



## Workshop on the implementation of human rights judgments and decisions against the Czech Republic

10.30 - 16.30, Tuesday 14 November 2017

Faculty of Law (room 109), Masaryk University, Brno

This workshop is being organised jointly by (i) the Judicial Studies Institute (JUSTIN) in the Faculty of Law at Masaryk University, Brno, Czech Republic, under the [Beyond Compliance Research Project](#) supported by the Czech Science Foundation and (ii) Middlesex University London, School of Law in the UK, in its capacity as a participant in the [Human Rights Law Implementation Project](#) (HRLIP).

### **Introduction of JUSTIN and its Beyond Compliance Project**

JUSTIN is a research center dedicated to the study of domestic courts, international tribunals and various bodies involved in court administration. JUSTIN opened in September 2016 with the help of the ERC Starting Grant (JUDI-ARCH, 2016-2021), which focuses on the ever growing role of judicial councils and other forms of judicial self-government in a globalising legal order. JUSTIN's research efforts aim at creating groundbreaking results within the field of inquiry through a series of closely integrated interdisciplinary research projects that study courts and judges from legal, philosophical, political science and sociological perspectives, and employ both qualitative and quantitative methods. Research at JUSTIN currently concerns judicial independence, judicial accountability, public confidence in courts and judges, transparency of the judiciary, legitimacy of courts.

A part of the JUSTIN research team engages more closely with legislative responses to the Strasbourg Court's case law, citation analysis, and domestic compliance with judgments and decisions of the European Court of Human Rights (ECtHR) and UN human rights bodies. Under the BeCOM (Beyond Compliance) research project, supported by the Czech Science Foundation (**GA 16-09415S**), the team aims to contribute to and extend the present debate through enquiring how the ECtHR and other international human rights bodies influence domestic politics and law in the Czech Republic and Slovakia - two representatives of young Central and Eastern European democracies and states with very similar historical legacies, concepts of separation of powers and the rule of law, and judicial cultures.

So far, we know surprisingly little about the actual implementation of international human rights case law in the Czech Republic and Slovakia and even less about the repercussions of this case law for the legislature and top courts (the Supreme Court and the Constitutional Court in Slovakia; and



the Constitutional Court, the Supreme Court and the Supreme Administrative Court in the Czech Republic). However, such understanding is needed because international human rights case law may alter domestic politics and separation of powers, interpretation of domestic constitutions and even change the way people think about law.

The aim of the project is to analyze the impact of the ECtHR and core UN human rights treaty bodies on Slovakian and Czech top national courts as well as parliaments. This includes, predominantly, an analysis of references, in decisions of top national courts, to (i) the European Convention on Human Rights and ECtHR case law and (ii) the use and citation of other international human rights treaties and the 'jurisprudence' and other relevant documents of selected UN human rights treaty bodies.

### **Introduction of the Human Rights Law Implementation Project (HRLIP)**

The HRLIP is a comparative research project (2015-18) which is tracing the responses of nine states in Europe (Belgium, the Czech Republic and Georgia), Africa (Burkina Faso, Cameroon and Zambia) and the Americas (Canada, Colombia and Guatemala) to selected human rights judgments and decisions issued by (i) regional courts and commissions and (ii) selected UN treaty monitoring bodies.

By, among other activities, creating detailed timelines of the responses to judgments and conducting semi-structured interviews in the respective states and supranational bodies, the HRLIP aims to identify and elucidate the factors which impact upon implementation and compliance in relation to:

- a) **structure**: the institutions and formal mechanisms and procedures of the respective systems;
- b) **capacity**: the ways in which domestic and supranational actors operate within those systems, taking into account issues such as information, expertise, resources and relationships; and
- c) **attitudinal factors**: such as different actors' motivations, interests, incentives and assumptions.

### **Aims of the workshop**

The workshop aims to explore the issues above with respect to the Czech Republic, informed by early findings from the HRLIP and ongoing research projects of JUSTIN, which will be presented at the workshop.

