

Supreme Courts in the 21st Century: should organization follow the function?

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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 publication¹, gave a survey of global issues pertinent for 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 organization of the supreme courts. Namely, if the supreme courts aspire to fulfill certain special social goals a necessary precondition is to have appropriate organizational structures, means and personnel to realize 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 organization – 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.

In this report, I will not provide an in-depth analysis of the various organizational 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 of more thorough comparative and empirical research of their impact on the organization 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 of 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 organizational elements, while abandoning or reducing the existent ones.

¹ See 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, op. cit. (note 1), p. 63.

In the second part, as an illustration of the possible comparative and empirical research regarding the organization 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 set 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 for 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 a qualitatively wholly new features) some global and regional developments do 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 organizational structures and methods of work.

First change in the work of the national supreme courts is associated to 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 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 2000s. Other international courts, especially related to international criminal law (ICTY, ICTR and ICJ), contributed to the internationalization 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 organizational level, this raises several new issues. On one hand side, the supreme courts need to be in 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 organizational 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 court in Strasbourg found violations of European Human Rights Convention)³. Although most of the supreme courts today have some staff, department or office that are entrusted with legal research and analysis, the rise in importance of international jurisprudence is putting on the agenda the need of restructuring and reinforcing the existing departments. This development may have twofold consequences: first, the supreme courts becoming less and less self-centered in their adjudication; and, second, the change in the organization and methods of work by focusing on legal research and

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. Carl Baudenbacher, *The EFTA Court: An Actor in the European Judicial Dialogue*, *Fordham Int'l LJ*, 28:353-391 (2005).

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 in 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 which prepare the work of judges and assist them in drafting judgments, using *inter alia* a court library of over 400.000 publications. Therefore, in comparative study of the supreme court organization, 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 sufficient or comparable organizational units, this should serve as guidance and encouragement.

Second change that has an impact on the organization of the supreme courts is connected with the technological revolutions⁵, in particular to so-called *digital revolution* and *information revolution*. Though those notions refer to changes caused by introduction of new technology that partly reach back to 1950’s, it seems that most of the judiciaries around the globe relatively successfully resisted to them until 2000s. However, in the 21st century not even the supreme courts, which are often strongholds of traditional, well-established methods and technologies, cannot remain immune to the changing world of internet, electronic communications and IT to which the users of judicial services got accustomed to. 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 organization of the supreme courts goes far beyond these points. The trend towards designing 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 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 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

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

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

important part of the services that are provided by the highest national judicial bodies. They also call for the adequate organization, able leadership, good IT departments and close co-operation 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 socialization date back in the ages 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 has 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 (organizational 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 organizational 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.

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 organizational 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 have launched in 2006 a project on 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

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 summarization, anonymization 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.

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>.

issuance of 'red covers' for these case files), and the need for regular periodical reporting by lower courts on the resolution of these cases.

The activities of the Supreme Courts in the area of securing right to trial within reasonable time in principle require only moderate organizational 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 on the supreme courts in the domain of financing of judiciary and creation of court budgets. In Slovenia, since 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 of the Slovenian judiciary, again with the argument that such an autonomy is beneficial for the (corporate) judicial independence. However, this move required establishment of the 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 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 is so accustomed that it had 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 Supreme Court or its members participate in the programs of education and professional training of current and future legal professionals, or sit in the examining commissions that control the entry to judicial and other legal professions. These activities give opportunity to set forth the law and express opinions on its purpose and meaning, they 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 field 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, ie 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

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

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

3. Size matters: does the number of supreme court judges have an impact on the court’s ability to realize 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 organization, but the core of the work of the supreme courts is, and will remain to be, fulfillment of its main functions by adjudication of individual matters. In approach of the supreme courts to this main area of work, the most essential issue raised in comparative analysis was 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, ie 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 fulfill its public purpose 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 favor of private purpose. One of the ways is to employ the larger number of judges and create larger organizational 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.

From that perspective, it may be interesting to compare the composition of the supreme courts and analyze the relationship between the number of judges and the dominant role and function of those courts. Apparently, really important legal issues 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

⁹ See on the critique of „authentic interpretation“ of the Supreme Court, in a Croatian example, Rodin, S., Vjerodostojno - jedinstveno tumačenje zakona odjela Vrhovnog suda RH - sedam smrtnih grijeha članka 57. prijedloga Zakona o sudovima, *Pravo u gospodarstvu*, 44(2005),3:str.80-87.

