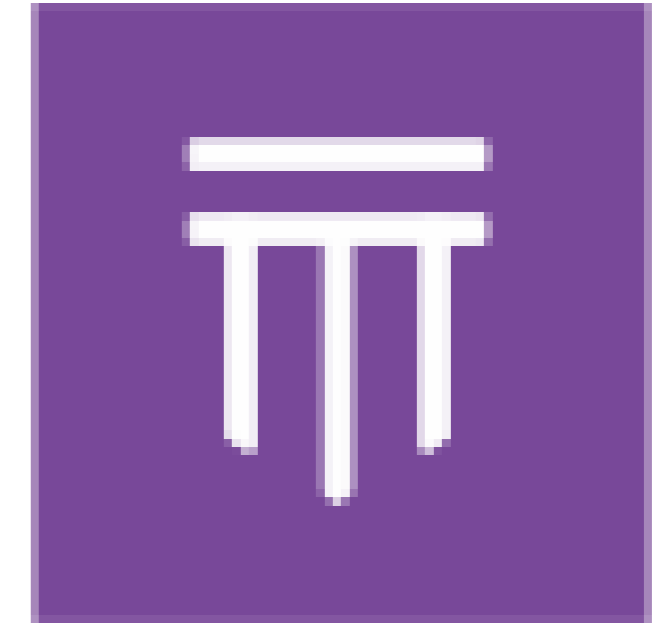


Brno, 13 November 2017

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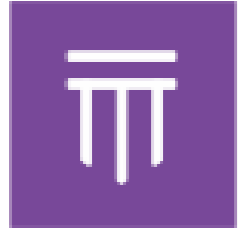


# Beyond Compliance:

## Domestic Implementation of International Human Rights Case Law

JUSTIN  
Judicial Studies Institute  
Masaryk University

The research leading to this article has received funding from the Czech Science Foundation under grant agreement No. 16-09415S, panel P408.



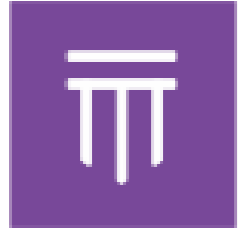
# Project description & our team

## 1. Scope

- Countries: Czech Republic + Slovakia
- Period: 1993-2015
- HR bodies: ECtHR + UN HR bodies
- Pillars: Legislative compliance & Judicial compliance
- Courts: CZ (SC + SAC + ConCourt)  
SVK (Supreme Court + ConCourt)

## 2. Team

- Jozef Janovský
- David Kosar
- Jan Petrov
- Hubert Smekal
- Katarína Šipulová
- Ladislav Vyhnánek



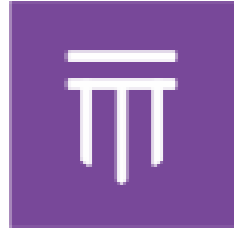
# Impact of rulings of the ECtHR & UN bodies on the Legislature (1993-2015)

## **3 lines of analysis**

A. Legislative reactions to rulings of the ECtHR & UN bodies

B. Analysis of parliamentary mechanisms for ensuring compatibility of the legislative acts with rulings of the ECtHR & UN bodies

C. Analysis of legislative debates



# Impact of rulings of the ECtHR & UN bodies on domestic apex courts (1993-2015)

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## I.

### Macro level

- **Automated quantitative** analysis of references to intl. HR case law by domestic apex courts
- Studies to what extent intl. HR case law is “living” domestically
- Which intl. HR cases are referred to? How? How often?
- Q: Which ECtHR’s decision is the most cited one in the SAC case law?

## II.

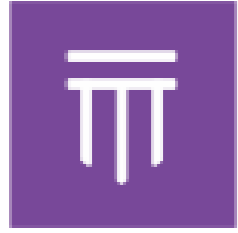
### Meso level

- **Qualitative codebook** analysis of references to intl. HR case law by domestic apex courts
- RQ: How apex courts use intl. HR rulings in their argumentation?
- Substantive vs. supporting influence
- Following/distinguishing/rejecting
- Invalidation/direct application/conforming interpretation etc.

