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## Development Principles

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### Development principles for case law analysis in 2013?2016

#### Results of the previous period and the present situation

1. The purpose of a court proceeding is to ensure that a court case is resolved justly, within reasonable time and with the lowest possible costs. The activity of a court of higher instance must facilitate ensuring legal certainty and directing and shaping case law. To ensure meeting these goals, the case law of various courts of different levels have been analysed at the Supreme Court since 2006.
2. Case law analysis is practical research work whose primary and main objective is to identify the case law in applying particular legislative acts or legal institutions.
3. Case law in private law, offences law, administrative law and, from 1 March 2011, European law is analysed. In the field of European law, the case law of European Court of Human Rights and European Court of Justice is analysed. As of 1 January 2013, 72 analyses have been prepared, of which 33 discuss private law and civil procedural law, 18 discuss administrative law and administrative court procedure, 8 penal and criminal procedural law and 5 constitutional review and European legislation. Eight analyses combine several areas.
4. The practice of publishing papers featuring the analyses in the Yearbooks of Courts, the Journal of the Estonian Parliament and *Juridica* has continued. Altogether, 11 papers have been published in 2010?2012.
5. Two analysts work in private law while all other areas are covered by one analyst. In the field of private law, a strong collaboration has been established between the analyst and the chief specialist: the chief specialist assists the analyst in gathering materials and their initial systematisation. The existing resources do not enable analysing all key topics; therefore, some areas and legal institutions have not received sufficient coverage despite a need for an analysis. In all other areas, except for private law, the problem is that it is not possible to substitute the analysts between areas.
6. In the area of penal law, a yearly rotation has occurred with the Chamber's councillor with the aim of giving them both an opportunity to get a picture of the other official's tasks. The administrative law analyst had a two-week in-service training at Tartu Administrative Court to obtain a better overview of organisation of work at an administrative court. In autumn 2010, the analysts took a trip to Ireland to learn what the legal research assistants are doing in the Irish court system. In 2010, a collection of papers titled "Fiat iustitia" introducing the analysis of case law was published.
7. In addition to preparing analyses, the analysts constantly perform additional tasks. The analysts participate

in working groups, perform the duties of a contact person for international organisations, respond to international questionnaires and, if necessary, represent the Supreme Court at international events, give opinions about the development documents of the courts` information system of the Ministry of Justice and e-folder, attend various events and assist in preparing publications etc.

8. The previous period is characterised by an intensive collaboration with the training department. Numerous analyses were used for judicial training. In the field of private law, two case study courses were carried out and the case law analyst participated in the preparation of these courses. The possibilities of using the analyses themselves and analysis results for training were repeatedly presented to trainers of judges in other countries. For example, the trainers of Belgian judges visiting Estonia were introduced to the essence and possibilities of case law analysis within the framework of EJTN exchange programme. One analyst took part in the EJTN forum “Methodologies and brainstorming in the framework of judicial training” in Rome. A paper introducing case law analysis was prepared for EJTN in collaboration with the training department.

9. Methodological guidelines have been developed for writing case law analyses. Topics for analysis are established based on the needs of the court system.

10. The Ministry of Justice is developing a new version of the court decisions database (KIS2) via the Centre of Registers and Information Systems (Registrite ja Infosüsteemide keskus). This is the reason why the existing database has not been developed further and the difficulties of collecting court decisions have remained the same due to the poor functionality of the court decisions database.

### **Objective of analysis**

11. Case law analysis is focused on identifying the trends and problems in the application of law and serves the interest of the Supreme Court, as well as the entire court system. The more general objective of the analyses is to promote the standardisation and increasing the quality of application of law and the development of legal thought. In a longer term, the analyses could be conducted in a single centre whose functioning would be driven by the needs of the court system as well as legislative drafting.

12. The primary objective of case law analysis is identifying the problems associated with court proceedings, generalisation of case law, making case law available to judges and supporting judicial training and the Supreme Court operations when harmonising case law.

### **Work of the analysis**

13. The existence of a stable and experienced analysis unit must be ensured by providing the necessary work conditions and technical devices.

14. Collaboration in the field of analysis with the Chambers of the Supreme Court and courts of I and II instance should be improved and continued.

15. The number of analysts needs to be increased to ensure two analysts for each area in the future. This would increase the amount of topics analysed, ensure the availability of substitutes for analysts and enable them to develop themselves.

16. Collaboration between the analysts and chief specialists must be continued and developed to further facilitate the development of research work and prepare new analysts. The chief specialists assist the analysts, i.e. they gather case law required for preparing the analyses and systematise them. The analyst and the chief specialist should be encouraged to write the analyses together.

### **Fields of analysis**

17. The established practice of case law analysis must be continued. The number of comparative analyses

should be increased, for example to identify unfounded differences in different types of court proceedings. Repeat analyses should be periodically conducted in important areas; the need for a repeat analysis must be identified when preparing the initial analysis.

18. It is important to increase the study of the case law of applying the legislation of the European Union, as well as the case law of the European Court of Justice and the European Court of Human Rights in specific issues that require analysing. Collaboration between the European legislation analyst and other analysts must be improved so that when Estonian case law is analysed, the corresponding field in the case law of the European Court of Justice or the European Court of Human Rights is analysed simultaneously.

19. Various types of analyses must be prepared, for example generalisations in certain branches of law or when specific provisions are applied. The analysts in collaboration with the chief specialists start to prepare collections of the case law of the Supreme Court (electronic) in areas suggested by the Chambers. These collections will then be supplemented on an ongoing basis. Analyses will be prepared to study issues originating from a certain court case on the request of the Chambers of the Supreme Court.

20. If the need arises to use knowledge or skills (economics, sociology etc) of some other area in the analysis process, a specialist of the appropriate area will be involved for an individual project if possible.

21. The establishment of the priorities of topics of analysis should be based on the need to analyse the decisions of county and circuit courts of such areas that do not reach the Supreme Court via an appeal procedure (also for the reason that they can not be appealed or the parties to the proceedings do not use the opportunity to appeal).

### **Collaboration**

22. The collaboration should be continued in the area of judicial training, including an opportunity to introduce our activity via IOTJ.

23. The analyses should be presented more extensively in other countries; for this purpose, practical guidelines should be prepared for the presentation of the procedure of the analysis containing an overview about the objectives of an analysis as well as the premises for developing such activity. These materials enable other countries to implement a similar practice if required.

24. In-service training at courts should be continued to improve relationships with the judges of first and second instance.

25. If possible, get acquainted with a unit in another country that is involved in systematising court decisions and ensuring uniform application of law. As the European Court of Human Rights also prepares case law analyses, one of the opportunities could be getting to know their activity.

### **Developing technical possibilities**

26. Analysis presumes constant work with the database of court decisions, which has to be user friendly, trustworthy and reliable, and developed to take into account the requirements of analyses supporting application of law. KIS 2 must enable the fast access to case law by relatively specific legal issues and at least a preliminary comparison of a particular court case in different instances of court. Another important feature is the smooth functioning of large searches and separate search options for different parts of a court decision, e.g. the statement of reasons of a Supreme Court decision.

27. A database of court decisions linked to keywords and annotations, containing the most important decisions and allowing finding them in a systematic manner is an important component for the development of the practice of analysis. This is why it is important to create a database that meets the requirements for analysis and ensure its sustained functionality and development.

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