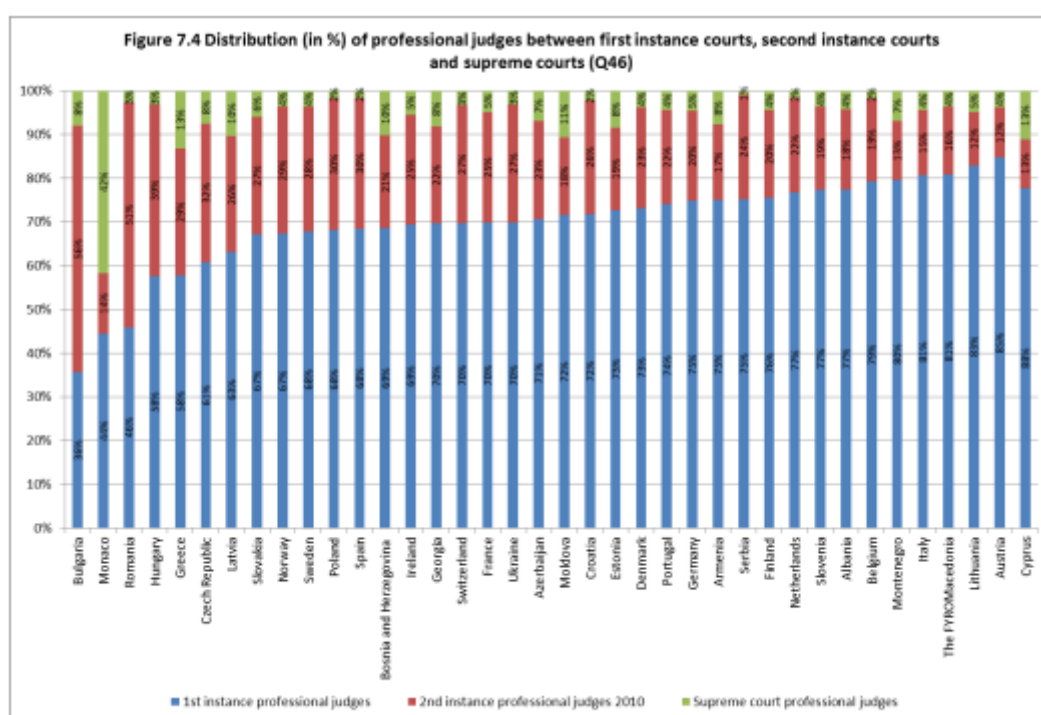
¹⁰ Indeed, if this is not the case, like in PR of China, the Supreme Court openly and without any reservations accepts that it has overlapping jurisdiction with other bodies of government.

¹¹ Jolowicz, op.cit. (note 2), p. 62. Admittedly, some encouragement for overstepping the thin line between a “court” and another body of government may be found in the recent 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 Jolowicz, op. cit., p. 56.

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 present 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, the CEPEJ report does not analyse the data on the absolute number of the supreme court judges, and neither does it put these figures in relation with the size of the particular jurisdiction. However, as the raw data is available and may be extracted from the national reports of particular countries, which is publicly available.¹³ In the next table, this data is presented in a shortened and partly modified form. The number of European jurisdiction was 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*) was added, and showed together with the declared

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

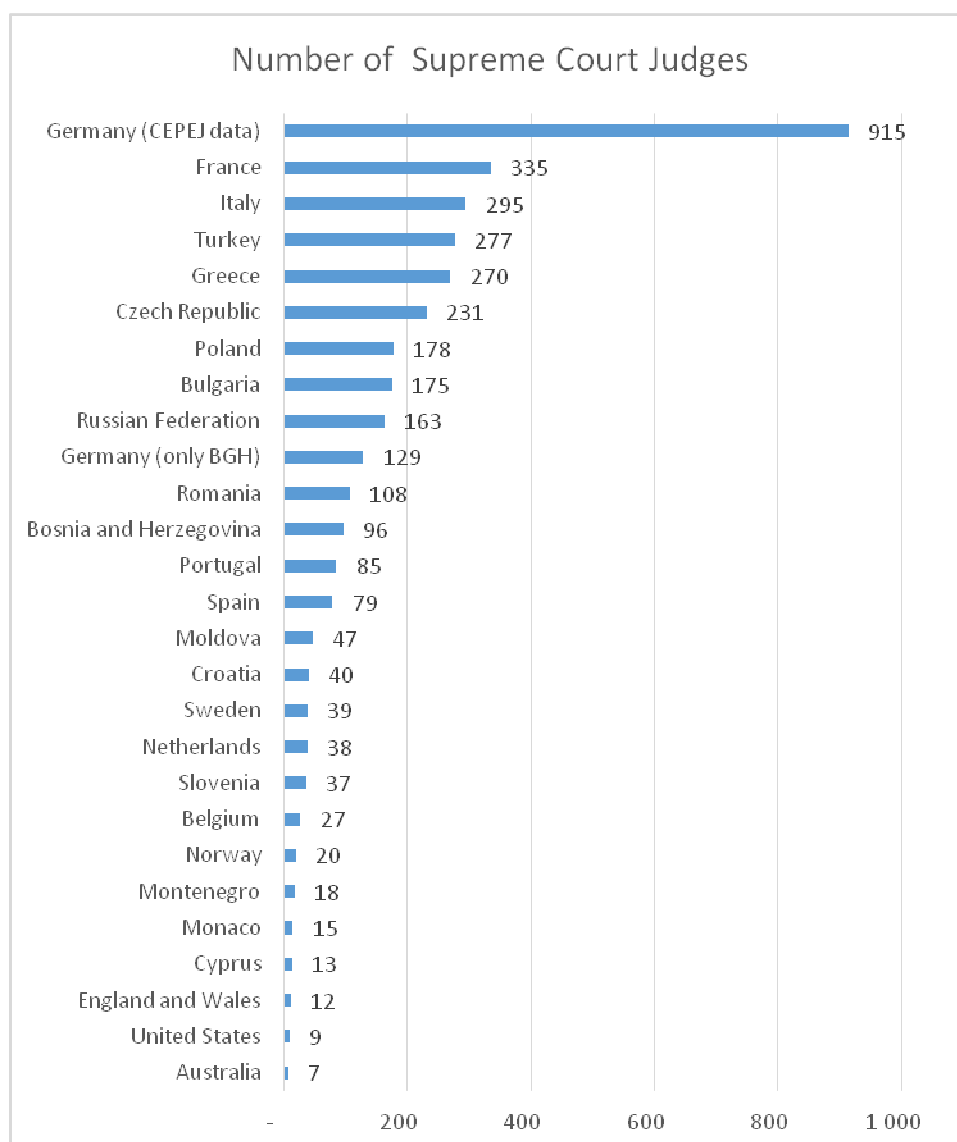
German figure on the number of supreme court judges, that is calculated on the bases of total number of all judges in five German highest courts.¹⁴

