
PROJECT OVERVIEW

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When the communist regimes in Central and Eastern Europe (hereinafter “CEE”) collapsed in the late 1980s, each state in this region was faced with the tasks of restoring judicial independence and reforming the system of the administration of justice. Most CEE countries initially returned to the pre-communist model of court administration, in which the executive plays the central role. I refer to this model as the “Ministry of Justice model” (hereinafter “MoJ model”). However, this model was subject to the increasing criticism from judges as well as from various international and supranational bodies (such as the EU, the Council of Europe and the UN). These actors encouraged governments in CEE countries to establish a new independent institution – a judicial council – and transfer court administration to this institution. I refer to this model as the “Judicial Council model” (hereinafter “JC model”). The JC model was endorsed as the only “right” solution that should eradicate the vices of the MoJ model by enhancing judicial independence, reducing judicial accountability and insulating the judiciary from political tumult. As a result of this joint pressure, most CEE countries adopted the JC model in the late 1990s or a few years later. However, no one has studied the impact of judicial councils thoroughly and without bias. Therefore, we do not know whether the “rosy picture” of the JC model of court administration, as portrayed by its proponents, reflects the reality on the ground and to what extent judicial councils have delivered the positive changes they were originally envisaged to achieve.

I believe that it is a mistake to take a cynical or pessimistic view of some institutions and an unjustifiably rosy view of others and that the comparison of institutions must be “symmetrical” and “evenhandedly empirical”. The core of my project is a paired comparison that is built on the “most similar cases” logic – it compares the JC model in Slovakia with the MoJ model in the Czech Republic. The Czech Republic and Slovakia share the same essential features: a communist past, a civil law system, a career model of the judiciary, a centralized model of constitutional review outside the ordinary courts, and membership in the EU and the Council of Europe. In addition, Czechs and Slovaks shared, almost uninterruptedly, a common institutional structure since the independence of Czechoslovakia in 1918 until its dissolution in 1992. What is more, both countries retained the MoJ model of court administration immediately after the dissolution of Czechoslovakia. In other words, the Czech Republic and Slovakia are matched on all variables, but vary on the key independent variable – the model of court administration.

More specifically, my project explores the use of mechanisms of judicial accountability in the Czech Republic and Slovakia between 1993 and 2010. Two critical junctures delineate my case studies. The first critical juncture took place in 1993, when Czechoslovakia split into two separate states, the Czech Republic and Slovakia. Both of these countries initially kept the MoJ model. The second critical juncture occurred in 2003, when Slovakia established the Judicial Council of the Slovak Republic (hereinafter “JCSR”), whereas the Czech Republic kept the MoJ model of court administration. My project exploits this opportunity and examines the impact of the JCSR on the use of mechanisms of judicial accountability. I am in particular interested in whether the JCSR changed the way *how* judges are held to account (by which mechanisms), whether it altered the answer to a question of *who* holds judges to account (which principals), and whether it reduced judicial accountability. Irrespective of the impact of the Slovak judicial council, I am also interested in whether de facto accountability differed from de iure accountability.

My research questions can be summarized as follows:

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- Q.1 Did the JCSR disempower dominant principals from the “pre-JC” era?
 - Q.2 Did the JCSR decrease the *use* of mechanisms of judicial accountability?
 - Q.3 Did the JCSR reduce the *sanctions* imposed?

I defined the following hypotheses, fine-tuned to the specific context of the Czech Republic and Slovakia, to answer these four research questions:

- H.1 The JCSR disempowered the Minister of Justice, but it empowered court presidents.
- H.2 The JCSR increased the use of mechanisms of judicial accountability.
- H.3 The JCSR increased the sanctions imposed.

To put my cards on the table, there are three possible results: (1) my empirical analysis will prove my hypotheses; or (2) it will falsify my hypotheses and show that the Slovak judicial system moved to the opposite direction; or (3) it will show that the introduction of a judicial council in Slovakia made no difference. I think that all three possible results are valuable. If my empirical analysis proves my hypotheses, it will debunk a widely shared view that the JC model of court administration automatically enhances judicial independence and reduces judicial accountability. If my analysis falsifies my hypotheses, it would mean that the JC model delivers the goods it was envisaged to deliver. Finally, if my analysis shows that the introduction of the JC model in Slovakia made no difference, it would still be a valuable observation as it will seriously question, given the huge costs of such a large-scale institutional change, the desirability of introducing a judicial council (at least without a proper local fine-tuning).

In order to understand the chapter I present this semester, a bit more must be said about the design of my case studies. As mentioned above, the aim of my case studies is to examine the impact of introducing a judicial council on the use of mechanisms of judicial accountability in Slovakia and whether the use of these mechanisms in Slovakia (after the creation of the judicial council) differed from their use in the Czech Republic (in the same period). Therefore, it is useful to divide the period between 1993 and 2010 into two phases. The critical juncture is 2003, when the judicial council was introduced in Slovakia. The years 1993-2002 will be referred to as “Phase I” while the years 2003-2010 will be referred to as “Phase II”. Thus, four specific periods will be studied: (1) 1993-2002 in the Czech Republic (CR I); (2) 1993-2002 in Slovakia (SK I); (3) 2003-2010 in the Czech Republic (CR II); and (4) 2003-2010 in Slovakia (SK II).

