

Do Constitutional Court's rulings bind lower courts? Doctrinal and empirical perspectives

Abstract

Czech doctrinal researchers conclude that decisions of the Czech Constitutional Court are – at least in some respect – bind lower courts *pro futuro*. Although continental legal systems do not officially subscribe to a doctrine of precedent, a quasi-precedential role of the jurisprudence of higher courts is often defended by theorists. However, this theory of quasi-precedent has never been empirically tested in the Czech Republic. This dissertation constitutes a first such attempt as it examines whether courts actually decide in practice according to the jurisprudence of the Czech Constitutional Court. Specifically, it focuses on a guideline decision by the Czech Constitutional Court on parole decisions made in 2018. The guideline decision emphasized that parole decisions – made by courts in the Czech legal system and not by parole boards or committees – constitute a systemic problem since they are poorly reasoned and as a result they are ambiguous and not persuasive. The guideline decision in detail stated what reasons can be used to justify parole decision and how various factors, such as previous convictions, should be interpreted when deciding on parole. This dissertation studies two groups of first-level courts' decisions: Those made right before the guideline decision and those made a year later. Based on a content analysis of these decisions, this dissertation concludes that the guideline decision had zero impact on the decision-making of first-level courts. The quality of parole decisions remained very low, albeit the guidance provided by the Czech Constitutional Court. These findings have implications both for theorists, Constitutional court and policy-makers. Theorists might need to embrace a realist perspective to bridge the gap between law-in-books and law-in-action. Constitutional court might need to employ new methods destined to persuade lower courts to follow its jurisprudence. And policy-makers might need to exploit different measures to improve the quality of parole decisions.