## III.

### Micro level

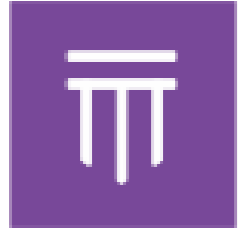
- **In-depth qualitative** analysis of the usage of intl. HR case law in leading domestic cases and peculiar areas of law (asylum law)
- Includes normative assessment of the citation (obsolete citation, “fig leave” citation etc.)
- Zeroes in on strategic citations (gate-keeping etc.)



# Macro-level analysis (1993-2015)

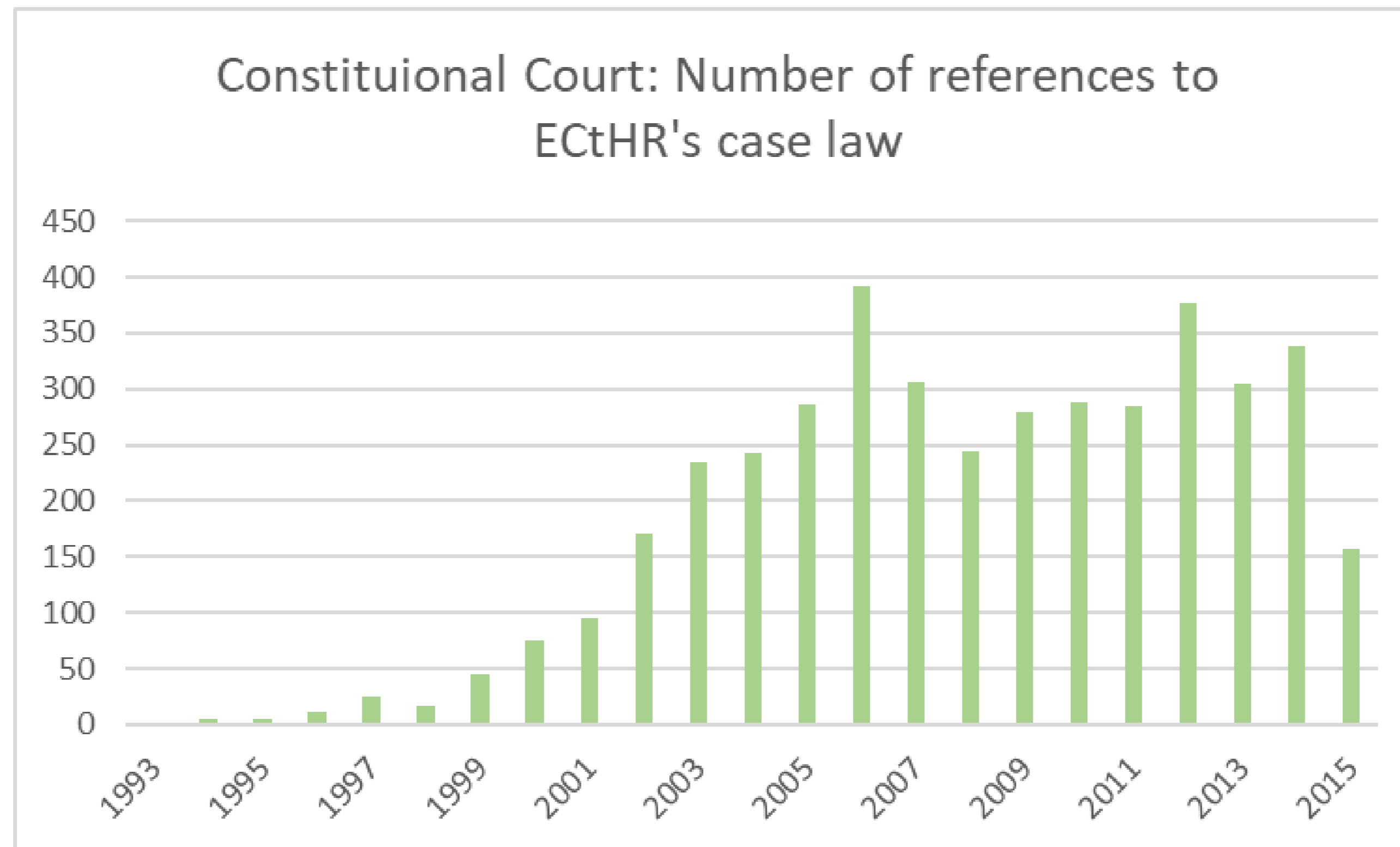
## Questions

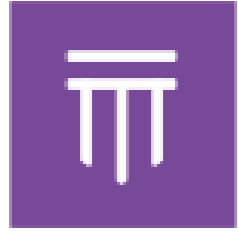
- What is the general pattern?
- Development and changes in time
- Influence of certain events (11<sup>th</sup> Protocol, Constitutional amendment, Entry into the EU)



