

## INDEX

appointment of judges abuse of mechanisms of judicial accountability, 76, 92, 95, 295 to the grand chamber, 84-85, 196, accession conditionality theory of 209, 225, 230 to the position of court president or judicial councils, 11 accountability vice-president, 195, 200, 209, 224, behavioral, 39, 50 230, 277, 289, 311, 313, 322 broad, 33 Armenia, 394 contingent circumstances of, 20, 382 Article III judges, 43 Association of Slovak Judges, 253, 426 decisional, 39, 50 definition, 32-36, 52 Austria, 131, 395, 397 institutional, 51, 52 authority legal, 53, 54 coordinate, 114, 115 narrow, 34 hierarchical, 114, 115 political, 51-54 Azerbaijan, 394 public, 30 Baxa, Josef, 173, 175 accountability as a concept, 30 accountability as a mechanism, 19 Belarus, 394 accountability as a virtue, 19, 428-431 Belgium, 132, 134 accountability gap, 29 Beneš, Edvard, 177 accountability nesting problem, 49, 391 blind distribution of cases, 91 accountability perversions. See judicial Brožová, Iva, 174 accountability perversions Bulgaria, 5, 123, 132, 393, 416, 417 accounting agents. See principals bureaucratic judiciary, 399 Bureš, Jaroslav, 173-175, 185 of judges accountability relationships among, 48 Canada, 76 overlap between, 49 career judiciary, 113-116 Amendment to the Law on Courts career track to the judiciary, 189 and Judges adopted by the Czech case assignment, 44, 91, 195, 202, 203, Republic in 2008, 186, 187, 221, 210, 211, 226 224, 231 phases of, 281 Andorra, 37 China, 49, 99 anti-mečiarism, 246, 259 Civic Democratic Party (ODS), 160, 161 appeal, 103-106 civil law systems, 12, 13, 37, 47, 56, 69, appeals and quasi-appellate 74, 75, 80, 84–86, 104, 115, 116, mechanisms, 103, 105, 193, 217, 173, 176, 200 268, 300 post-communist, 13



INDEX

466

civil liability of judges, 82, 270 common law systems, 12, 56, 104, 115, dealing with the past, 167, 246, 380 116, 400, 422 institutional legacies, 19, 418 complaint mechanism, 77, 78, 151, 221, default configuration of the CEE 222, 229, 275, 285, 309, 320, 424 judiciaries, 3 Constitutional Amendment adopted demotion, 82 by Slovakia in 2001, 245, 256, Direction (Smer), 238 258, 363 Disciplinary Code adopted by the Constitutional Court of the Czech Czech Republic in 2002, 220 Republic, 178, 184, 379, 380 Constitutional Court of the Slovak in 1991, 273 Republic, 251, 273, 304, 379 Disciplinary Court of the Slovak constitutional courts, 107, 122 Republic, 273, 305, 306 corruption, 167, 256, 384, 417, 418 disciplinary motion, 77, 150, 194, Council for Testing Competence of Judges, 185, 222 346, 353-356, 372 Council of Europe, 123, 136, 137 Council of Judges of the Slovak disciplinary offenses, 308 Republic, 252 court administration history of, 121 342, 356 models of. See models of court 264, 272, 276, 304, 305, 352 administration court officials, 97-99 dormancy of parliaments theory of court presidents, 12, 49, 86, 99, judicial councils, 11 204-207, 209-212, 222-225, Dzurinda, Mikuláš, 237 227-230, 232, 250, 266, 272, 278, 280, 282-286, 291-294, 296, electronic registry, 281, 295, 327 297, 301, 309, 313, 315-322, 324, en banc procedure, 103, 104 Estonia, 5, 123, 132 325, 329, 330, 338, 349, 352, 363, 390-397, 403, 413, 414 criminal liability of judges, 82 criminal mechanisms of judicial ex ante mechanisms of judicial accountability, 51 accountability, 108 Croatia, 100, 401 Cyprus, 132 ex post mechanisms of judicial Czech Republic, 5, 11, 28, 29, 67, 80, accountability that affect all judges of a given 84, 98, 100, 131, 149, 150-153, 158-235, 405, 415, 421, 424, 427 jurisdiction, 95 Czechoslovakia, 159, 162, 164, 412 that affect court officials, 97, 98 that affect court presidents and division of, 162, 240 vice-presidents, 96 Damaška, Mirjan, 114 that affect entire courts, 93, 94 de facto judicial accountability, 14, 149 de jure and de facto judicial government, 96 non-individual, 93 accountability

