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SUPREME COURTS IN THE 21ST CENTURY: SHOULD ORGANISATION FOLLOW THE FUNCTION?

1. INTRODUCTION

In May 1997, the International Association of Procedural Law devoted its Thessaloniki Colloquium to the comparative research on the national and supra-national supreme courts. This event, which produced a comprehensive publication[1], gave a survey of global issues pertinent to the work of the supreme courts at the end of the 20th century. Now, almost two decades later, it may be time to see what has changed, and whether there are any new trends and developments that have changed the landscape of national judiciaries and their supreme judicial institutions.

The dominant focus of the last IAPL attempt to deal with supreme courts was on their role and function. However, in the conclusion of his general report, distinguished professor and IAPL member, late Professor Tony Jolowicz noted that "there is a substantial degree of consensus on the main topic [role and function of the supreme courts]". In fact, he said, while we all agree that the supreme courts must serve a variety of predominantly public purposes, the focus needed to be shifted to the "How?" question.[2]

One of the important but generally less discussed aspects of the "How?" question is the organisation of the supreme courts. Namely, if the supreme courts aspire to fulfil certain special social goals a necessary precondition is to have appropriate organisational structures, means and personnel to realise the defined mission. And, in particular, if the court system is evolving, and some changes in functions and purposes of the highest tribunals occur, it may have to reflect on its organisation – or, on the contrary, the supreme courts may face the risk of failing to deliver what is promised due to inadequate framework for the new tasks.

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[1] See P. Yessiou-Faltsi (ed.), *The Role of the Supreme Courts at the National and International Level*, Athens: Sakkoulas, 1997.

[2] J. A. Jolowicz, *The role of the Supreme Court at the national and international Level*, (in:) Yessiou-Faltsi (ed.), *The Role…* (note 1), p. 63.

In this report, I will not provide an in-depth analysis of the various organisational elements that have an impact on the successful work of the supreme courts. Rather, I will only try to outline a few developments regarding the role and functions of the supreme courts that have become more prominent in the first decades of the 21st century, and point to the need for more thorough comparative and empirical research of their impact on the organisation of the supreme courts. As will be demonstrated later, some of those new functions are doubtful and stretch the institutional capacity of the supreme courts to successfully deal with them beyond the limits, therefore leading to the need for rethinking and, as the case may be, changing the course of development. On the other hand, some developments are ultimately inevitable and necessary, but invoke the need to adjust the organizational structures and introduce new organisational elements, while abandoning or reducing the existent ones.

In the second part, as an illustration of the possible comparative and empirical research regarding the organisation of the supreme courts based on the quantitative data analysis, I will examine information supplied by the European national judiciaries to the European Commission for the Efficiency of Justice (CEPEJ). What will be extracted is the data on the number of the supreme court judges in national justice systems of the member states of the Council of Europe. Based on the comparison of data for selected sets of small, medium-sized and large European jurisdictions, some provisional conclusions regarding balance between the public and private functions in the European national supreme courts will be suggested for further discussion and research.

2. TRENDS AND DEVELOPMENTS REGARDING NATIONAL SUPREME COURTS: WHAT MAY BE CHANGING IN THE THIRD MILLENNIUM?

As history teaches us, in judicial matters several decades usually do not bring revolutionary changes. The same is true of the developments regarding the supreme courts, which are among the most established (and therefore inert) judicial institutions. Still, we believe that, at least as a matter of quantity and intensity (if not as qualitatively wholly new features) some global and regional developments did have a more or less profound impact on the work of the highest judicial institutions in the past few decades. Such developments could significantly change the way in which they operate – asking for new organisational structures and methods of work.

