

HABILITATION THESIS REVIEWER'S REPORT

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Habilitation thesis

Judges as Actors of Democratic Resilience

Reviewer

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Judges as Actors of Democratic Resilience

This thesis shines new light on the role played by judges in democratic resilience by analysing their individual, institutional and collective engagement throughout the democratisation cycle. It is essential reading for understanding the process of both democratisation and erosion of democracy. It shows an impeccable grasp of the many factors shaping judicial approaches to democratic resilience, from institutional design to historical contingencies and personal experience with non-democratic regimes.

The author demonstrates the role that judges in fact play as 'guardians of the constitution' across three phases – transition, backsliding and re-democratisation, with a focus on CEE countries. Courts and individual judges can resist democratic decay and democratic erosion on the bench (judicial review) and off the bench (judicial governance, freedom of expression), but limitations are also quickly reached. The crucial matter, therefore, is how effective judges are or can be in shaping democratic resilience through formal and informal mechanisms. In this respect, 'Institutional design, strategic choices, and deeply ingrained judicial culture' are all decisive factors. At the same time, democratic resilience may at times morph into judicial resistance, and while resistance can safeguard democratic structures, it also risks politicising the judiciary and eroding public trust. Ultimately, the author shows that, for judges to be effective 'actors of democratic resilience', there must be a combination of institutional safeguards, strategic alliances, and cultural transformation.

This thesis is a remarkable scholarly achievement as it paves the way for future research on the long-term effects of judicial resistance, the interplay between formal and informal institutions, and the role of professional norms in shaping democratic outcomes.

Key features:

- **A focus on CEE, with comparative reach.** The thesis centres on CEE but draws on examples from other jurisdictions, such as Latin America, to support its claims. The Slovak case study (Study VI) is compelling in illustrating the role of courts in transitional justice.
- **Attention to lower courts.** A welcome emphasis is placed on the role of lower courts in democratic consolidation i.e. in 'setting the key values and democratic principles of new constitutions'.

- **Judges as agents of change.** A recurring theme is the tension between path dependency and judicial agency, particularly in contexts where judiciaries remain loyal to prior (non-democratic) regimes.
- **Empirical evidence and theoretical framework.** The thesis is grounded in a strong theoretical framework (democratization and institution-building theories, judicial behaviour approaches) and a rich evidence base, using qualitative and quantitative methods.

Key themes and questions

➤ **Judicial resistance, resilience, independence**

Could the coordinated actions of Romanian and Polish judges that are cited (at 151) as evidence of a shared commitment to judicial independence (JI) alternatively be described as resistance?

How porous are the concepts of JI and judicial resistance? When does one shift into the other?

The author acknowledges that judicial resistance ‘needs to be better conceptualised and grounded in current theories on judicial independence and legitimacy’ (concluding remarks), and that JI is itself a ‘fairly elusive term’ (p.217) (concluding remarks). *Is this due to conceptual vagueness, or might it reflect the inherently relational nature of both resistance and JI?*

The thesis notes that some resistance strategies may ‘bend the letter of the law’ or ‘stretch the contours of judicial power’. This raises a normative tension: *is resistance the appropriate term, given that judges often argue they are merely fulfilling their constitutional duty to uphold the rule of law? Is ‘resistance’ simply the defence of judicial autonomy, or does it imply a departure from neutrality and a turn to ‘high-risk judicial activism’ (cf. p. 125)?*

The thesis presents judicial resistance as both a source of ‘light’ and ‘darkness’. *At what point does resistance cross into harmful activism?*

➤ **Judicial culture and role conception**

Judicial culture is rightly identified as a cornerstone of institutional and democratic resilience. The thesis argues that resilience requires not only legal reform but also the internalisation of democratic norms and values. The formation of judicial culture is shown to condition the success of institutional reforms, with Slovakia providing rich illustrations. The author highlights the importance of judges’ self-understanding of their role, particularly their conception of democracy, independence, and professional responsibility. The notion of ‘mental independence’ (p. 147) and ‘mental maps of judicial independence’ (p. 218) is especially insightful.

