

Judicial Dialogue in EU Matters in the Czech Republic and in Slovakia

GAČR project 2022-2024 (acronym: JUDEUM)

Together with 8 other countries, the Czech Republic and the Slovak Republic acceded to the European Union on 1 May 2004. Since then, Czech and Slovak courts have submitted **155 requests for a preliminary ruling** to the European Court of Justice (‘ECJ’).¹ This covers the period from May 2004 to 19 April 2021 (date of submission of the present project proposal); 89 of these requests were referred by Czech courts, 66 of them by Slovak courts.²

The aim of the proposed research project is to analyse all the requests referred to the ECJ by Czech and Slovak courts and to do so at three levels: 1. at the stage of the requests by national courts, 2. at the stage of the ECJ’s responses, and most importantly, 3. at the stage of the follow-up decisions by the national courts, implementing the ECJ’s responses to the questions referred. The proposed research aims **to analyse all the existing Czech and Slovak cases and to shed light on the way in which the national courts fulfil their European mandate.**

1. Background to the Project: State of the Art & Gaps in Knowledge

Preliminary references by national courts to the ECJ represent one of the most fundamental topics of EU law. The mechanism of preliminary references forms part of all major EU law textbooks³ as well as of more specialised publications on EU procedural law.⁴ Prominent authors have claimed that the preliminary reference procedure has enabled the ECJ to transform the EU legal order.⁵ Yet, as one of the monographs dedicated to preliminary references states in its preface, ‘*While it is true that every general textbook or standard work on EU law will discuss preliminary rulings, surprisingly few authors have written more in-depth analyses of the subject.*’⁶

Although preliminary references form a backbone of EU law, it has not been common to track the process of a reference for a preliminary ruling all the way to its end. It is a common practice to read the ECJ’s preliminary rulings; yet, scholars and practitioners rarely know what happened after the cases returned to the national level. As has been observed by Stacy A. Nyikos, ‘*very little is known about who implements or how rulings are implemented.*’⁷ There are some exceptions to this general rule. Scholars have explored the situation in very narrow fields of EU law, such as the implementation of the Natura 2000 Directives in France, Germany and the Netherlands,⁸ and usually the research focuses on a limited territorial scope. Most research has been done in the field of environmental law, with individual articles covering Sweden,⁹ the Netherlands,¹⁰ the United

¹ See Art 19(1) TEU. In line with common practice, the Court of Justice of the European Union is abbreviated to CJEU and the Court of Justice is abbreviated to ECJ. Pursuant to Art 256(3) TFEU, the General Court could have a jurisdiction to hear certain questions referred for a preliminary ruling if the Statute so provides; yet, no such provision has been adopted so far.

² Source: the CJEU’s own search form available at <https://curia.europa.eu/juris/recherche.jsf?language=en>.

³ The obvious references are omitted in this project proposal.

⁴ Koen Lenaerts and others, *EU Procedural Law* (1st edition, Oxford University Press 2014).

⁵ Eric Stein, ‘Lawyers, Judges, and the Making of a Transnational Constitution’ (1981) 75 *The American Journal of International Law* 1; Joseph Weiler, ‘The Transformation of Europe’ (1991) 100 *The Yale Law Journal* 2403; Alec Stone Sweet and Thomas L. Brunell, ‘The European Court and the National Courts: A Statistical Analysis of Preliminary References, 1961–95’ (1998) 5 *Journal of European Public Policy* 66; Karen Alter, *The European Court’s Political Power: Selected Essays* (Oxford University Press 2009); Arthur Dyevre, Monika Glavina and Angelina Atanasova, ‘Who Refers Most? Institutional Incentives and Judicial Participation in the Preliminary Ruling System’ (2020) 27 *Journal of European Public Policy* 912.

⁶ Morten P. Broberg and Niels Fenger, *Preliminary References to the European Court of Justice* (2nd edn, Oxford University Press 2014) v. See also the forthcoming latest edition of the book: Morten P. Broberg and Niels Fenger, *Broberg and Fenger on Preliminary References to the European Court of Justice* (3rd edn, Oxford University Press forthcoming).

⁷ Stacy A. Nyikos, ‘The Preliminary Reference Process: National Court Implementation, Changing Opportunity Structures and Litigant Desistance’ (2003) 4 *European Union Politics* 397, 398.

⁸ Reinhard Slepčević, ‘The Judicial Enforcement of EU Law through National Courts: Possibilities and Limits’ (2009) 16 *Journal of European Public Policy* 378.

⁹ Sanja Bogojević, ‘Judicial Dialogue Unpacked: Twenty Years of Preliminary References on Environmental Matters Initiated by the Swedish Judiciary’ (2017) 29 *Journal of Environmental Law* 263.

