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**Domestic Judicial Treatment of European Court of Human Rights
Case Law**
Beyond Compliance
*David Kosař, Jan Petrov, Katarína Šipulová, Hubert Smekal, Ladislav Vyhnánek,
and Jozef Janovský*

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Domestic Judicial Treatment of European Court of Human Rights Case Law

Beyond Compliance

**David Kosař, Jan Petrov, Katarína
Šipulová, Hubert Smekal, Ladislav
Vyhnánek, and Jozef Janovský**

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Preface

This book marks the ending of a three-year project which started out as a seemingly easy puzzle. We asked what is hidden in domestic courts' decision-making practice and to what extent the lengthy discussion over interpretation of various European Court of Human Rights (ECtHR) rulings matches domestic judges' views of the issue. Very soon, we realized that the question hides many twists and nuances and calls for a systematic analysis of national case law. We discovered that the underlying issue, how domestic courts use Strasbourg case law, has occupied the minds of scholars both in Europe and worldwide for a while.

We also soon found out that we needed an insider's knowledge of the functioning of each apex court we wanted to cover as well as in-depth specialists in quantitative methods for the automated coding in the macro level of our inquiry. Such knowledge is impossible to accumulate in one or two people. That is why we decided to write a monograph with six co-authors, which is still rare in the field of law. In our endeavor, we divided our tasks as follows (in alphabetical order):

Jozef Janovský – Chapter 4 (together with Katarína Šipulová and Hubert Smekal).

David Kosař – Chapters 1, 2, and 9 (together with Jan Petrov).

Jan Petrov – Chapter 6, and Chapters 1, 2, and 9 with David Kosař.

Hubert Smekal – Chapters 3 and 8, and Chapter 4 with Katarína Šipulová and Jozef Janovský.

Katarína Šipulová – Introduction and Chapter 5, and Chapter 4 with Jozef Janovský and Hubert Smekal.

Ladislav Vyhnaněk – Chapter 7.

Nevertheless, although each substantive chapter has a different author (or authors), the chapters individually and collectively pursue the book's central argument. They are intended to stand together, not like the chapters of an edited collection united by a set of related themes, but like the chapters of a single-authored monograph. For this reason, while each chapter listed above specifies an author, the book as a whole is jointly authored.

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The research leading to this book benefited greatly from external feedback and presentations of our endeavor at various venues. First of all, conferences at the European Consortium for Political Research and the Association of Human Rights Institutes, and various workshops and research stays at fellow research centers at iCourts in Denmark and PluriCourts in Norway provided us with great methodological advice and tools. Parts of the book and various methodological issues were presented at several workshops and conferences. Particularly useful for bringing this inquiry to its current state of completion have been events held in (listed alphabetically) Brno (especially a workshop co-organized with Alice Donald and Anne-Katrin Speck at the MUNI Law Faculty), Copenhagen (Marlene Wind, Mikael Rask Madsen), Oslo (Andreas Føllesdal and Geir Ulfstein), and Prague (CEELI Institute). We also learned a lot from the participants of our "Beyond Compliance" conference, which included, among others, Jiří Malenovský, the judge at the Court of Justice of the European Union, and both Czech and Slovak Government Agents for the European Court of Human Rights, Vít A. Schorm and Marica Pirošíková.

Chapter 1 and Chapter 2 elaborate on an article previously published as David Kosař and Jan Petrov, 2017, "The Architecture of the Strasbourg System of Human Rights: The Crucial Role of the Domestic Level and the Constitutional Courts in Particular", *Heidelberg Journal of International Law* 77: 585–621. Chapter 4 draws on a shorter methodology article published as Katarína Šipulová, Hubert Smekal, and Jozef Janovský, 2018, "Searching for a reference: Using automated text analysis to study judicial compliance", *Masaryk University Journal of Law and Technology* 12 (2): 131–60. The review process in both above-mentioned journals and the critical evaluations we received helped us clarify our arguments and methods and motivated us to continue developing our research.

We are also extremely grateful to the highest Czech judicial institutions (the Constitutional Court, the Supreme Court, and the Supreme Administrative Court) and their staffs. Four of the authors (have) closely cooperated with these courts in past, which enabled us to study from inside the practical application of ECtHR case law in their everyday activities. Particular acknowledgements are due to (listed alphabetically) Martina Baráková, Jan Drábek, Martina Grochová,

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