges Constitutional Court work). The accessibility of these institutions and their personnel is a great advantage for the proposed research. International research databases, statistical software and other necessary sources are readily available for the team's use at both faculties. The team can also rely on the institutional support of the **Judicial Studies Institute** (*see also* Part 5). Additional institutional support might be provided by the **Czech Centre for Human Rights and Democratization** (Hubert Smekal and Ladislav Vyhnánek are its founding members, while the former served as its director until 2014).

7. Research team: roles and composition

The team's blended composition includes both academics and practitioners active in legal and social sciences. The team members combined hold degrees from law, political science, international relations, media

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studies, sociology and economics. This guarantees a varied, balanced and creative environment, expert insight into the topic, as well as a holistic and interdisciplinary research approach. Individual members have experience with GAČR grants and the team's efficiency is boosted by the fact that Ladislav Vyhnánek and Hubert Smekal have already worked on a GAČR project together. The team members have published in prestigious journals (EuConst, NQHR or ICL-Journal) and co-authored or edited leading commentaries and books on the Czech Constitution and international human rights law.

At the same time, the team composition reflects the team members' qualified interest in and previous experience with the topic. Two members (Hubert Smekal and Ladislav Vyhnánek) of the team have studied the topic under the supervision of leading authors in the field (Kevin Quinn and Barry Friedman respectively). Another team member Monika Stachoňová is an author of an award-winning thesis concerning media influence on judges and co-author of the monograph *New Trends in Judicial Creation of Law*. Jaroslav Benák has defended his Ph.D. thesis on individual's access to Constitutional court in 2015. One of its chapters has used game theoretical approach to describe relationships between various actors (politicians, ombudsman and Constitutional court). The upcoming conference (Extralegal Influences on Judicial Decision-making, 4/2016, organized by Ladislav Vyhnánek (with Monika Stachoňová participating) also manifests the team's qualified interest in the topic.

The competence and capability of key individual members follow. **Ladislav Vyhnánek** (the principal investigator) is an assistant professor of constitutional law at the MUNI Law School. He has clerked for two judges of the Czech Constitutional Court for over seven years. He holds a Ph.D. in constitutional law from MUNI's Law Faculty. In 2013-2014, he has studied in the LL.M. program at NYU School of Law (as a Fulbright Scholar). He has published articles concerned with the Czech Constitutional Court in international (recently in EuConst and ICL-Journal) and domestic peer-reviewed journals; he co-authored leading commentary on the Czech Constitution and a monograph on the role of the case-law in the Czech legal system. He has unique knowledge of the case law of the Constitutional Court as well as of the personal and institutional context of its decision-making due to his clerkship. He will be responsible for the overall coordination of the project and will take part in most of the publications (for selected publications, see the attachment D1).

Hubert Smekal holds Ph.D. in European Studies from MUNI's Faculty of Social Studies, where he currently works as an assistant professor. He spent a year (2010-2011) as a Fulbright-Masaryk Scholar at the Center for the Study of Law and Society, UC Berkeley, under sponsorship of Martin Shapiro. He serves as a member of the Human Rights Council of the Czech Government. His academic interests cover the issues of human rights, political role of CJEU and ECtHR and judicialization of (international) politics. He authored two books on human rights, co-edited four volumes, and published number of book chapters and articles in peer reviewed journals, both in Czech and English, incl. IF journals such as *European Constitutional Law Review* and *Netherlands Quarterly of Human Rights*. His selected publications include 1) SMEKAL, H., VYHNÁNEK, L. Equal voting power under scrutiny. Czech Constitutional Court on the 5% Threshold in the 2014 European Parliament Election. *European Constitutional Law Review*, 1/2016 2) SMEKAL H. & ŠÍPULOVÁ K. DH v Czech Republic Six Years Later: On the Power of an International Human Rights Court to Push through Systemic Change. 32 *Netherlands Quarterly of Human Rights* 288 (2014). (IF), 3) SMEKAL H. Pronikání lidských práv do agendy Evropské unie. 49 *Mezinárodní vztahy* 81 (2015). (SCOPUS). He will be the main expert concerning the empirical social science methods.

Jaroslav Benák is an assistant professor of constitutional law at the MUNI Law School. He holds a Ph.D. in constitutional law from MUNI's Faculty of Law. He holds a degree in economics and is now a graduate student in the field of public economics (exp. graduation June 2016). He will use his economical background and game theoretical approach to analyze political influences on the Constitutional Court.

Monika Stachoňová is a postgraduate student at MUNI Faculty of Law with the focus on media law and theory of law. She works at the Czech Ombudsman's Office. In addition to her legal education, she holds degrees from media studies and sociology (MUNI's Faculty of Social Science). She is a co-author of an academic monograph *New Trends in Judicial Creation of Law* and author of award-winning thesis *Media as a second trial?* in a competition Ius et Societas, organized and evaluated by Jan Hus Education Foundation, the Constitutional Court of the Czech Republic, the Supreme Court of the Czech Republic etc. Her responsibilities lie mostly in the public opinion part of the research (mainly the use of qualitative methods).

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