¹⁰ Lorenzo Squintani and Dionne Annink, ‘Judicial Cooperation in Environmental Matters: Mapping National Courts’ Behaviour in Follow-up Cases’ (2018) 15 *Journal For European Environmental & Planning Law* 147.

Kingdom,¹¹ or a sample of five countries (Belgium, Italy, Netherlands, Sweden, and the United Kingdom).¹² One country stands out: for the Netherlands, a comprehensive study was published in 1991,¹³ and a survey of the highest Dutch courts was published in 2019.¹⁴

1.1 Gaps in Knowledge

With the few exceptions mentioned above, it can be concluded that while the judicial activity of the ECJ in the preliminary ruling mechanism is well-known, **national follow-up judicial decisions usually remain unnoticed**, tucked away in the respective countries and often hidden behind a veil of a language barrier. At the same time, the ECJ has continuously insisted that the preliminary ruling procedure is the keystone of the EU judicial system which ‘*by setting up a dialogue between one court and another [...] has the object of securing uniform interpretation of EU law, thereby serving to ensure its consistency, its full effect and its autonomy.*’¹⁵ But to what extent are preliminary rulings *in fact* fulfilling this purpose? This cannot be assessed by looking merely at the national court’s request and the ECJ’s response. What is crucial is to examine the follow-up judgments (**gap in knowledge #1**).

Czech and Slovak cases are no exception in this matter. An overview of the preliminary rulings in Czech cases was offered in first for years 2004-2009,¹⁶ and later for years 2004-2019;¹⁷ yet, both these studies only addressed the first and second part of the preliminary ruling procedure, i.e. the request by the national court and the answer by the ECJ. The follow-up judicial decisions remain unanalysed. In 2019, the Czech Supreme Court published a comprehensive study examining the application of EU law by lower courts.¹⁸ The research design of this study was different: it tackled a broader question during a narrower time frame (2012-2015). It may be concluded that no one has (yet) compiled an overview of all the Czech and Slovak follow-up judicial decisions implementing the ECJ’s rulings in the preliminary ruling procedure, nor has anyone analysed them to see how Czech and Slovak courts implement the ECJ’s conclusions (**gap in knowledge #2**).

At the level of the ECJ, the rulings can take the form of a **judgment** on the merits, or a procedural **order**. Several of the requests submitted by Czech and Slovak courts have been decided by an order, often due to the fact that EU law did not apply at all to the case at hand, or because the legal problem had already been resolved by the Court (*acte éclairé*). Although the nature of judgments and orders has been addressed in the abstract,¹⁹ scholars have not yet attempted to engage in a systematic examination of cases in a selected jurisdiction in order to identify the reasons why the ECJ did not deal with the merits of the case and to formulate some general conclusions about the national courts’ practices (**gap in knowledge #3**).

A useful classification of ECJ rulings has been proposed by Takis Tridimas who distinguishes three categories of answers the ECJ may give to a request for a preliminary ruling. ‘*The ECJ may give an answer so specific that it leaves the referring court no margin for manoeuvre and provides it with a ready-made solution to the dispute (outcome cases); it may, alternatively, provide the referring court with guidelines as to how to resolve the dispute (guidance cases); finally, it may answer the question in such general terms that, in effect, it defers to the national judiciary on the point in*

¹¹ Lorenzo Squintani and Jon Rakipi, ‘Judicial Cooperation in Environmental Matters: Mapping National Courts Behaviour in Follow-up Cases’ (2018) 20 Environmental Law Review 89.

¹² Lorenzo Squintani and Sjoerd Kalisvaart, ‘Environmental Democracy and Judicial Cooperation in Environmental Matters: Mapping National Courts Behaviour in Follow-up Cases’ (2020) 5 European Papers 931.

¹³ Joest Korte and others, ‘Primus Inter Pares: The European Court and National Courts. The Follow-up by National Courts of Preliminary Rulings Ex Art. 177 of the Treaty of Rome: A Report on the Situation in the Netherlands’ (EUI 1990) Working Paper <<https://cadmus.eui.eu/handle/1814/69>> accessed 18 April 2021.

¹⁴ Jasper Krommendijk, ‘The Highest Dutch Courts and the Preliminary Ruling Procedure: Critically Obedient Interlocutors of the Court of Justice’ (2019) 25 European Law Journal 394.

¹⁵ Opinion of the ECJ 2/13, *Accession to the ECHR* [2014] EU:C:2014:2454, para 176 and the case-law cited.

¹⁶ Milan Žondra, ‘Reference to Preliminary Rulings Lodged by Czech Courts, 2004-2009’ in Alexander J Bělohávek and Prof JUDr Naděžda Rozehnalová, *Czech Yearbook of International Law - Second Decade Ahead: Tracing the Global Crisis - 2010* (Juris Publishing, Inc 2010).