Building on the tentative findings of both teams regarding the application and implementation of ECtHR's case law by the top Czech courts, as well as the research on the compliance and comparative practice from Belgium and Georgia by the HRLIP, the workshop will create a platform for an in-depth discussion broadening the existing debate on fostering the compliance with the Convention and ECtHR's judgments in the Czech Republic.



Below is a list of the Czech cases that the HRLIP is investigating. We encourage participants at the workshop to discuss these cases in the context of the broader issues raised throughout the workshop.

### **UN Human Rights Committee**

***L.P. v. the Czech Republic***, Communication No. 946/2000, Views adopted on 19 August 2002 *Authorities' refusal to act upon court decisions allowing father regular access to his son; violation of Article 17 ICCPR (protection from arbitrary or unlawful interference with one's privacy and family), in conjunction with Article 2.*

### **European Court of Human Rights**

***Bureš v. the Czech Republic***, Appl. No. 37679/08, judgment of 18 October 2012. *Ill-treatment of applicant at a hospital sobering-up centre, in particular by being strapped to a bed for several hours and inadequacy of investigation; substantive and procedural violation of Article 3 (prohibition of inhuman or degrading treatment).*

***D.H. and Others v. the Czech Republic*** [GC], Appl. No. 57325/00, judgment of 13 November 2007. *Discrimination against Roma children in the education system on account of their placement in special schools for children with learning difficulties; violation of Article 14 ECHR (prohibition of discrimination) in conjunction with Article 2 of Protocol No. 1 to the ECHR (right to education).*

***Eremiášová and Pechová v. the Czech Republic***, Appl. No. 23944/04, judgment of 16 February 2012. *Authorities' failure both to safeguard the right to life of the applicants' relative and to conduct an effective investigation into the circumstances surrounding his suicide while in police custody; substantive and procedural violation of Article 2 (right to life).*

***Hartman v. the Czech Republic***, Appl. No. 53341/99, judgment of 10 July 2003. *Excessive length of proceedings in cases concerning recovery of property confiscated under the communist regime; violation of Article 6 (1) (right to a fair trial / right to a hearing within a reasonable time); Article 13 ECHR (right to an effective remedy).*

***Wallová and Walla v. the Czech Republic***, Appl. No. 23848/04, judgment of 26 October 2006. *Taking into care of children from a large family on the sole ground that the family's housing was inadequate; violation of Article 8 ECHR (right to respect for family life).*



## Programme

### 10.00 Registration

### 10.30 Presentation of ongoing research by JUSTIN

### Presentation of early findings of the HRLIP

### Discussion and short break

### 11.30 1. Domestic response to supranational human rights judgments

- Who are the relevant actors and how do they interact?
- Which actors see themselves as having a role in / an obligation to promote implementation (e.g. Parliament? judiciary? civil society?)?
- Who is involved in identifying implementation measures?
- Case-related and other factors: what factors make it more or less difficult to achieve implementation?
- Obstacles / potential for improvement with respect to the domestic 'system' for implementation.

### 12.45 Lunch (room 110)

### 13.45 2. Relationships between Strasbourg / Geneva and the Czech Republic

- Domestic perspectives on the Committee of Ministers' supervision process
- Domestic perspectives on monitoring the implementation of UN treaty body decisions
- Usefulness of specificity and prescriptiveness, both in the rulings of the European Court of Human Rights and UN treaty bodies and in the instructions/recommendations from the Department for the Execution of Judgments / treaty bodies
- Measuring implementation: with reference to particular cases (in particular those requiring a change in societal attitudes), when should supervision come to an end?

### 15.00 Coffee break

### 15.15 3. Attitudes towards the Strasbourg and UN human rights systems

- Awareness and knowledge of the respective systems
- Awareness of wider debates across Europe about the authority/legitimacy of the Strasbourg and Geneva systems
- What makes the systems legitimate / what are features of a supranational human rights system that would make it be perceived as legitimate?
- Attitudes among political actors
- Existence of any criticism / backlash, and the reaction to any such criticism

### 16.30 Wrapping up