The first change in the work of the national supreme courts is associated with the rise in the activity and the case law of the supra-national and international level. Though the courts such as the European Court of Human Rights

in Strasbourg and the Court of Justice of the European Union have existed since the 1950's, the intensifying of their activity and production of the ever-increasing case law was raised to a much higher level since the late 1990's and further on in the 2000s. Other international courts, especially related to international criminal law (ICTY, ICTR and ICTR), contributed to the internationalisation of matters that were earlier ending in the supreme national institutions. Thereby, the supreme courts are increasingly becoming less supreme, bound to pay more and more attention to the matters that were previously in the sovereign domain of their sound discretion in interpretation of legal norms. At the organisational level, this raises several new issues. On the one hand, the supreme courts need to be in a position to monitor not only its own case law, but also to follow the relevant case law of the supra-national courts that are in some matters undoubtedly "higher" than the highest courts in national judicial hierarchies. This demands creation of adequate services, and extension of staff and organisational units devoted to legal research. Ultimately, in the case of interpretation of some legal instruments, such as the EU law, the supreme national courts must have capacity and structures needed for reference to and dialogue with the international judicial institutions (eg. in preliminary ruling procedure, or in retrial of cases where the court in Strasbourg found violations of the European Human Rights Convention)[3]. Although most of the supreme courts today have some staff, department or office entrusted with legal research and analysis, the rise in importance of international jurisprudence is putting on the agenda the need for restructuring and reinforcing the existing departments. This development may have twofold consequences: first, the supreme courts becoming less and less self-centred in their adjudication; and, second, the change in the organisation and methods of work by focusing on legal research and analysis of international and comparative law. The latter may mean the imperative of embedding units and departments entrusted with comparative research and monitoring of legal developments not only at the national, but also on the international and supra-national level. Some European supreme courts, such as German BGH, have made important structural changes in that direction. The BGH currently employs over 50 "scientific assistants" [4] who prepare the work of judges and assist them in drafting judgments, using *inter alia* a court library of over 400,000 publications. Therefore, in a comparative study of the supreme court organisation, attention will have to be paid to the structures that are being set up to meet the demand of following international jurisprudence and case law, and to the way how their work affects the decisions of the highest national tribunals. Indeed, for all those who have not established

[3] See Art. 267 of the TFEU. The notion of "European judicial dialogue" was introduced and used in the 2000s to describe the interaction of the highest national tribunals with the European judicial bodies ("vertical dialogue"). See e.g. C. Baudenbacher, *The EFTA Court: An Actor in the European Judicial Dialogue*, "Fordham International Law Journal" 2005, No. 28, pp. 353–391.

[4] *Wissenschaftliche Mitarbeiter*, or *wissenschaftliche Hilfskräfte*, see § 193 Abs. 1 GVG.

sufficient or comparable organisational units, this should serve as guidance and encouragement.

The second change that has an impact on the organisation of the supreme courts is connected with the technological revolutions[5], in particular to so-called *digital revolution* and *information revolution*. Though those notions refer to changes caused by the introduction of new technology that partly reaches back to the 1950's, it seems that most of the judiciaries around the globe relatively successfully resisted them until 2000s. However, in the 21st century not even the supreme courts, which are often strongholds of traditional, well-established methods and technologies, can remain immune to the changing world of internet, electronic communications and IT to which the users of judicial services have got accustomed. Superficial changes, such as the introduction of computers for the daily routine work, happened relatively fast. For more affluent judiciaries, the use of video- and audio-conferencing also became reality. However, the potential of technological revolutions that have an impact on the work and the organisation of the supreme courts goes far beyond these points. The trend towards designing an integral case management system for all courts (ICMS) poses natural challenges to the role of the supreme courts. The "integral" systems as such need unified management and professional supervision that cannot be left to technical experts. The clash between often fuzzy legal logic and stringent mathematical logic of digital systems, and the potential incompatibilities of various systems introduced in different times by different actors invoke a need for one central, highest institution that would secure interoperability and uniform application of new technologies across all judicial bodies. These tasks may be partly in the domain of executive bodies (eg. ministries of justice) or the special services (eg. councils for judiciary), but the central role of the Supreme Courts in the supervision of the work of the lower courts and secure uniformity of their work naturally calls for its active participation, if not leadership. On the other hand, the Supreme Courts are facing the challenge of adjusting their own practices to the new case management systems. They offer much faster and more complete insight into the work of the lower bodies of the judicial hierarchy (including instant statistical monitoring and reporting), and thereby enable more accurate and speedy reaction to diagnosed problems. Nevertheless, they also raise public expectations in terms of speed and transparency of the work of all actors, including supreme courts. Not only that the standards of work change with technological revolutions, but new work arises as well. The information components of the technological revolutions calls for publication of case law in electronic databases. One of the new functions assumed by (some) supreme courts is in the establishing or supervision of on-line publication systems for court judgments – at least of those