¹⁷ Václav Stehlík and David Sehnálek, ‘The Use of the Preliminary Ruling Procedure by Czech Courts: Historical Retrospective and Beyond’ (2019) 9 TalTech Journal of European Studies 150.

¹⁸ Katarína Šipulová, Aleš Pavel and Simona Česká, *Aplikace unijního práva českými civilními a trestními soudy 2012-2015* (Nejvyšší soud ČR 2019).

¹⁹ Broberg and Fenger (n 6); Luca Prete and Nils Wahl, ‘The Gatekeepers of Article 267 TFEU: On Jurisdiction and Admissibility of References for Preliminary Rulings’ (2018) 55 Common Market Law Review 511.

issue (**deference cases**).²⁰ This classification is a very useful tool of analysis; yet, no one has applied it to a specific sample of case law such as to all cases of a selected jurisdiction (**gap in knowledge #4**).

As for **inter-institutional dynamics**, the preliminary ruling mechanism involves several stakeholders. Some of the questions referred to the ECJ by national courts may be politically sensitive,²¹ some challenge the application of rules protected by national procedural autonomy, or the reference itself may represent an example of a lower court's *rebellion* against a higher court's case law.²² Although most of the references for a preliminary ruling in the Czech and Slovak context come from higher courts, there are also references submitted by lower courts and there are indications that some of them could be examples of the above-mentioned *rebellion phenomenon*. This question, however, has not yet been examined (**gap in knowledge #5**).

In the Czech and Slovak context, a seminal publication on the preliminary ruling procedure appeared in 2005,²³ shortly after the countries' accession to the EU. Another publication by a similar group of authors was published in 2011, focusing on the more general topic of applying EU law in the national context.²⁴ No further monograph on the topic of preliminary references has been published in these two countries, leaving the issue unaddressed for more than a decade (**gap in knowledge #6**).

Despite a considerable amount of existing academic contributions on the preliminary ruling procedure in general, the possibilities of empirical and analytical research related to national follow-up judicial decisions are unexplored. Against this background, the Team wishes to collect all the relevant national case law in the two studied countries and analyse it thoroughly, following up on the general publications and applying their conclusions to the existing Czech and Slovak cases.

The outcomes of the proposed project should be highly relevant both domestically and internationally.

1.2 Team Members' Previous Work

As for the Team members' previous work relevant to the proposed project, **Marek Pivoda** conducted research dealing with preliminary references submitted to the CJEU by national constitutional courts under the project *Constitutional Courts and EU Integration through Law: Beyond Preliminary References* which was financed by the Internal Grant Agency of Masaryk University; **Natálie Dřínovská** is currently working on a master's thesis on the use of EU law in the review of constitutionality by the Czech Constitutional Court; and **Zuzana Vikarská** has published two book chapters on the changes of Slovak constitutionalism in light of the accession to the EU, one in co-authorship with Michal Bobek,²⁵ another one in co-authorship with Kamil Baraník.²⁶

2. Aims of the Project and Research Question (incl. Timeframe and Outputs)

2.1 Aims of the Project

This project aims to observe the preliminary ruling mechanism by thoroughly examining the judicial dialogue between the Czech and Slovak national courts and the Court of Justice.

The preliminary ruling mechanism ('PRM') may be divided into three stages:

1. the reference submitted by the national court to the ECJ;
2. the response (ruling) by the ECJ which may take the form of a judgment or an order; and
3. the follow-up decisions by the national courts, incl. the possibility of a new reference to the ECJ.

²⁰ Takis Tridimas, 'Constitutional Review of Member State Action: The Virtues and Vices of an Incomplete Jurisdiction' (2011) 9 International Journal of Constitutional Law 737.

²¹ Karin Leijon, 'National Courts and Preliminary References: Supporting Legal Integration, Protecting National Autonomy or Balancing Conflicting Demands?' (2021) 44 West European Politics 510.

²² For the most prominent example, see case C-416/10 Křížan [2013] ECLI:EU:C:2013:8.

²³ Michal Bobek and others, *Předběžná Otázka v Komunitárním Právu* (Linde 2005).

²⁴ Michal Bobek, Petr Bříza and Jan Komárek, *Vnitrostátní Aplikace Práva Evropské Unie* (1st edn, C H Beck 2011). The authors are currently putting together the second edition of this monography.

²⁵ Zuzana Vikarská and Michal Bobek, 'Slovakia: Between Euro-Optimism and Euro-Concerns' in Anneli Albi and Samo Bardutzky (eds), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law: National Reports* (TMC Asser Press 2019) <https://doi.org/10.1007/978-94-6265-273-6_18> accessed 5 April 2021.