# Macro-level analysis (1993-2015)

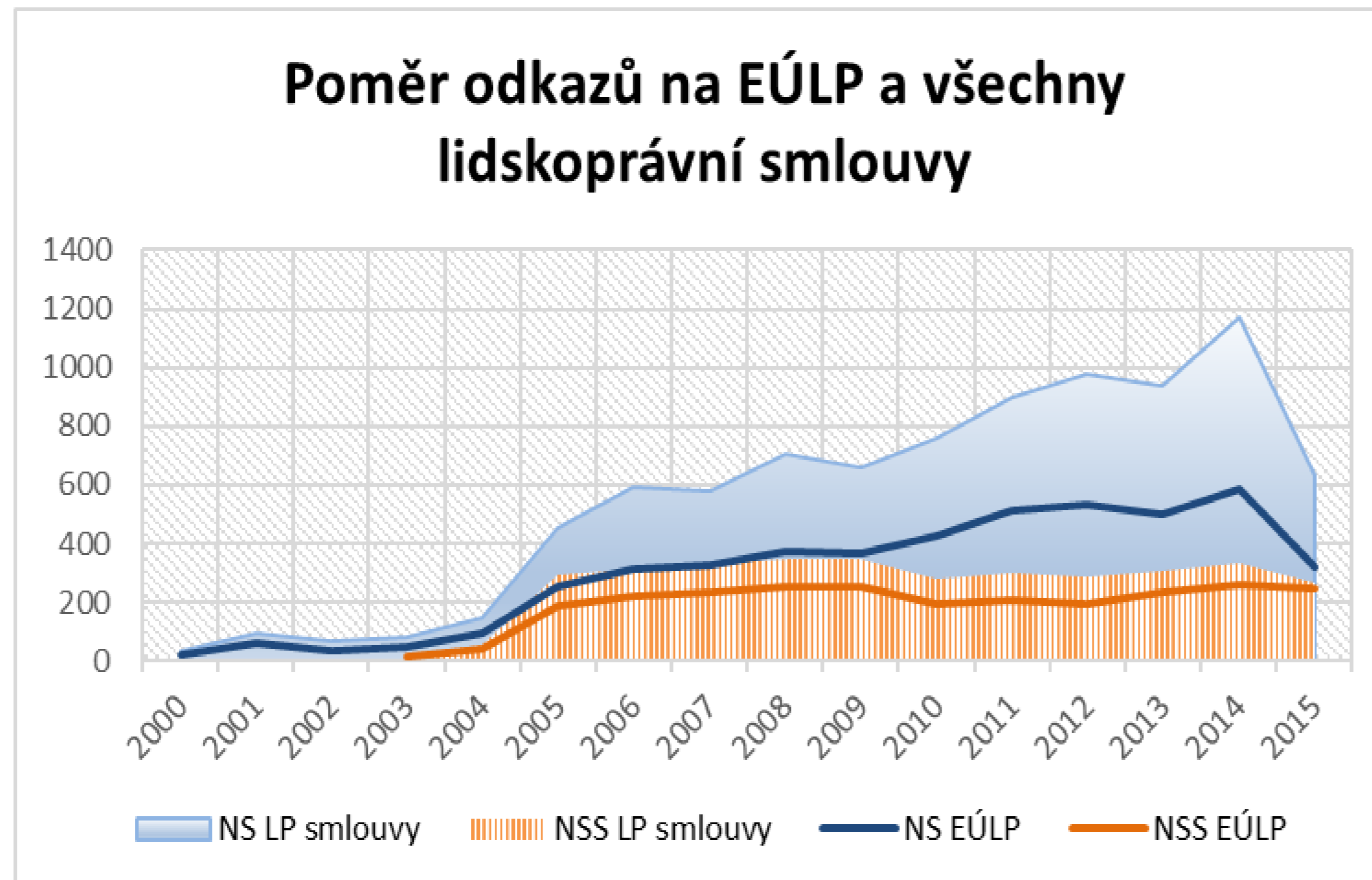
*Constitutional Court: ECtHR quotations*