[5] On the notion of technological revolution see N. Bostrom, *Technological revolutions: Ethics and Policy in the Dark*, (in:) N. M. de S. Cameron, M. Ellen Mitchell (eds.), *Nanoscale: Issues and Perspectives for the Nano Century*, John Wiley, 2007, pp. 129–152.

of the Supreme Court, but often also of the other high tribunals. The effective maintenance of these information systems, user-friendly policies and practices, and good search engines are becoming an important part of the services that are provided by the highest national judicial bodies. They also call for the adequate organisation, able leadership, good IT departments and close cooperation with other institutions and bodies within and outside of the judiciary. Taking into account the composition of the Supreme Courts, which are in many countries staffed by senior career judges whose professional training and socialisation date back to the times much before the technological revolutions, the challenge of new technologies may be considerable. All these factors should be discussed more thoroughly in the future comparative work on supreme courts.[6]

Finally, the third change that is happening to the supreme courts has a more complex and diffuse nature, and is of a more political than a legal or technical origin. It deals with the regional and global trends in the understanding of the concept of judicial independence, and the resulting shift in powers that presses the supreme courts to assume more powers and responsibilities for the overall administration of justice. At least in Europe, it seems that for many jurisdictions, in particular those from post-socialist countries (but not only them), the emphasis put on the independence of judiciary resulted in the evolving idea that judiciary should not only be independent in the adjudication of cases (functional independence), but also independent in its own management (organisational or corporate independence of judiciary). The proof for this submission comes both from the common and civil law jurisdictions. The formation of the Supreme Court of the United Kingdom, that has assumed all judicial functions of the House of Lords, was motivated by the wish to enhance the separation of judicial, legislative and executive powers by organisational measures. In the rest of Europe, the trend of establishing High Councils for Judiciary, or broadening of their competences, is also motivated by the idea that judiciary should be self-managed (*autogoverno della giustizia*). While not entering into discussion about the advantages and disadvantages of this trend, it should be noted that supreme courts have also been affected by it, though differently in different countries. The common denominator is the tendency to intensify the engagement of the supreme courts in the decision-making on matters that are not strictly of judicial nature, but affect the work of the national judiciary and have an impact on the overall administration of justice.

[6] A special attention should be devoted also to the role of the supreme courts in eventual selection of leading cases (or cases that will appear in the on-line database), or the policies applied by the court regarding summarisation, anonymisation of judicial decisions, timing and other aspects of publication of case law. Some of these elements were controversial in Croatia, and it was argued that Court's department for monitoring of case law (*evidencija*) assumes too broad informal powers in selecting "good" and "bad" law of the court.

A borderline example is the engagement of the supreme courts in the fight with delays and backlogs in the national judiciary. Namely, one of the inherently modern means of intervention into cases that last excessively long in various jurisdictions (among them Croatia and Poland) is the one inspired by the case law of the ECtHR, and has *prima facie* judicial nature. It is the ruling upon individual petition ordering the lower courts to accelerate the proceedings and/or pay just compensation for the fair trial violation, which may be issued by courts of higher jurisdiction, including the supreme courts. The statistical share of such cases has recently become considerable in some countries, raising also the organisational issues (eg. who should deal with them, as such cases are usually regarded as too simple or trivial for the supreme court judges).