²⁶ Zuzana Vikarská and Kamil Baraník, 'EU Integration and the Slovak Constitution' in Stefan Griller and Roman Puff (eds), *National Constitutions and EU Integration* (Hart 2021).

The project will focus on all the existing Czech and Slovak cases which led to a preliminary reference. By contrast, cases where a reference to the ECJ was not made, remain **outside the scope of the proposed project**, even if they represent a situation in which a reference *should have been made*. What also remains outside the scope of the project is the motivation of the national judges who decide to refer or not to refer a question to the ECJ.²⁷

On the basis of the collected data, the Team will create **an online database** categorising the follow-up judicial decisions (in their original language) with short annotations in English. This part will be **addressed primarily to international audience**, given that follow-up decisions of national courts are generally inaccessible to scholars worldwide. Furthermore, the Team also aims to generalise its findings and to provide national courts with guidance useful for their future judicial dialogue with the ECJ. These recommendations will be drawn from the data gathered in the first part, as well as from general principles of EU law and its application, and will be **addressed primarily to national judges**, advising them how to engage most efficiently in the EU judicial dialogue.

By conducting this research, the Team's goal is to contribute to scholarly discussion both domestically (in the Czech Republic and in Slovakia) as well as on the international forum. At the end of the project, **a complete dataset of the relevant judicial decisions** will be made publicly available for other researchers' use.

2.2 Hypothesis & Research Question

In the context of the preliminary ruling mechanism, national follow-up judicial decisions are usually not generally accessible, primarily due to a language barrier, and in some cases also due to the unavailability of lower courts' decisions. The basic project design stems from a **hypothesis** that the collection of data from the national courts could lead to a better understanding of the judicial dialogue exercised within the preliminary ruling mechanism. Such study could uncover interesting patterns of judicial behaviour both at the level of the national courts, as well as at the level of the ECJ. Last but not least, the conclusions from the study of the two selected countries could lead to a **formulation of research designs** which can be applied also to other Member States of the EU.

The main research question of the project is: **How do Czech and Slovak courts fulfil their European mandate within the preliminary ruling mechanism?** To answer this research question, the Team will explore a number of research sub-problems formulated below.

2.3 Research Sub-Problems and Work Packages

The project can be divided into several work packages, in light of the gaps in knowledge identified above:

WP1: The Team will first **create a database of all existing requests for a preliminary reference** submitted to the ECJ by Czech and Slovak courts, incl. both closed and pending cases. In April 2021, there are 155 such proceedings, 23 of them pending. The project database will cover 20 years of the Czech and Slovak membership in the EU, i.e. the period **from 1 May 2004 to 30 April 2023**. In Slovakia, all judicial decisions are publicly available. In the Czech Republic, decisions of apex courts are publicly available while most decisions of lower courts must be requested pursuant to the relevant freedom of information law (Act No. 106/1999 Coll., on Free Access to Information). A **project webpage** (D1) will be created, outlining and categorising all these proceedings. The full text of the national courts' decisions (in Czech and Slovak language) will be made available on the project website.

WP2: After collecting the data, the Team will analyse them in order to summarise the national courts' references, the ECJ's rulings, as well as the national follow-up judicial decisions. For each of the cases, a **short annotation** in English language will be included on the project website, together with contact details of the Team member who can offer further information on the particular case. Partial findings of WP1 and WP2 will be presented and discussed at a **workshop** organised in cooperation with the analytical departments of all three Czech apex courts at the end of 2022 (*workshop 1*).

WP3: As regards the first stage of the preliminary ruling mechanism, the Team will focus on the **references** submitted by the national courts and assess whether the national courts' references in individual cases comply

²⁷ This question is studied by Helena Bončková, a PhD scholar at the Palacký University in Olomouc. Her expected thesis submission date is the end of 2021; the proposed project will certainly aim to reflect her findings and follow up on them.

with the methodical recommendations.²⁸ Focusing more closely at the ECJ level, the Team will categorise the ECJ rulings issued in Czech and Slovak cases into judgments and orders. In case of orders, the Team will attempt to **reveal the reason for the lack of a substantive answer**: was it a result of the national court's non-compliance with the methodical recommendations; or of the national court's mistake in assessing the scope of EU law; or of the national court's unawareness of pre-existing case-law; or of a misunderstanding on the ECJ's side? This WP aims to establish whether the national courts could have formulated their questions in a different way in order to receive a substantive answer from the ECJ. This systematic examination of Czech and Slovak requests answered by an order from the ECJ may help formulate general recommendations for national courts.