gap between, 66, 68

distinction, 66

de jure judicial accountability, 14, 149 Disciplinary Code adopted by Slovakia 196-198, 204, 205, 227, 228, 272, 283, 284, 306, 317-319, 341, 342, disciplinary proceedings, 153, 220, 317 disciplinary sanctions, 198, 274, 308, disciplining of judges, 1, 196, 220, 262, European Union, 123, 136, 137, 184, 237 ex ante accountability mechanisms, 33 ex post accountability mechanisms, 33 that affect the judiciary as a branch of

external incentives theory of

judicial councils. See accession



INDEX

conditionality theory of judicial interpretative guidelines, 103, 104 councils Ireland, 77 extraordinary appeal, 103, 104, 193, Italy, 48, 122, 132, 395, 397 217, 268, 300 Japan, 27, 37, 79, 82, 119, 429 family members placement Jefferson, Thomas, 68 business, 267 judge Federal Supreme Court of definition, 44 Czechoslovakia, 163, 242 judge bashing, 117 Fico, Róbert, 238, 261 filtering mechanisms, 56 Party, 171 Finland, 131 Judicial Academy of the Czech fire alarm oversight, 78, 423, 424, 427 Republic, 217 fixed mechanisms of judicial Judicial Academy of the Slovak accountability, 339 Republic, 303 judicial accountability, 17, 25, 29, 118, For Transparent Judiciary organization, 253 139, 140, 153 France, 42, 48, 89, 90, 117, 118, 122, collective (of the judiciary), 41 132, 134, 135, 395, 397, 422, 429 concept, 41 to court presidents, 48 definition, 57 Garzón case, 25, 26 dimensions of the "judicial" Georgia, 37, 123 Germany, 26, 27, 37, 76, 80, 83, 131, element, 41 172, 395, 415, 422 to the executive, 44 grand chamber, 104 individual (of judges), 41 Greece, 122 internal, 47 legalization of, 38, 54 Harabin, Štefan, 9, 17, 248, 256, 264, to the legislature, 46 to other actors, 47 289, 290, 292, 319, 320, 322, 324, judicial accountability avoidance, 68, 325, 328, 355, 356, 359, 369, 375,

376, 410, 426, 427 Harabin's judicial reform, 349 Harabin's proposal for JCSR reform, 264 Havel, Václav, 159, 160, 177 hegemony preservation thesis, 10 High Court of Prague, 164 Hungary, 4, 96, 100, 123, 132, 134, 393, 416

Iceland, 132 impartiality, 62 impeachment, 76 independence of individual judges, 408 independence of the judiciary, 408 India, 76, 81 information asymmetry, 38, 39 insurance theory of judicial councils, 10 judges' membership of the Communist 70, 213, 233, 299, 347, 360, 368 judicial accountability mechanisms effects of, 54-56, 64 process criteria of, 52 judicial accountability perversions, 68, 213, 233, 299, 333, 346, 360, 368, 419 judicial boards, 178, 185, 186, 225, 227, 251, 281 judicial candidates, 189 judicial competence evaluation, 222 judicial council, 135 Judicial Council Euro-model of court administration, 17, 123, 126-130, 134-137, 147, 288, 304, 398, 406, 409, 410 impact of, 136, 406 key requirements of, 128

