GUIDELINES for lawmakers regarding management of Supreme Courts

Supreme Courts as guarantee for effectiveness of judicial systems

Augstākās tiesas kā tiesību sistēmu efektivitātes garants Eiropas Savienībā

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The Supreme Courts of Latvia, Lithuania, Hungary and Spain, together with Universities of Antwerp and Ljubljana, carried out the European Union co-funded project "Supreme Courts as guarantee for effectiveness of judicial systems in European Union" in 2016-2017. During the project, the performance of the Supreme Courts of the European Union was analysed in four areas: performance of Scientific and Research divisions of the Supreme Courts, general organization of judicial work in order to speed up the deadlines of hearings, communication with the public, work of the Councils for Judiciary. The main deliverable of the project is the "Best practice guide for managing Supreme Courts", which compiles best practices in the above mentioned areas from 25 Supreme Courts of the European Union.

During the research, the project team has indicated a few practices regarding the law making process – here we have summarized the main ideas how the lawmakers could contribute to better management of the Supreme Courts.

Transparency of the judiciary: focus on access to case law

Take appropriate measures to safeguard data by providing the possibility for the parties to request anonymization of the judgement

It is usually the task of the lawmakers to decide if the judgements of the Supreme Court must be available to general public, and whether they must be anonymised. The research shows that the majority of the EU Supreme Courts must anonymise their rulings before publishing, with exception of Estonia, Ireland, Italy and Cyprus (parties may, however, request anonymization (e.g. Estonia, Italy) or the Court can decide on its own motivation to anonymise the decision (e.g. Estonia). However, it would be useful to discuss the practice of the European Court of Human Rights and the Court of Justice. For these Courts, the full version of the judgment is accessible to the public unless one of the parties submits a reasoned request for anonymization or the president of the Court decides on confidentiality through their wont motion. Grounds for anonymization include morals, public order or national security in democratic society, the interests of juveniles, the protections of the private life of the parties or of any person concerned, or special circumstances where the publicity would prejudice the interests of justice.

States should provide a central case-law database that has user-friendly search facilities and has adequate safeguards for the protection of personal data

In addition to all the Supreme Court decisions, this database should contain a selection of the decisions of the lower courts and also contain the case from the European Court of Justice and the European Court of Human Rights. This central database should have the advantage that people could find all relevant case law in one integrated database and would not have to search databases of each separate court. By facilitating access to justice, a central case law database contributes to an effective justice system. It also allows judges to search for the relevant case law more efficiently and thus increases the efficiency of the adjudication of cases and the quality of judgments. To ensure that such a central database is efficient, in the sense that people can find what they need, this database should have user-friendly search facilities.

COMMUNICATION

The states should have a clear legislation in place regarding the audio and video recording in courtrooms

According to Article 6 ECHR, judicial proceedings must be *conducted in public. This principle of public proceedings implies that citizens and the media are generally allowed in the courtroom. While allowing audio or video recordings of the hearing may have advantages in terms of raising public awareness of how judicial proceedings are conducted, there is also a risk that these kinds of recordings may disturb the proceedings and alter the behaviour of those involved in the trial. Furthermore, the right to privacy and the presumption of innocence should also be considered. The research shows that there are very different approaches in the Member States. In almost all countries, media representatives are generally allowed to be present in the courtroom (e.g., Supreme Court of Slovenia is an exception, where media representatives are generally not allowed, except in very specific cases related to appeals in criminal law cases). In some countries, it is prohibited for media representatives to make audio and video recordings of the hearing; in other countries, the general rule is that audio and video recordings is prohibited, but the judges examining the case or the president of the court can grant an exception to this rule; in a few countries, audio and video recording is allowed, but only within certain limits. As mentioned, there is still no common view on audio and video recording in courts. Above all, it is important to have clear, precise and comprehensive guidelines about audio and video recording. This is the joint responsibility of the legislator and the Supreme Court itself.*

Consult the Supreme Court regarding proposed legislation that affects the Supreme Court

With regard to legislation that affects the judiciary, the latter must be able to communicate with the executive and the legislature. The Supreme Court should therefore be consulted by the executive or the legislature when it concerns legislation that affects the Supreme Court. This consultation can be done by sending a draft of the legislation to the Supreme Court, by organising meetings with the stakeholders, etc. When consulted, the Supreme Court should refrain from public policy debates or giving political opinions.