WP4: As regards the second stage of the preliminary ruling mechanism, the Team will analyse the **ECJ's rulings** issued in Czech and Slovak cases. The **formulation** of the questions for a preliminary reference will be studied closely and compared with the ECJ's **reformulation** of the question, as well as with the ECJ's **response** as such. The ECJ's rulings will be categorised on the basis of the proposal by Takis Tridimas (*outcome cases, guidance cases, deference cases*)²⁹ and national follow-up judicial decisions will be examined closely. The most important part of WP4 will be **a qualitative analysis of the national follow-up decisions** from the perspective of EU law and its uniform application. The Team aims to determine whether national courts implement the ECJ's rulings 'correctly', i.e. whether they accept the ECJ's conclusions or not, whether they diverge from the conclusions, whether they ever submit a second reference in the same case, etc. While the Team members will specialise on the input (i.e. divide the examined cases into topical clusters by subject-matter), the deliverables will rather be cross-sectoral.

WP5: Building on the conclusions in WP4, the Team will examine the **institutional dynamics** at the national level, i.e. the relationships between different national actors before and after the implementation of the ECJ's ruling. In all cases, the Team will focus on the underlying relationship between the legislature and the judiciary, i.e. whether national courts point out national rules or practices that might inhibit their unfettered right under Article 267 TFEU to ask preliminary questions;³⁰ and whether the implementation of the ECJ's ruling requires **disapplication of national law or even a change in national law**. In case of references from lower national courts, the Team will examine whether the reference was preceded by a higher court judgment and whether the reference itself may be perceived as a *rebellion* against the decision of a higher court; it will also be studied how the lower courts used the ECJ's rulings in relation to higher courts (*inter-judicial dialogue*). If the national judicial decision implementing the ECJ's ruling was challenged by an appeal (and/or an extraordinary remedy or a constitutional complaint), the Team will examine whether the higher courts respected the ECJ's ruling in their follow-up judgments. All the findings will be added to the project website, thus creating a comprehensive overview of relevant national judicial decisions in cases where the preliminary ruling mechanism was used.

WP6: In the final year of the proposed project, the Team will summarise all its findings in **a monograph** written in the Czech and/or Slovak language, addressed not only to academic readers but primarily to legal practitioners (judges, advocates, civil servants, etc). This proposed book should offer a solid theoretical background in the area of the preliminary ruling mechanism, covering all the basic notions of the EU judicial dialogue, explaining the conditions under which national courts may or must submit a reference to the ECJ, explaining the various steps of the proceedings, the various forms of ECJ rulings given in response to the national requests, and instructing the national judges how best to participate in the EU judicial dialogue.

2.4 Phases of Research (incl. a Visualised Timeline of the Project)

Year 1 (2022): Defining the conceptual framework and theoretical background for further research; formulating a detailed **research design**; study of primary and secondary sources to familiarise ourselves with the key concepts; starting the data collection from primary sources (case law, i.e. databases of judicial decisions, namely CURIA and national databases); setting up the project website; discussing the research design with international partners and institutional partners; preparing the first workshop; active participation at national and international conferences.

Year 2 (2023): Further data collection, cleaning, and analysis; introducing the findings at the **first workshop** organised in Brno; organisation of a **conference** at the Czech Ministry of Foreign Affairs; further consultations with international partners; active participation at national and international conferences;

²⁸ CJEU, *Information note on references from national courts for a preliminary ruling*, OJ 2011 C 160, p. 1; available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:160:0001:0005:EN:PDE> [accessed 18 April 2021]

²⁹ Tridimas (n 20).

³⁰ Case 166/73 *Rheinmühlen-Düsseldorf* [1974] EU:C:1974:3; para 4; case C-210/06 *Cartesio* [2008] EU:C:2008:723, para 88.

implementation of received feedback; organisation of the **second workshop**; preparation (and potentially submission) of **4 articles**.

Year 3 (2024): Further data collection and data cleaning; finalisation of data sets; final analysis of collected data; final consultations with international partners; integration of the collected feedback; evaluation of results; presentation of results at national and international conferences; submission of **remaining articles**; organisation of the **third workshop**, finalisation of the **monograph** in Czech/Slovak language.

	Year 1 (2022)				Year 2 (2023)				Year 3 (2024)			
	I	II	III	IV	I	II	III	IV	I	II	III	IV
Detailed research design												
Consultation with partners												
WP1: Database of case-law												
T1.1 creating a project webpage		D1					update				update	
T1.2 case-law (data collection)				workshop1								
WP2: Analysis of case-law												
T2.1 case-law (data analysis)				workshop1								
T2.2 case-law (case annotations)												
WP3: ECJ judgments vs. orders												
T3.1 data analysis and categorisation												
T3.1 analysis of ECJ orders					D6							
WP4: Analysis of follow-up decisions												
T4.1 apex courts (data available)				D2		D3		D4				
T4.2 lower courts (data to request)								D5				
T4.3 presentation of findings						conference		workshop2				
WP5: Institutional dynamics												
T5.1 data collection & analysis									D7	D8		
T5.2 recommendations to nat. courts											workshop3	
WP6: Monograph												
T6.1 study of primary & sec. sources												
T6.2 book publication												D9

2.5 List of Planned Deliverables & Publication Strategy

The dissemination of the project results is projected as follows: a project website (D1), at least 7 articles (D2-D8), and a monograph written in Czech and/or Slovak language, summarising the findings for domestic audience (D9). It is also foreseen that the Team will produce at least 2-3 conference papers (e.g. ECPR, ICONS, UACES or other relevant venues) or working papers.