46



INDEX

468

Law on State Administration of Courts adopted by Slovakia in 1992, 255 legitimacy of the courts, 63 Liechtenstein, 132 limited transparency, 418 Liščák, Jozef, 248, 255 Lithuania, 5, 123, 132, 420 lustration, 242, 246, 380 Luxembourg, 132

Masaryk, Tomáš Garrigue, 177

108, 149, 270, 334, 347

mechanisms of judicial accountability,

carrots, 13, 73, 83, 195, 270, 310

dual mechanisms, 54, 73, 87, 194,

Madison, James, 69

Majchrák, Juraj, 324

270, 315

Judicial Council of the Slovak Republic, 9, 258, 259, 262, 263, 301, 305, 317, 322, 330, 423-426 composition of, 260, 261 criticism of, 264 impact of, 366-368, 372 judicial councils first wave, 122 fourth wave, 123 second wave, 122 third wave, 123 judicial independence, 137, 139, 308, 408 overemphasis on, 416 judicial leadership theory of judicial councils, 16, 398, 401, 403-405 limits of, 399-403 judicial misconduct, 1 judicial performance evaluation, 87, 88, 282, 296, 316, 329, 414 judicial promotion committees, 301, 322 judicial reforms in CEE countries pre-accession wave, 4, 10 transition wave, 4, 10 judicial selection committee, 301, 312 Judicial Union (Czech Republic), 179 judicial virtues, 19, 430

sticks, 73, 76, 194, 270
mechanisms of judicial accountability
used in a pathological way, 111
Mečiar, Vladimír, 237, 238
meta-goals of judicial
accountability, 62, 63
mid-level goals of judicial
accountability, 63
Minister of Justice, 204, 205, 209, 212

Karabín, Milan, 249, 324, 327 Klaus, Václav, 159–161, 177 kolegium of presidents of regional courts, 179 Minister of Justice, 204, 205, 209, 212, 223, 227–230, 232, 250, 266, 272, 278, 279, 283–285, 297, 313, 317, 318, 321, 330, 331, 338, 349 ministerial model. See court

lateral track to the judiciary, 190 Latvia, 4, 37, 166 administration: Ministry of Justice model mixed mechanisms of judicial

Law on Courts adopted by Slovakia in 2004, 312, 313, 320, 323 Law on Courts and Judges adopted by accountability, 101, 131 models of court administration, 99, 134

the Czech Republic in 2002, 186, 215–218, 220–223, 225–227 Law on Court and Judges adopted by court service model, 132 hybrid models, 132 Judicial Council Euro-model. *See* Judicial Council Euro-model of

136, 137

Slovakia in 2000, 268 Law on Judges and Lay Judges adopted by Slovakia in 2000, 257, 274, 275, court administration judicial council model, 123, 131,

280, 302, 314 Law on the Judicial Council of the Slovak Republic adopted by Slovakia in 2002, 281, 315, 320

242, 254, 410 socialist model, 132 state administration of courts, 2

Ministry of Justice model, 131, 181,



INDEX 469

Mokrý, Antonín, 163 Moldova, 37, 123, 394 most similar cases logic, 370 Motejl, Otakar, 163, 164, 182, 184, 210 Motejl's proposal for the creation of a High Council of the Judiciary, 182, 184 motivation of judges, 75 Movement for Democratic Slovakia (HZDS), 9, 237, 238

National Council of the Slovak Republic, 265, 266, 269, 272, 277, 280, 292, 297 Netherlands, 132, 134 Nigeria, 416 normalization, 413 normative element of judicial accountability concept, 58

observable use of mechanisms of judicial accountability, 149 Opposition Pact, 160 Orlet case, 26, 27 output excesses of judicial accountability, 70, 213, 233, 299, 346, 360, 368, 420