However, the involvement of highest courts in speeding up the cases at lower courts may take other, more policy-related forms. In Croatia, the Supreme Court and its president launched in 2006 a project on the reduction of "old cases" (defined as all cases lasting over three years).[7] The project involves monitoring of these cases, their assignment of higher priority in case-flow (*inter alia* marked by issuance of "red covers" for these case files), and the need for regular periodical reporting by lower courts on the resolution of these cases.

Activities of the Supreme Courts in the area of securing the right to trial within reasonable time in principle require only moderate organisational adjustments (eg. special judicial formations for speeding up applications; engagement of law clerks or temporary assignment of judges of lower courts; administrative offices for statistics on time-management in lower courts). Considerably more demanding may be the transfer of the powers to the supreme courts in the domain of financing of judiciary and creation of court budgets. In Slovenia, in 2000 the Supreme Court assumed the highest power for the financial distribution of means acquired from the state budget, based on the "lump-sum" awarded by the government. The Supreme Court thereby became the highest body of financial autonomy in the Slovenian judiciary, again with the argument that such an autonomy is beneficial for the (corporate) judicial independence. However, this move required the establishment of general financial services and the adjustment of a number of departments of the Supreme Courts.[8]

Finally, another trend that may be diagnosed in some jurisdictions is in the more intensive participation of the supreme courts and its judges in the design, interpretation and amendments of the statutory law, not via adjudication in concrete cases, but in a more abstract manner. Here, we can distinguish softer and indirect forms from direct, mandatory form. One way of influencing the design of legal norms and their interpretation is in the institutional participation of the Supreme

[7] See http://www.vsrh.hr/EasyWeb.asp?pcpid=780; http://www.vecernji.hr/hrvatska/jos-uvijek-imamo-osam-tisuca-nerijesenih-predmeta-starijih-od-14-godina-840200.

[8] See http://www.sodisce.si/sodisca/posebne_sluzbe/skupna_financna_sluzba/.

Court or its members in the drafting committees and other bodies entrusted with legal reforms.

Another way of influencing the case law without being active as adjudicator in concrete cases may happen when supreme courts arrange meetings with judges of lower courts and discuss issues that occur or may occur in their practice. The practice of regular meetings with the judges of lower courts is a regular feature of Russian courts, where it has become a customary occurrence as to have an impact on the architecture of court buildings – all larger federal courts dispose of conference or congress facilities which are big enough to assemble all or almost all judges of the lower courts. A softer, but equally effective form is taking place when the Supreme Court or its members participate in the programmes of education and professional training of current and future legal professionals, or sit on the examining commissions that control the entry to the judicial and other legal professions. These activities provide an opportunity for setting forth the law and expressing opinions on its purpose and meaning, they also reinforce the institutional monopoly of the supreme court judges on the construction of national legal rules. However, there may be other, more direct ways as well. Some supreme courts in Europe and Asia maintain the practice of issuing practice directions, decrees and opinions that regulate certain fields or interpret the law. They may be phrased in an abstract and impersonal way, outside of any concrete pending cases, and often have a binding force for all judges. Such general decrees and opinions are regularly issued by the larger formations or even the plenary session of the court, and thereby even in their outer shape resemble the legislative process. All these extended non-adjudicative ways of influencing the law are being legitimized by the argument that they are necessary in the interest of the public purpose of the supreme court, i.e. in the interest of securing uniform application of law. However, it is questionable both whether the supreme courts are institutionally capable of producing good and consistent drafts of general legal acts, and whether this encroachment into the functions that are normally reserved for the legislative branch of government is compatible with the constitutional norms of the states that recognize the doctrine of separation of powers.[9,10] We may be reminded here on the wise words of Jolowicz, who argued that "since Supreme Courts are courts, any contribution they may make to a public purpose is, and must continue to be, by way of their decisions in actual live cases."[11]

[9] On the critique of "authentic interpretation" of the Supreme Court, in a Croatian example, see S. Rodin, *Vjerodostojno – jedinstveno tumačenje zakona odjela Vrhovnog suda RH – sedam smrtnih grijeha članka 57. prijedloga Zakona o sudovima*, "Pravo u gospodarstvu" 2005, Vol. 44, No. 3, pp. 80–87.

