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Methodology

SUMMARY OF CASE LAW ANALYSIS METHODOLOGY

I. GENERAL PRINCIPLES

1.1. Essence of case law analysis

Case law analysis is practical research whose primary and main objective is to identify how certain legal provisions or legal institutions are applied. The process of analysis results in an analysis document that generalises case law and highlights its trends and problems.

1.2. Objectives of analysis

The objectives of analysis were phrased and approved by the Supreme Court en banc on 9 April 2013 in the development principles of case law analysis for 2013?2016.

The objectives of analysis include:

- identifying problems related to court proceedings,
- generalising case law, making it available to judges,
- supporting judicial training and the operations of the Supreme Court by harmonising case law.

1.3. Important characteristics of analysis

Although a **case law analysis** is not a research paper, it is possible to write a scientific research paper by further studying the topic of an analysis. In addition to summarising case law in writing, an analysis document must include the conclusions and generalisations made by the analyst.

The most important parts of an analysis document are

- the objective of analysis,
- the description of legal provision or problem examined,
- the contents of the analysis or generalised case law,
- a summary or the most important conclusions and suggestions.

A case law analysis is primarily a qualitative analysis. Numeric data collected and used for the analysis is used as an illustrative material, if necessary and possible.

II. STAGES OF WRITING AN ANALYSIS

2.1 Selecting and specifying the topic

Topics may arise from

- a research task established by a 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 professions 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 collaboration with a Chamber of the Supreme Court.

For the selection of topics for analyses, the interests of the court system come first. In case of equal topics, the topics in respect of which the court system of three instances does not function for some reason should be preferred.

2.2. Formulating the objective of analysis

An objective, which must be sufficiently clear and specific, is initially formulated before the writing of the analysis commences. When you start your research, specific questions that require answers must be phrased.

The title of the analysis should describe the contents of the analysis as accurately as possible to allow the interested parties to find the necessary analysis.

2.3. Selection of sources

Sources fall into theoretical sources and court decisions.

The most important theoretical sources are articles in Juridica, other research articles and comments on legal acts. Appropriate popular scientific materials may be used in moderation. If there is a regulation in some other country similar to the legal provisions under examination in the analysis, related sources may reasonably be used. **The main objective of analysing is to examine Estonian case law.**

Court decisions are collected via the courts' information system, using all available functionality of the database.

As regards European law, the case law of the European Court of Human Rights and European Court of Justice is mainly analysed. The decisions of the European Court of Human Rights and European Court of Justice are available through the relevant databases HUDOC and CURIA.

If the field under analysis has a large corpus of court decisions, the volume of examined sources must be limited. The selection must be made to enable incorporating decisions from all territorial jurisdictions of courts in the collected material.

The selection of the period to be examined depends on the research objective but generally the most recent case law is taken as a basis.

When choosing sources, the inertness of case law must be taken into consideration – in order to assess the impact of a regulation, sufficient time must have passed and the necessary disputes must not only have reached the court but also reached a decision.

The principles for the selection of decisions are described together with the objective of the analysis.

2.4. Composing the text

The final length of the text must be reasonable. The length of an ideal analysis is generally 20-30 pages; in case of an extensive topic, up to 50 pages is allowed as an exception. **The analysis must be thorough and usable in a practical way.**

Only the most important aspects of theoretical material are generally presented in the analysis. A more thorough approach is justified when, for example, a problem is discovered during the analysis of case law and it becomes necessary to explain the theory and the legal provisions. In cases where Estonian legal literature is insufficient as regards the issue under consideration, a more thorough theoretical analysis may also be necessary.

It is important to highlight those theoretical aspects that are important for the objective of the analysis and the initial problems.

The circumstances of a case are presented so as to enable highlighting the points of views of the participants of proceedings, different legal institutions, and the analyst. The analysis must explain the status of all decisions and the stage of proceedings.

The analysis also includes an analysis of relevant Supreme Court case law.

For systematising the material, a system developed in theoretical works may be used, or the problem or case groups taken as the basis. It is also possible to combine these two options. Systematising the material based on problems facilitates using the analysis as a tool in practice.

Citations should follow the citation guidelines for student papers at the Tartu University Faculty of Law.

As a rule, personal names are left out of the analysis.

The analysis must be copyedited and proofed.

2.5. Making conclusions and summaries

The summary must give the reader an overview of the results of the analysis. The conclusions must correspond to the initial objectives. The contents of the summary must mostly match the objective of the analysis.

III. INVOLVING OTHER SPECIALISTS IN THE ASSESSMENT OF THE COMPLETED ANALYSIS BEFORE ITS PUBLICATION

Engaging other specialists is voluntary as a rule. Engagement is necessary, if:

- the analysis is expected to attract considerable public interest;
- the analysis has a clear purpose for later use (research, presentation etc);
- the topic is related to several legal branches.

IV. 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.

Sending the analysis to other persons is decided on a case-by-case basis.

The analyses are further communicated in writings concerning the court system and by presenting them at training courses intended for the representatives of other legal professions.

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