Administration of Supreme Courts: focus on the allocation of cases and length of proceedings

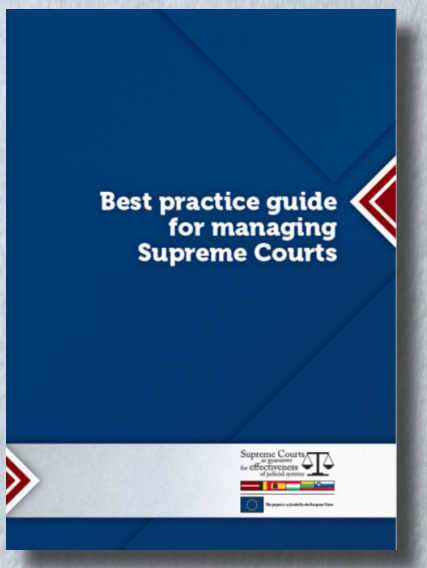
Provide procedural sanctions against parties causing delay and exhibiting vexatious behaviour
The legislator must give courts the potential to sanction parties that cause delay or present vexatious behaviour. The survey results showed that there are many options: a fine, declaring belated submissions inadmissible, etc. The issue of being able to impose procedural sanctions seems less pressing at Supreme Courts that work with a leave to appeal to the Supreme Court or with a strict admissibility factor (e.g. the Supreme Court of Estonia, the Supreme Court of Ireland, the Supreme Court of Italy), since the Court then has a greater influence on which cases are accepted or not.

Role of the Councils for the Judiciary

One of the major issues of independence of the judiciary is its financing. Close involvement of a Council or equivalent body at all stages of the budgetary procedure is necessary to ensure due respect for the opinion of judiciary regarding the financial resources required for effective and efficient justice system
In order to ensure and strengthen the separation of powers, the Council (or a body in which the judiciary is represented) should be closely involved and fully informed at all stages in the budgetary process and should have an opportunity to express its views about the proposed budget to the Parliament.

In order that the Council's members have sufficient time for the quality performance of their work, they could have a full-time position in the Council or part-time position with the preservation of court practice or other non-judicial function (of non-judges) at the same time
If the function of a member is honorary, the members of the Council (may) only discuss and adopt decisions, while office staff prepares majority of agenda and its documents. If the function is part- or full-time, then members of the Council have sufficient time to prepare themselves for the sessions and they can prepare or at the very least review the documents related to the agenda of each session. It is plausible that a part- or even full-time function presents an opportunity towards a more effective work, but poses a threat on the other hand concerning the continuity of the judicial work of the (judge) members. It seems that a balance between the two could be achieved by part-time function as a member of the Council (while simultaneously preserving court practice).

The Council may not only provide opinion on the existing legislative framework, but should also have the possibility to express its opinion on the regulation of the judiciary in the future
Consultation with the Council on all draft legislation, likely to have a direct impact on the judiciary prior to its deliberation in Parliament, is an opportunity that professional and representative voice during the legislative procedure is heard from amongst the judges themselves. It is important to note that the Council may not only react when the current position of the functioning of the judiciary is concerned, but may express its opinion on the regulation of the judiciary in the future (de lege ferenda).

The Council should have the appropriate means to operate as well as the power and capacity to negotiate and organize its budget effectively
Additional reference needs to be made towards having adequate human and financial resources for the functioning of the Council. If this is not guaranteed, the Council will clearly have a difficulty in effectively carrying out its function. Considering the fact that the Council is an independent body, it is of utmost importance that it is financed in a way that enables it to function properly. Therefore it should have the appropriate means to operate as well as the power and capacity to negotiate and organise its own budget effectively. When the Council has budgetary powers, it is only logical that it should then be accountable for the use of the funds to the Parliament (which adopted the budget), or other supervisory body.

To get more information and read full text, please, see the "Best practice guide for managing Supreme Courts", which can be found here:
www.ej.uz/SCbestpractice