[10] Indeed, if this is not the case, like in PR of China, the Supreme Court openly and without any reservations accepts that it has overlapping jurisdiction with other government bodies.

[11] J. A. Jolowicz, *The role of the Supreme Court at the national and international level*, (in:) P. Yessiou-Faltsi (ed.), *The Role*... (note 2), p. 62. Admittedly, some encouragement for overstepping the thin line between a "court" and another government body may be found in the recent

3. SIZE MATTERS: DOES THE NUMBER OF SUPREME COURT JUDGES HAVE AN IMPACT ON THE COURT'S ABILITY TO REALISE ITS PUBLIC PURPOSE?

The trends and developments described in the previous chapter may be significant for the present and future of the supreme courts and their organisation, but the core of the work of the supreme courts is, and will remain to be, fulfilment of its main functions by adjudication of individual matters. In the approach of the supreme courts to this main area of work, the most essential issue raised in comparative analysis is the balance between the two different kinds of objectives which the supreme courts seek to achieve, defined through the notions of "public" and "private" purposes of the exercise of their jurisdiction. It is commonly held that, at the supreme court level, the public purpose of clarification, unification and development of the law should play a prominent, if not exclusive role. On the other hand, it is also manifest that many supreme courts, in particular in the civil law tradition, still devote a large part of their activities to private purposes, i.e. to resolving disputes in which the private interest of the parties – dispute resolution according to law – dominate. In extreme cases, such as in Italy, the private purpose is elevated to the level of constitutional principle according to which anyone has a right to have his or her case heard and adjudicated by the Supreme Court (*Corte di cassazione*). It seems that the comparative research suggests that, at least for those countries in which the crowded dockets adversely affect the ability to deal with really important matters of general importance, more attention should be paid to the public purpose. As Jolowicz observed, "it is manifest that a Supreme Court will be unable adequately to fulfil its public role if its judges do not have the time for full discussion and reflexion on the complex problems they have to consider".[12] However, there are different ways to cope with the larger number of cases imposed by the shifting of balance in favour of private purpose. One of the ways is to employ a larger number of judges and create larger organisational structures that could cope with the high number of incoming cases. The highest tribunals, which are more restrictive and concentrate on their public function, may need a significantly lower number of judges.

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developments regarding the powers of the European Court of Human Rights. By the Protocol 16 to the European Convention the ECtHR will be granted the right to issue advisory opinions on questions of principle upon request of highest courts and tribunals of the CoE member states. The opinions of the Court will not be binding, and should build upon its "constitutional" role, but this development may anyway sparkle new initiatives to give comparable powers to national supreme courts vis-à-vis the lower courts in judicial hierarchy. It may be noted that Protocol 16 stays in contradiction with the previous ECtHR practice to avoid using its authority to issue advisory opinions under Art. 47 of the ECHR.

[12] J. A. Jolowicz, *The role of the Supreme Court at the national and international level*, (in:) P. Yessiou-Faltsi (ed.), *The Role…*, p. 56.

From that perspective, it may be interesting to compare the composition of the supreme courts and analyse the relationship between the number of judges and the dominant role and function of those courts. Apparently, legal issues really important for a legal community do not depend on the size of the jurisdiction, so that, irrespective of the population or territory covered by the court's jurisdiction, they may be discussed and decided by a relatively small number of judges. But if a supreme court is invited, or even bound to hear individual cases selected by mechanical criteria (value of the type of case), it is to be expected that bigger jurisdictions should need more supreme court judges than those whose population is smaller.