As for the journal articles, **at least 4 articles** will be published in **indexed law journals** (WoS or SCOPUS) while the remaining ones will be submitted to other peer-reviewed journals, both in the Czech Republic and abroad. In the chart below, the articles intended for publication in indexed law journals are highlighted. Depending on the topics of the individual deliverables, the Team will aim to publish its results in some of the following journals: European Const. Law Review (Jimp); Common Market Law Review (Jimp); Journal of Eur. Public Policy (Jimp); West European Politics (Jimp); Review of CEE Law (Jimp); Maastricht J of Eur. and Compar. Law (Jsc); Croatian YB of Eur. Law & Policy (Jsc); Utrecht Law Review (Jsc); German Law Journal (Jsc); Vienna Journal on Int'l Const. Law (Jsc); European Papers (Jsc); The Lawyer Quarterly (Jsc); or ČPVP (Jsc).

Team member(s)	Topic	Description / main research question
D1: all	Judicial Dialogue in EU Matters in the Czech Republic and in Slovakia	The Team will set up a project website offering an overview of all the cases referred by Czech and Slovak courts. This website will be updated regularly, with complex updates at the end of each year.
D2: ZV+ND	Follow-up judicial decisions of the Czech apex courts after the ECJ's preliminary ruling	This article will be an introductory one, aimed at domestic audience, analysing the follow-up judgments of the Czech apex courts, i.e. the Supreme Court and the Supreme Administrative Court of the Czech Republic. (No reference has been submitted by the Constitutional Court.)

D3: ZV+ND	Follow-up judicial decisions of the Slovak apex courts after the ECJ's preliminary ruling	This article will be an introductory one, aimed at domestic audience, analysing the follow-up judgments of the Slovak apex courts, i.e. the Constitutional Court and the Supreme Court of the Slovak Republic. (The Slovak Supreme Administrative Court is yet to be established.)
D4: ZV+BB	CILFIT revisited? The duty of the courts of last instance to refer questions in the perspective of the Czech & Slovak existing judicial practice	Last instance Czech and Slovak courts have a twofold duty in relation to EU law: to comply with the so-called <i>CILFIT</i> case law of the ECJ (which has been very recently challenged by Advocate-General Bobek ³¹) and to comply with the parties' right to a fair trial in line with the case law of the respective constitutional courts and/or the ECtHR. On the basis of the data collected in the two studied countries, this article will analyse the Czech and Slovak last instance courts' (non)compliance with this twofold duty.
D5: MP	The Ability of National Courts to Influence the CJEU's Doctrine through Preliminary Reference Mechanism	This article will attempt to examine whether national courts can influence the ECJ's opinions by phrasing their preliminary question in a particular way. All preliminary questions asked by Czech and Slovak courts will be categorised by the national courts' approach (<i>seeking guidance, seeking outcome</i>) and the ECJ's reaction (<i>guidance opinion, outcome opinion</i>). It will be studied whether the ' <i>margin of appreciation</i> ' left by the ECJ to national courts depends on the formulation of the reference or on other factors on the ECJ's side.
D6: FV	Framing the Preliminary References: Do National Courts Ask Their Questions Well?	The article will examine the way in which the framing of the preliminary reference influences the responsiveness of the ECJ. The research will focus on the style in which national courts ask the questions. The ECJ's responses will be divided into procedural orders and judgments on the merits. Subsequently, the article will advise national judges how better to frame their questions in order for to receive a substantive judgment from the ECJ.
D7: ZV	Follow-up judicial decisions of the Czech and Slovak lower courts after the ECJ's preliminary ruling: the inter-judicial dynamics within the Member States	The article will attempt to analyse various ways in which lower national courts treat ECJ's rulings in the follow-up cases and establish to what degree the national courts complied with the ECJ's judgment (<i>full cooperation / partial cooperation / silent pushback / open backlash</i>). It will also be examined whether the national courts used the ECJ's ruling as a sword against national law and case-law of higher courts. The article will examine not only the degree in which national courts comply with the ECJ's opinion, it also describes how national courts further develop it and use it.
D8: BB	National procedural autonomy: how much margin is left to national courts in procedural matters? A Czech and Slovak case study.	National procedural autonomy refers, <i>inter alia</i> , to the relative freedom of national law to adopt procedural rules. The ECJ will strike down these rules if they hamper the effectiveness EU law. The aim of this article is to explore the compliance of the Czech and Slovak national legal systems with such judgments. In particular, it will investigate whether the national legislator repeals the non-EU-compliant rule or whether the national court will 'simply' disapply it in the future, or whether the Court's ruling will be 'ignored' and the national procedural rules remains applicable.
D9: all	Preliminary ruling mechanism in EU law	The last deliverable is a monograph addressed to domestic audience, comprehensively covering the preliminary ruling mechanism and summarising the findings from the project.