If, as the author suggests, institutional independence (the regulatory design of judicial governance and decision-making) and decisional independence are intrinsically linked, could legal formalism then be considered a constraint on mental independence in CEE judiciaries? Should this be more prominent in the thesis?

➤ **Internalization of values and a duty to act**

The thesis outlines five stages of internalising judicial independence, culminating in the willingness to act within its normative boundaries (p. 218). *Does this imply a duty to act, such as speaking out, on every judge, including those in lower courts? If not, how should we understand the limits of this responsibility?*

➤ **Public trust and social legitimacy**

The relationship between judicial resistance and public trust is a recurring theme (e.g. pp. 128–131, 149, 155–157, 177). Public confidence is shown to be shaped by political, cultural, and experiential factors, and mentions further research on public attitudes - how far they are driven primarily by partisan alignment and awareness of legal institutions. Yet, could/should the thesis or further research explore the following:

Should/how could the courts engage in historical reckoning to address unresolved legacies and strengthen legitimacy?

Could the theme of judicial accountability be developed further, particularly in relation to public trust and the judiciary's social legitimacy (cf role of the public as watchdog in Ukraine)?

Reviewer's questions for the habilitation thesis defence (number of questions up to the reviewer)

Judicial resistance, resilience, independence

- 1.1. How porous are the concepts of JI and judicial resistance? When does one shift into the other?
- 1.2. Judicial resistance 'needs to be better conceptualised and grounded in current theories on judicial independence and legitimacy' (concluding remarks), and JI is itself a 'fairly elusive term' (p.217) (concluding remarks). Is this due to conceptual vagueness, or might it reflect the inherently relational nature of both resistance and JI?
- 1.3. Is resistance the appropriate term, given that judges often argue they are merely fulfilling their constitutional duty to uphold the rule of law? Is 'resistance' simply the defence of judicial autonomy, or does it imply a departure from neutrality and a turn to 'high-risk judicial activism' (cf. p. 125)?
- 1.4. At what point does resistance cross into harmful activism?

Judicial culture and role conception

- 1.5. If, as the author suggests, institutional independence (the regulatory design of judicial governance and decision-making) and decisional independence are intrinsically linked, could legal formalism then be considered a constraint on mental independence in CEE judiciaries? Should this be more prominent in the thesis?

Internalization of values and a duty to act

- 1.6. The thesis outlines five stages of internalising judicial independence, culminating in the willingness to act within its normative boundaries (p. 218). Does this imply a duty to act, such as speaking out, on every judge, including those in lower courts? If not, how should we understand the limits of this responsibility?

Public trust and social legitimacy

- 1.7. Should/How could the courts engage in historical reckoning to address unresolved legacies and strengthen legitimacy?
- 1.8. Could the theme of judicial accountability be developed further, particularly in relation to public trust and the judiciary's social legitimacy (cf role of the public as watchdog in Ukraine)?

Further questions if time permits

- 1.9. Is the theory of judicial resilience specific to CEE, or does it have wider applicability? If so, how can overgeneralisation be avoided?
- 1.10. What concrete policy tools could realistically reshape judicial culture without infringing judicial independence? Is this feasible within deeply hierarchical systems
- 1.11. The thesis argues that judicial culture and professional role conception are decisive for democratic resilience. How can we empirically measure 'judicial culture' and distinguish it from individual ideology or strategic behaviour?
- 1.12. Informal practices are identified and verified through qualitative and quantitative analysis. Could you tell us a bit more about your approach - how to ensure robustness of findings, particularly in non-authoritarian regimes?

Conclusion

Overall, this is a remarkable and timely thesis that significantly advances our understanding of the judiciary's role in democratic resilience. It opens important avenues for future research, particularly on the long-term effects of judicial resistance, the interplay between formal and informal institutions, and the role of professional norms. The author has also outlined areas such as the conceptual clarity of resistance, the role of public trust, and the empirical study of judicial culture which will benefit from further research. The thesis is a major contribution to the field.

The habilitation thesis entitled "Judges as Actors of Democratic Resilience" by Mgr. et Mgr. Katarína Šipulová, Ph.D., **fulfils** requirements expected of a habilitation thesis in the field of Political Science.

Date: 09 November 2025 Signature