A relatively complete and representative comparison of the number of supreme court judges in the European countries can be derived from the reports of the European Commission for the Efficiency of Justice. Within its evaluation rounds, one of the issues that is subject to the reporting of the competent state authorities is the number of judges at various levels. Based on the official reports of the national correspondents based on the uniform scheme for evaluating judicial systems, the CEPEJ assembles its regular bi-annual surveys that evaluate European judicial systems (EJS reports). Among other data, distribution of professional judges between various levels of jurisdictions, including the supreme court judges, is analysed and presented. For instance, in the latest EJS report (Edition 2012 based on the 2010 data), one of the figures presents the ratios of judges of lower courts (first and second instance) and the supreme court judges.

The CEPEJ report demonstrates interesting divergences in the ratio of lower and higher court judges. However, it does not analyse the data on the absolute number of the supreme court judges, and neither does it put these figures in relation to the size of the particular jurisdiction. However, the raw data are available and may be extracted from the national reports of particular countries, which is publicly available.[13] In the next table, these data are presented in a shortened and partly modified form. The number of European jurisdictions has been reduced, and includes a selection of small, mid-sized and large jurisdictions from all sides of Europe; for reasons of comparison, some representative common law jurisdictions, such as those of the United States and Australia, are added (marked with*). The states that made remarks and reservations, such as the United Kingdom (England and Wales) and Russian Federation, are marked with**. Finally, a separate figure for the Federal Court of Germany (*Bundesgerichtshof*) has been added, and shown together with the declared German figure on the number of supreme court judges, that is calculated on the bases of total number of all judges in the five German highest courts.[14]

[13] See http://www.coe.int/t/dghl/cooperation/cepej/profiles/default_en.asp.

[14] *Bundesgerichtshof* (BGH) in Karlsruhe, *Bundesverwaltungsgericht* (BVerwG) in Leipzig, *Bundesfinanzhof* (BFH) in Munich, *Bundesarbeitsgericht* (BAG) in Erfurt and *Bundessozialgericht* (BSG) in Kassel.

Table 1: Population, number of judges of the supreme courts, population per judge

State	Population	No. of SC judges	Population per SC judge
*Australia**	21,507,717	7	3,072,531
Belgium	10,839,905	27	401,478
Bosnia and Herzegovina	3,843,126	96	40,033
Bulgaria	7,364,570	175	42,083
Croatia	4,412,137	40	110,303
Cyprus	804,536	13	61,887
Czech Republic	10,517,247	231	45,529
*England and Wales***	55,200,000	12	4,600,000
France	65,026,885	335	194,110
Germany (CEPEJ data)	81,751,602	915	89,356
*Germany (only BGH)**	81,751,602	129	633,733
Greece	11,309,885	270	41,888
Italy	60,626,442	295	205,513
Moldova	3,560,430	47	75,754
Monaco	35,881	15	2,392
Montenegro	620,029	18	34,446
Netherlands	16,655,799	38	438,311
Norway	4,920,305	20	246,015
Poland	38,200,000	178	214,607
Portugal	10,636,979	85	125,141
Romania	21,431,298	108	198,438
*Russian Federation***	142,914,136	163	876,774
Slovenia	2,050,189	37	55,411
Spain	45,989,016	79	582,139
Sweden	9,415,570	39	241,425
Turkey	72,561,312	277	261,954
*United States**	309,300,000	9	34,366,667

The above table shows considerable variety and range of figures: while some countries have less than ten supreme court judges, other have declared almost a thousand. However, if very small jurisdictions (Cyprus, Monaco, Montenegro) and common law countries are excluded, and Germany is counted only according to the number of BGH judges, the divergences are reduced to about 1 to 15 ratio (from about 20 judges to about 300 judges). Here is the grouping of countries according to the above criteria:

Less than 20	From 20 to 50	From 50 to 100	From 100 to 200	Over 200
Australia, US, UK (E&W), Cyprus, Monaco, Montenegro	Norway, Belgium, Slovenia, the Netherlands, Sweden, Croatia, Moldova	Spain, Portugal, Bosnia and Herzegovina	Romania, Germany (BGH), Russian Federation, Bulgaria, Poland	Czech Republic, Greece, Turkey, Italy, France