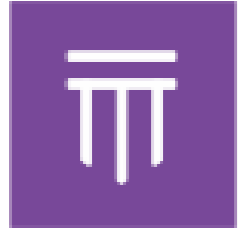




# Macro-level analysis (1993-2015)

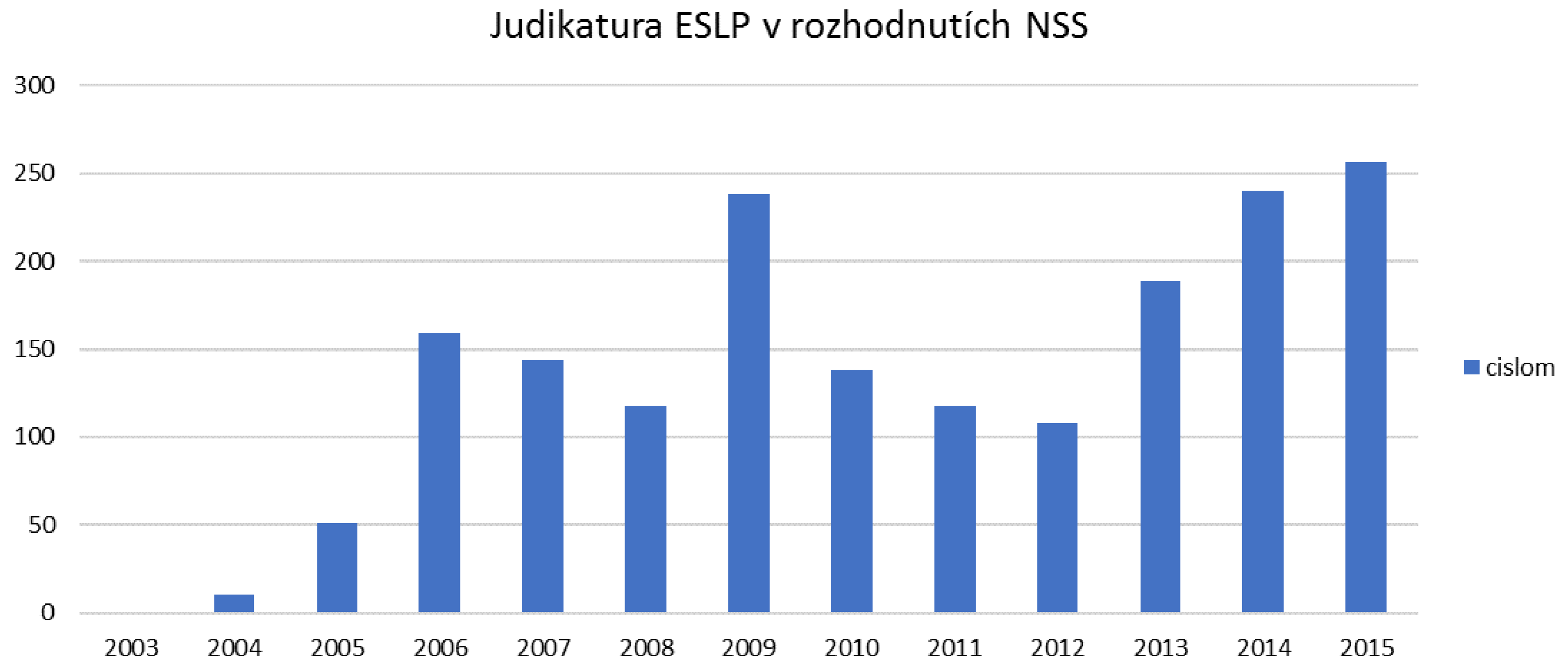
*Supreme and Supreme Administrative Court: references to ECHR compared to other HR conventions (lines: ECHR, areas: HR conventions)*



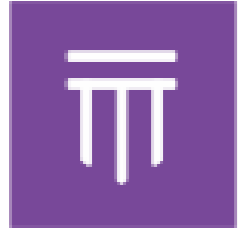


# Macro-level analysis (1993-2015)

*Supreme Administrative Court: ECtHR quotations*







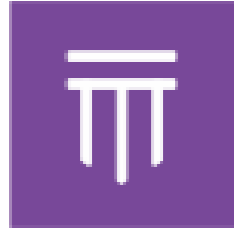
# Meso-level analysis (1993-2015)

What is an application?