Parkanová, Vlasta, 183 pathological mechanisms of judicial accountability, 108, 110 per rollam voting, 423 Pinochet cases, 55 Poland, 5, 100, 132, 134, 393, 401, 413, 415 police patrol prowls, 428 Portugal, 122, 132, 134, 135 Pospíšil, Jiří, 427 power of judges, 1, 59, 60 practical goals of judicial accountability. See mid-level goals of judicial accountability President of the Czech Republic, 176 President of the Slovak Republic, 239, 250 principals of judges, 17, 39, 44, 297, 330, 335, 349, 362, 371 promotion of judges, 83, 310, 321 to grand chambers, 201

to higher courts, 195, 200, 207, 223, 229, 276, 287 to the position of chamber president, 201, 209, 224, 230, 277, 291, 313, 324

quasi-promotion, 84, 86

Radičová, Iveta, 426 reassignment of cases, 281, 286, 372, 406 reassignment of judges, 80, 81, 194, 199, 206, 229, 276, 286, 309, 320, 321, 355, 359, 372 recognition judiciary, 114-116 recruitment and selection of judges, 188, 190, 216, 265, 300 regional court presidents, 208 relocation, 81 removal from office, 36, 37 retention election for new judges, 275 retention review, 78, 79 of new judges, 242, 285 right to a legal judge, 55, 91, 92, 202, 296 Romania, 5, 123, 132, 393, 416, 417 rule of law, 62 rule of law reforms, 416 Russia, 28, 45, 49, 90, 93, 96, 99, 394 Rychetský, Pavel, 208

salary bonuses, 279, 292, 315, 325, 326 screening mechanisms, 100 secondment, 85, 196, 202, 209, 225, 229, 278, 291, 313, 314, 324 selective case assignment and reassignment, 420 selective judicial accountability, 42, 71, 215, 235, 299, 333, 346, 360, 361, 369, 419 separation of powers, 85, 165, 257 geographic separation of powers, 182, 257, 385 simulating judicial accountability, 70, 235, 299, 347, 360, 368, 420 slack, 424, 427 agency slack, 59

agency slack, 59 Slovak Union of Independent Judiciary, 253



INDEX

470

Slovakia, 4, 9, 28, 67, 89, 100, 123, 132, 149, 150, 153, 236-333, 370, 403, 408, 415–417, 421, 424, 425 Slovenia, 5, 123, 132, 134 small-scale mechanisms of judicial accountability, 12 Social Democratic Party (ČSSD), 160, 161 South Africa, 37, 416 Spain, 25, 26, 122, 132, 134, 135 standards of judicial accountability, 53 superjudges, 173, 176, 248 Supreme Administrative Court of the Czech Republic, 164, 216, 218, 224 Supreme Court of the Czech Republic, 163, 164, 170, 216, 218, 224 Supreme Court of the Slovak Republic, 163, 243, 268, 277, 288, 289, 300, 302, 311, 322, 323, 327, 331 Switzerland, 37, 132

telephone justice, 109
temporary assignment to a higher
court. See secondment
temporary assignment of judges outside
the judiciary, 196, 202, 209, 225,
229, 278, 279, 292, 314, 325
training of judges, 193, 217, 303
transitional judiciary, 411

transitional societies, 430
transnational networks theory of
judicial councils, 11
transparency mechanisms, 101, 102,
192, 218, 267, 302
two-waye-theory of judicial

two-wave-theory of judicial councils, 10 typology of judicial councils, 123

Ukraine, 28, 49, 90, 93, 99, 123, 395, 420 United Kingdom, 37, 42, 92, 117, 118, 132 United States, 12, 27, 37, 43, 45, 76, 79, 80, 118

volatile non-monetary benefits, 90 volatile salary, 88 Vyvadil, Jiří, 176

weaknesses of judges, 28 whistle-blowers, 39, 40 wild promotion, 288 work schedule, 91, 198, 199, 203, 206, 211, 212, 226, 276, 280, 281, 286, 294, 309, 315 writ-small mechanisms, 390

Zeman, Miloš, 177 Žitňanská, Lucia, 426