Sorted this way, the table reveals a lot of similarities in legal traditions and history among the grouped countries. The countries with less than 20 SC judges are either extremely small jurisdictions, serving few hundred thousand people (Monaco, Montenegro), or belong to common law tradition (UK, US, Australia), or both (Cyprus). The group of countries between 20 and 50 SC judges includes Northern Europe – Scandinavian countries, Belgium and the Netherlands, and some smaller European jurisdictions (Slovenia, Croatia, Moldova – all with less than 5 million inhabitants). In the group between 50 and 100 SC judges we find the South-West of Europe – Spain, Portugal, Bosnia and Herzegovina (in which a very high number of supreme court judges is attributable to its peculiar – and dysfunctional – constitutional design). Countries between 100 and 200 SC judges include Germany (only BGH) and some larger post-socialist states (Romania, Russian Federation, Bulgaria and Poland). Barely escaping the previous group, Czech Republic is in the group of countries with over 200 judges. There, we find the large European countries of the "cassational" model, such as Italy and France. Ominously, among them are some other South-European countries, such as Greece and Turkey.

The selected jurisdictions widely differ in size and population, and range from Monaco – a country of barely 35 thousand inhabitants, to the US that has almost ten thousand times bigger population. In order to inquire what is the impact of size of population on the size of supreme courts, the next table puts into relationship population and number of supreme court judges, showing the size of population per one supreme court judge, as well as ranking of the country in terms of population.

Table 2: Ranking of the countries according to the population served by one supreme court judge

State	Population per one SC judge	Rank (Population)
United States	34,366,667	1
England and Wales	4,600,000	8
Australia	3,072,531	11
Russian Federation	876,774	2
Germany (only BGH)	633,733	3
Spain	582,139	9

State	Population per one SC judge	Rank (Population)
Netherlands	438,311	13
Belgium	401,478	15
Turkey	261,954	5
Norway	246,015	20
Sweden	241,425	18
Poland	214,607	10
Italy	205,513	7
Romania	198,438	12
France	194,110	6
Portugal	125,141	16
Croatia	110,303	21
Germany (CEPEJ data)	89,356	4
Moldova	75,754	23
Cyprus	61,887	25
Slovenia	55,411	24
Czech Republic	45,529	17
Bulgaria	42,083	19
Greece	41,888	14
Bosnia and Herzegovina	40,033	22
Montenegro	34,446	26
Monaco	2,392	27

As expected, the extremes in this table are even further apart: while one judge of the supreme court of Monaco serves less than 2.5 thousand people, in the US one SC judge comes on every 34.4 million inhabitants.

Does this also confirm that supreme court judges in larger jurisdictions inevitably have to serve larger number of people than in the smaller ones? A certain soft tendency to confirm this submission may be seen in the lowest (Monaco, Montenegro) and the highest (US, Russia) rows of this table. But all other data are too diverse to support this conclusion. The millions of inhabitants per supreme court judge at the top of the table are attributable rather to legal tradition and the special function of the supreme courts in common law countries than to their sheer size or population. Equally, the relatively low population-per-judge figures in the lower part of the table can be attributed rather to geographical and cultural factors, than to the small size of the country. The fact that the countries with less than 100 thousand people per SC judge include mainly the South of Europe (post-Yugoslav countries, Bulgaria, Greece, Cyprus) can be proof of this. Also, few large European jurisdictions, such as Italy, France, Romania and Portugal, still belong to the lower part of the table, which is due more to their common judicial history ('Romanic' cassational model) than to their relative size.

Having said all that, we may conclude by some questions and statements that can be taken as a challenge for further research.

1. Does this analysis indicate that the judicial bodies called "supreme courts" and their members called "supreme court judges" are even more different than we originally thought, so that we should refrain from treating them as similar or even comparable? Perhaps not… completely. However, these differences should caution us against resorting too early to premature comparisons. They also need further research and analysis.