2.6 Methodology

As for methodology, the Team will employ standard methods of qualitative research, including data collection (mostly case law of Czech & Slovak courts and case law of the CJEU), content analysis, mutual comparison, sorting, clustering, and analysis. As for the overall conception, the Team will approach the research questions mainly through **empirical legal research** of the national judicial decisions, and complement it with **doctrinal legal research** in the area of EU law, national constitutional law and comparative constitutional law. Some parts of the project will be descriptive, e.g. the presentation of judicial statistics for the relevant time period; yet, the main method employed in the Team's research will be empirical and analytical. The Team will not

³¹ See the opinion of AG Bobek in case C-561/19 Consorzio Italian Management [2021] ECLI:EU:C:2021:291. The case is still pending at the time of submission of the project proposal.

need to conduct interviews, given that the motivations behind the stakeholder's activities (e.g. why a national judge referred a question to the ECJ) remain outside the scope of the proposed project, as explained above.

3. International Cooperation

The proposed project covers two Member States of the EU: the **Czech Republic and Slovakia**. Three of the team members are citizens of the Czech Republic, two are Slovak citizens; the Team has good professional links both to the academic and the judicial stakeholders in both examined countries. The proposed project also has a significant international dimension and relevance; therefore, the Team wishes to offer several contributions to the international scholarly debate and to cooperate with other scholars and institutions in other European countries. The Team members plan to actively participate in **international conferences and congresses**, including the ECPR Joint Sessions, ICON-S, FIDE, UACES, and other relevant academic events that offer a forum for presenting our research results and receiving worthwhile feedback.

The Team plans to cooperate closely with institutions of international renown. First, Z. Vikarská has previously studied and taught EU law at the **University of Oxford**, of which two more Team members (F. Vlček and M. Pivoda) are also postgraduate students. The Team is thus able to use the facilities of the university as well as to benefit from the interaction with the academics at the *Institute of European and Comparative Law*. Second, B. Budinska is currently based at the *Europa Institute* of the **Leiden University**, which will enable the Team to cooperate with the members of the *Europa Institute* and receive valuable feedback.

The Team members are also well-connected with other relevant international institutions, including **courts** (CJEU, ECtHR, as well as the Constitutional Courts of the V4 countries) and **research institutions** (Leiden University, KU Leuven, University of Amsterdam, *Centre of Excellence for International Courts* in Copenhagen, *European University Institute* in Florence, and others). The Team can thus present their (preliminary) findings not only at the events mentioned above, but also at **informal workshops and discussion groups** organised at the abovementioned institutions, especially since many such academic events are currently held online, without incurring any costs.

As a **re:constitution scholar** in 2020-2021, Z. Vikarská has established and strengthened an international academic network with EU law and constitutional law scholars from various countries. This international network can be approached for any brainstorming or feedback in case of need. The Team might also approach the *Judicial Studies Institute* established at the **Masaryk University** under the auspices of D. Kosar's ERC grant.

4. Institutional Cooperation & Institutional Background

As for the institutional background, Masaryk University is the second largest university in the Czech Republic and one of the most important teaching and research institutions in the CEE region, with research being one of its top priorities. It has been awarded multiple research projects, including ERC Grants (two of them directly in the Faculty of Law, in a related field of judicial studies), Horizon 2020 projects and GAČR projects. In December 2020, the Faculty of Law sent documents about implementing the Human Resource Strategy for Researchers (HRS4R) personnel strategy to the European Commission; obtaining the HR Award certificate is expected during 2021. The strong commitment for improvement of human resources strategy at the Faculty of Law is supported by the Dean's provision about the implementation of the HR Award – Human resource strategy for Researchers (HRS4R), which can be found publicly on the faculty's website along with the Action Plan of the faculty.

Masaryk University is equipped with all the tools necessary for the proposed research, including well-equipped libraries, international research databases, administrative staff, technical support and other tools that will be readily available for the Team's use. Additional institutional support might be provided by the University of Oxford, the Leiden University, the Czech Society for European and Comparative Law (Z. Vikarská is its serving President, N. Dřínovská its serving Secretary General), and the Judicial Studies Institute at the MUNI Faculty of Law.

