Case Law Analysis

What is case law analysis?

Several tools can be used to achieve the uniform application of law – judges are permanently trained, higher court's decisions are discussed etc. In addition to that, the Supreme Court has introduced a special tool – case law analysis (hereinafter CLA) that is an innovative and effective instrument to help to improve the uniform application of law.

CLA:

- means studying cases and drawing essential conclusions on how courts apply certain norms and how they interpret them,
- results in an analysis document that generalises case law and highlights its trends and problems,
- is carried out at the Supreme Court by independent researchers,
- researchers work at the separate department and are not involved in the adjudication process.

The standpoints and findings expressed in the analysis are not binding to judges.

CLA is a process of studying judgments (and if necessary, other court documents as well) in all of its aspects in order to identify problems in the uniform application of law by the courts. In the course of such a research an analyst ascertains the scope of problems that exist in the field of application of material and/or procedural norms.

CLA is not counting numbers. It is also not a research carried out in the frames of a certain court case by law clerks working with judges at the Chambers.

CLA also differs from academic research carried out at universities because CLA is a more practical research tool than academic research and it is directly derived from the needs of the judiciary and the legal practice. The object of a particular research is usually wider, the materials are large-scale and the research questions are more of a practical nature.

The results of an analysis will be presented in an analysis document with the length of usually from 10–40 pages including conclusions on 1–2 pages.

The objectives of CLA

The objectives of analysis include:

- generalising case law, making it available to judges,
- identifying problems related to court proceedings,
- supporting judicial training.

CLA is a valuable instrument for the courts and judges of all three levels. Firstly, the results of an analysis can be signals for the Supreme Court that some specific issues should be handled and expressed in their decisions. Secondly, CLA also allows all judges to get information about the case law and to find out how their colleagues interpret certain norms and how they actually judge.

As mentioned above, the CLA is also used as a source of information to identify the training needs of judges and to evaluate the training effects. In addition, analyses can be and are used as training materials (see article by Margit Vutt and Tanel Kask: Court Practice Analysis as an Innovative Tool to Improve Judges' Training   [1]).

Besides, CLA is an important tool for court management, as well. For example, in the course of an analysis it can become evident that in some district the same kinds of proceedings take significantly more time than in another. Such findings allow the court managers to take relevant decisions in court management – to allocate resources more carefully or to provide support in case management.

The topics for CLA

For the selection of topics for analysis, the interests of the court system come first.

Topics may arise from:

- a research task established by the appropriate Chamber of the Supreme Court,
- problems discovered during the judges` round table that require a more thorough examination,
- issues of more general interest raised by judges,
- training requirements,
- signals from other representatives of legal professionals that there is a problem that needs to be looked into, provided that a similar signal comes from the court system indicating a need for an analysis.

Topics for analyses are chosen and research priorities established in close cooperation with the appropriate Chamber of the Supreme Court.

Publication and communication of the analysis

The completed analysis is sent to the appropriate Chamber of the Supreme Court and the training specialist of the particular field. The analysis is then published on the webpage of the Supreme Court and the training specialist organises notification of judges of the completion of the analysis. If the case law of the European Court of Justice or the European Court of Human Rights is addressed in the analysis, the appropriate contact person at the Ministry of Foreign Affairs of the European Court of Justice Bureau or Human Rights Bureau is notified.

The analyses are further communicated in writing to the court system and presented at training courses intended for the representatives of other legal professions.

Since 2006, when CLA as a permanent activity was introduced in the Supreme Court of Estonia over 80 analyses have been carried out, compendiums and lots of articles in legal magazines as well as in magazines of social science have been published.

For further information about CLA, see the following booklet.   [2]

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[1] http://www.ejtn.eu/Documents/News%20articles/Court_Practice_Analysis.pdf
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