Periods CR II and SK II are critical for understanding the impact of a judicial council. However, in order to eliminate false inferences, it is also necessary to examine the pre-change use of mechanisms of judicial accountability in both countries. Therefore, the project will present four comparisons. Each of these four comparisons will serve a different purpose:

- (1) *CR I with SR I*: This comparison will demonstrate how mechanisms of judicial accountability were used in the Czech Republic and Slovakia when both states retained the same model of court administration (the MoJ model) and will assess whether any differences existed between the two countries. If there was a significant difference between CR I and SR I, it must be taken into account when comparing CR II with SR II.
- (2) *SR I with SR II*: This comparison will show whether the introduction of a judicial council made a difference in Slovakia.
- (3) *CR II with SR II*: This comparison will show how mechanisms of judicial accountability were used in a period when the Czech Republic retained the MoJ model and Slovakia switched to the JC model of court administration *and* whether there were differences between these two countries.
- (4) *CR I with CR II*: This comparison will demonstrate how mechanisms of judicial accountability were used in the Czech Republic before and after 2003. This comparison has

an instrumental value since it serves as a check on whether it was the *judicial council* that caused the difference under consideration in Slovakia after 2003.¹ For instance, if this comparison reveals that the use of mechanisms of judicial accountability in the Czech Republic (with the MoJ model) after 2003 moved in the same direction as in Slovakia (with the JC model), it will be evident that a variable or variables other than the introduction of the judicial council made the difference.²

More generally, my project seeks to gain insight into how are judges in *civil law* systems held to account (*i.e.*, which principals are dominant in holding judges to account, what mechanism are used, how often and how effectively are these mechanisms utilized, which mechanisms are toothless and which mechanisms have a bite etc.). Most literature on judicial accountability comes from Anglo-American scholars and thus it tends to focus predominantly on common law systems. In contrast, European scholars (lawyers as well as political scientists) have produced far less scholarship on judicial accountability and on courts in general. Therefore, my project will contribute not only to the scholarship on judicial reforms in emerging democracies, but also to the scholarship on courts in the civil law countries in general. For this reason, I emphasize the generality of the theoretical framework developed in Part I and separate this theoretical part of my project, as much as possible, from the particulars of the Czech Republic and Slovakia.

My project is structured as follows. Part One develops the theoretical framework for the empirical analysis. It defines the notion of judicial accountability and identifies mechanisms of judicial accountability. Part Two is devoted to the case studies I briefly explained above. Finally, Part Three qualifies my claims, addresses broader implications that go beyond the borders of the Czech Republic and Slovakia and suggests avenues for further research.

Please, find also attached a tentative table of contents of my project.

- 1 Introduction: Theories of Judicial Councils
 - 1.1 Presenting the Problem
 - 1.2 What Is a Judicial Council?
 - 1.3 What Does the Judicial Council Do?
 - 1.4 Plan of the Project

PART ONE

JUDICIAL ACCOUNTABILITY: THEORETICAL FRAMEWORK

- 2 Defining “Judicial Accountability”
 - 2.1 Defining “Accountability”
 - 2.2 What Do We Mean by Judicial Accountability?
 - 2.3 Why Do We Care about Judicial Accountability?
 - 2.4 *De Iure* vs. *De Facto* Judicial Accountability
 - 2.5 Limits of Judicial Accountability
 - 2.6 Footnote No. 1: Etymology and Semantics Matter
- 3 Mechanisms of Judicial Accountability
 - 3.1 What Do Judges Maximize?
 - 3.2 Definition of a Mechanism of Judicial Accountability
 - 3.3 What Is “In”: Taxonomy of Mechanisms of Judicial Accountability
 - 3.4 What Is “Out”: What Does Not Count as a Mechanism of Judicial Accountability
 - 3.5 Borderline Cases

¹ There is obviously an option that the introduction of judicial council in Slovakia made no difference. As mentioned above, this would be in itself a valuable observation.

² For instance, both countries joined the European Union in 2004.

3.6 Footnote No. 2: Combination of Various Non-Accountability Mechanisms

PART TWO

JUDICIAL ACCOUNTABILITY IN THE CZECH REPUBLIC AND SLOVAKIA

- 4 Holding Czech and Slovak Judges to Account: Methodology and Its Pitfalls
 - 4.1 What Is Measured?
 - 4.2 How Is It Measured?
 - 4.3 Potential Inaccuracies
- 5 Prologue: Judging in Czechoslovakia
 - 5.1 Brief Introduction into the Czechoslovak Legal System
 - 5.2 Judging in the First Czechoslovak Republic (1918-1938)
 - 5.3 “Czechoslovak” Judiciaries after the Munich Pact and during the Second World War (1938-1945)
 - 5.4 The First Short Intermezzo: Postwar Democratic Czechoslovakia (1945-1948)
 - 5.5 Judging under the Communist Rule (1948-1989)
 - 5.6 The Second Short Intermezzo: Post-Communist Czechoslovakia (1989-1992)
 - 5.7 Conclusions
- 6 The Czech Republic
 - 6.1 General Issues
 - 6.2 Contemporary Models (1993-2010)
 - 6.3 How Were Czech Judges Held to Account from 1993 to 2002?
 - 6.4 How Were Czech Judges Held to Account from 2003 to 2010?
 - 6.5 Conclusions
- 7 Slovakia
 - 7.1 General Issues
 - 7.2 Contemporary Models (1993-2010)
 - 7.3 How Were Slovak Judges Held to Account from 1993 to 2002?
 - 7.4 How Were Slovak Judges Held to Account from 2003 to 2010?
 - 7.5 Conclusions
- 8 The Czech Republic v. Slovakia
 - 8.1 The Czech Republic vs. Slovakia in Phase I (1993-2002)
 - 8.2 The Czech Republic vs. Slovakia in Phase II (2003-2010)
 - 8.3 What Was the Impact of the Judicial Council of Slovak Republic?
 - 8.4 Lessons from the Czech Republic and Slovakia

PART THREE

BEYOND THE CZECH REPUBLIC AND SLOVAKIA

- 9 Beyond the Czech Republic and Slovakia
- 10 Conclusion