The Team plans to cooperate with **external institutions**. The following institutions have already confirmed their interest to cooperate on the proposed project: the EU law department at the Ministry of Foreign Affairs of the Czech Republic (contact person: J. Vlácil), the analytical department of the Czech Constitutional Court (contact person: L. Majerčík), and the analytical department of the Czech Supreme Court (contact person: K. Deák). The purpose of this cooperation with institutional partners is to present the Team's research to practitioners in relevant national departments and to receive valuable feedback on the project progress. The Team also plans to approach the Czech Supreme Administrative Court and the relevant institutions in the Slovak Republic and invite them to cooperate on the project.

5. Research Team: Roles and Composition

Zuzana Vikarská (0,3; principal investigator) is an assistant professor of constitutional law at the Masaryk University (Dept. of Const. Law and Pol. Science), a part-time assistant professor of EU law at the Palacký University (Dept. of Int'l and Eur. Law), and a judicial clerk at the Czech Constitutional Court (Chambers of Judge Šimáčková). She focuses on topics on the intersection of constitutional law and EU law, about which she has published book chapters with Michal Bobek (Springer, 2019) and Kamil Baraník (Hart, forthcoming in 2021). She holds a PhD in law and jurisprudence from the Charles University in Prague and two postgraduate degrees from the Oxford University (MJur 2014, MPhil 2015). Since 2018 she has served as President of the Czech Society for European and Comparative Law. In 2020-2021, she conducts her research as a re:constitution fellow, which includes a research stay at the Leiden University and an internship at the Court of Justice of the EU (chambers of Advocate-General Bobek). Zuzana will lead the project Team, coordinate the research activities, take part in most of the publications and oversee the due fulfilment of the Team's responsibilities.

Barbora Budínska (0,2) is a PhD candidate in EU law (submission in 2022, supervised by S. Van den Bogaert and V. Borger) at the Leiden University Faculty of Law (*Europa Institute*). She holds a law degree from the Humboldt University and a postgraduate law degree from the Leiden University (LLM 2017). She participated in two exchange programmes with the Ivane Javakhishvili University in Tbilisi (Georgia), and College of Management Academic Studies in Rishon LeZion (Israel). She worked as a research assistant for the German Conciliation Body for Public Transport in Berlin where she researched in the field of national, EU and international aviation law and air passenger rights. Barbora's doctoral research has mainly focused on EU banking law and EU administrative law. Her dissertation aims to analyse the role of the principles of EU law and national procedural autonomy in judicial review of decisions adopted within the Single Supervisory Mechanism.

Marek Pivoda (0,2) is a PhD candidate in constitutional law (submission in 2023, supervised by R. Zbíral) at the Masaryk University Faculty of Law (Dept. of Constitutional Law and Political Science), and a judicial clerk at the Czech Constitutional Court (chambers of Judge Jirsa). He holds a law degree from the Masaryk University and he spent one semester at the University of New South Wales (Sydney). Marek's research has mainly focused on the use of preliminary reference procedure by national constitutional courts. His dissertation thesis aims to analyse the discretion of national courts in implementation of EU law. In 2020-21, Marek will pursue a postgraduate degree (MPhil) at the University of Oxford, under the supervision of Sanja Bogojevic. Marek participated in the InDivEU H2020 Masaryk University research team. He will spend one month at the *Maastricht Centre for European Law* (under the supervision of M. Claes) in September 2021 and he will attend iCourts Summer School at the *Danish National Research Foundation's Centre of Excellence for International Courts* in June 2021.

Filip Vlček (0,2) is an MJur candidate at the University of Oxford (2020-21) and a PhD candidate in EU law and conflict of laws (submission in 2024, supervised by N. Rozehnalová) at the Masaryk University Faculty of Law (Dept. of Int'l and Eur. Law). He holds a law degree from the Masaryk University and during his studies he spent one semester at the Aix-Marseille University in France and one semester at The John Marshall Law School in the USA. In 2019-20, he worked as a junior associate in an international law firm in Prague. As of August 2021, Filip will work as a junior lawyer at the CJEU (General Court, chambers of the Judge Petrlik).

Natálie Dřínovská (0,2) is currently a last year master's student with expected graduation in September 2021, planning to pursue PhD studies afterwards. In her master's thesis, she focuses on the use of EU law in the review of constitutionality by the Czech Constitutional Court. During her studies, she interned at the Czech Constitutional Court (chambers of Judge Šimáčková) and the Czech Supreme Administrative Court (chambers of Judge Kühn). Since 2019, she has served as Secretary General of the Czech Society for European and Comparative Law.

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