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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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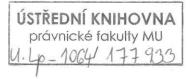
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Preface

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' decisionmaking 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

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 Vyhnánek - Chapter 7.

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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.

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 Katar-ína 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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