<b>Who?</b>	Party to the proceedings/court of a lower instance	Court itself
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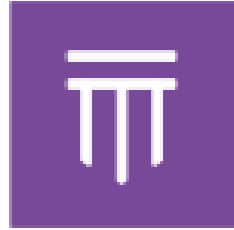


<b>How?</b>	Supportive argument, legitimization of reasoning	Reasoned non-application	Core influence on reasoning (direct application or conform interpretation)
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# Meso-level analysis (1993-2015)

DOMESTIC DECISION ID	COURT	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>											
	ID	Constitutional Court CR	Supreme Court CR	Supreme Admin Court CR	Constitutional Court SR	Supreme Court SR	SC SR - admin panel											
	DATE	Case file number day.month.year (04.05.2016)																
INTERNATIONAL HR PROVISION	TREATY ID	number (see sheet "Treaties ID")																
	PROVISION ID	number of provision, for ECHR See sheet "ECHR Coding"																
	INT BODY	<b>1</b> ECtHR	<b>2</b> IACtHR	<b>3</b> CCPR	<b>4</b> CESCR	<b>5</b> CRC	<b>6</b> CEDAW	<b>7</b> CAT	<b>8</b> CMW	<b>9</b> CRPD	<b>10</b> CED	<b>11</b> SPT	<b>12</b> ICC					
	INT DECISION	copy citation from the domestic case																
USE OF CITATION	PART OF DOMESTIC DECISION	1 Referral	2 Reasoning															
	ADDRESSEE	1 Country other than CR	2 Only CR	3 CR and other countries														
	HOW IS THE IHR CASE FOLLOWED	<b>1</b> Following	<b>2</b> Distinguishing	<b>3</b> Refusal														
	INFLUENCE OF THE IHR CASE ON NATIONAL DECISION	<b>1</b> Supporting	<b>2</b> Substantive															
	TECHNIQUE OF THE IHR CASE USE	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>												
		Invalidation of domestic legal norm	Primacy (in case of conflict) and application of IHR norm	Direct application of HR norm as filling the gap in the legislation	Conform interpretation of national law with IHR norm	Other												
	DETAILNESS OF THE REFERENCE	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>													
		Generic reference	Reference to particular case	Reference to particular part of the case	Direct quotation from IHR case													
	CREATIVENESS OF REFERENCE	<b>1</b>	<b>2</b>	<b>3</b>														
		Low	Medium	High														
	SPACE DEVOTED TO REFERENCE	<b>1</b>	<b>2</b>															
		Small	Significant															
CROSS REFERENCE	<b>1</b>	<b>2</b>																
	Direct reference	Indirect reference																
REFERENCE TO LITERATURE	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>													
	None	Domestic commentary	Other domestic	Foreign commentary	Other foreign													



# Meso-level analysis (1993-2015)

<b>How is the case followed</b>	Following	Distinguishing	Refusal		
<b>Influence of the HR case on the reasoning</b>	Supportive	Substantive			
<b>Technique of the HR case application</b>	Invalidation of domestic legal norm	Primacy (in case of conflict) and application of IHR norm)	Direct application of HR norm as filling the gap in the legislation	Confrom interpretation of national law with IHR norm	Other

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Thank you very much  
for your attention!

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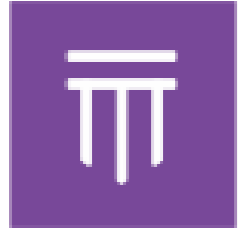
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# 3. Attitudes towards the Strasbourg and UN human rights systems

*Supreme Administrative Court: ECtHR quotations*

- 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



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