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

State	Population	No. of SC Judges	Population per SC judge
<i>Australia*</i>	21.507.717	7	3.072.531
<i>Belgium</i>	10.839.905	27	401.478
<i>Bosnia and Herzegovina</i>	3.843.126	96	40.033
<i>Bulgaria</i>	7.364.570	175	42.083
<i>Croatia</i>	4.412.137	40	110.303
<i>Cyprus</i>	804.536	13	61.887
<i>Czech Republic</i>	10.517.247	231	45.529
<i>England and Wales**</i>	55.200.000	12	4.600.000
<i>France</i>	65.026.885	335	194.110
<i>Germany (CEPEJ data)</i>	81.751.602	915	89.356
<i>Germany (only BGH)*</i>	81.751.602	129	633.733
<i>Greece</i>	11.309.885	270	41.888
<i>Italy</i>	60.626.442	295	205.513
<i>Moldova</i>	3.560.430	47	75.754
<i>Monaco</i>	35.881	15	2.392
<i>Montenegro</i>	620.029	18	34.446
<i>Netherlands</i>	16.655.799	38	438.311
<i>Norway</i>	4.920.305	20	246.015
<i>Poland</i>	38.200.000	178	214.607
<i>Portugal</i>	10.636.979	85	125.141
<i>Romania</i>	21.431.298	108	198.438
<i>Russian Federation**</i>	142.914.136	163	876.774
<i>Slovenia</i>	2.050.189	37	55.411
<i>Spain</i>	45.989.016	79	582.139
<i>Sweden</i>	9.415.570	39	241.425
<i>Turkey</i>	72.561.312	277	261.954
<i>United States*</i>	309.300.000	9	34.366.667

Here is the charts that ranks the jurisdictions according to the number of supreme court judges:

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



The above table shows considerable variety and range of figures: while some countries have less than ten supreme court judges, some 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 and Portugal, and Bosnia and Herzegovina (in which a very high 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 by their size and population, and range from Monaco – a country of barely 35 thousand inhabitants, to the U.S. 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.

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
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

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

As expected, the extremes in this table are even more far 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 is too diverse to support this conclusion. The millions of inhabitants per supreme court judge in 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 more attributed 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 a proof of it. 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 from 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, and in the court with 10 judges. Thus, the wish to engage in consistent interpretation and development of law and uniformization of the case law of lower judicial bodies while observing and developing your own case law imposes difficult organizational challenges in large courts, where a plenary debate and mutual interaction of all judges is impracticable and almost impossible. In addition, once when daily routine in adjudication of repetitive matters prevails, it is difficult to adjust to idea of having to develop law and reinvent new rules and principles in every case.
4. Finally, is there a link between the organizational 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 large number of supreme court judges? There has not been any conclusive evidence for that submission.... yet. Still, analyzing the population-per-SC-judge

table, it may be 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 than 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 to that journey, allow me to end this speech with another provisional conclusion. A true challenge for the supreme courts in the 21st century, both organizational and functional, will be to maintain effective work, concentrating on really important cases, but at the same time not sacrificing public confidence in 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.