2. Can we take the fact that, unlike their common law counterparts, supreme courts of civil law countries are composed of dozens or hundreds of judges as a proof that these courts still predominantly serve the private purpose, with only moderate inclination towards public purpose? Again, it is not proven…. fully. But the number of systemically important legal issues is not inexhaustible, and in order to keep a systemic perspective, one should keep it manageable.

3. Can we expect that a court with a high number of judges will make a decisive turn from private to public purpose? Perhaps… but not very likely. It is undoubtedly more difficult to have uniform views and decisions on important legal and social issues in a court with 300 judges than in a court with 10 judges. Thus, the wish to engage in consistent interpretation and development of law and uniformisation of the case law of lower judicial bodies while observing and developing your own case law imposes difficult organisational challenges in large courts, where a plenary debate and mutual interaction of all judges is impracticable and almost impossible. In addition, once daily routine in adjudication of repetitive matters prevails, it is difficult to adjust to the idea of having to develop law and reinvent new rules and principles in every case.

4. Finally, is there a link between the organisational elements, such as the number of judges and the population they serve, and the efficiency of the court work? Can we conclude that, paradoxically, smaller supreme courts whose judges serve more people are in fact *more* efficient than big courts with a large number of supreme court judges? There has not been any conclusive evidence for that submission…. yet. Still, analysing the population-per-SC-judge table, it may seem striking that the lower part of the table more often than not contains countries that experience more or less permanent crisis in their judicial systems with issues such as trial within a reasonable time or efficient protection of individual rights. Looking at the top side, there are few jurisdictions that experience problems of such nature. Of course, one may argue that the blessings of efficiency come at considerable expense: that many of those who might have been able to assert their rights in the highest judicial instances have been deprived of their right of access to justice. Is this true or not, is another question. It is hard to say that Australian or American citizens are more deprived of their access to justice then citizens in Greece or Bulgaria only because their supreme courts have much stricter filters for incoming cases. On the contrary, just like with the Holy Grail, it seems that

citizens have more trust in the courts that are exclusive, unique and – to a certain level – elusive and hardly reachable.

Nevertheless, this opens a wholly different story, which may also need further comparative and empirical research, this time of a different kind. Short of venturing on that journey, allow me to end this speech with another provisional conclusion. A true challenge to the supreme courts in the 21st century, both organisational and functional, will be to maintain effective work, concentrating on really important cases, but at the same time not sacrificing public confidence to the justice system and their own public image of transparency and accessibility. The legend of Johann William Grävenitz, the Miller of Sanssouci, speaks of a citizen who, being threatened by an angry king (Frederick the Great), expressed pride and defiance, confident that his rights will be protected by the "Supreme Court in Berlin". Just as in the 17th century, the citizens of the 21st century must not lose their confidence (even if illusionary one) that, ultimately, "their" Supreme Court will defeat injustices.

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SUPREME COURTS IN THE 21ST CENTURY: SHOULD ORGANISATION FOLLOW THE FUNCTION?

Summary

The text discusses different aspects connected with organisation of supreme courts. It argues that the focus should be shifted to the "how" question. If the supreme courts aspire to fulfil certain special functions, a necessary precondition towards fulfilling this goal entails appropriate organisational structures, means and personnel. The organisation, framework and methods of work of a supreme court should reflect the functions that it is supposed to serve. Although most supreme courts have staff, departments and offices that are entrusted with legal research and analysis, the rise in importance of international jurisprudence is putting on the agenda the need for restructuring and reinforcing the existing departments. The author claims that supreme courts are becoming less and less self-centred in their adjudication, which requires legal research of international and comparative law. The text also deals with other aspects of supreme courts' organisation. For instance, it shifts focus towards the relation between the number of judges in a supreme court and its impact on the uniformity of jurisprudence. It also emphasises the need to further examine the relation between the number of judges *per capita* and the efficiency of the court's work.

KEYWORDS

Supreme Court, organisation of the Supreme Court, work efficiency in the Supreme Court

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Sąd Najwyższy, organizacja Sądu Najwyższego, efektywność pracy w Sądzie Najwyższym