



GRAND CHAMBER JUDGMENTS: PRECEDENTS, METHODOLOGY, OR SCIENTIFIC PAPERS?

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PRECEDENTS IN CONTINENTAL LAW SYSTEMS

- The EU and ECHR area: No significant distinction between stabilized continental law systems and common law systems – for both are **supreme court judgements (de facto) sources of law**
- The importance of supreme court judgements for the „law in action“ is huge. **Sources of judgements as precedents:**
 - The European Court of Justice (ECJ)
 - The European Court of Human Rights (ECHR)
 - (National constitutional courts – if they exist)
 - National supreme courts

PRECEDENTS IN CONTINENTAL LAW SYSTEMS

- **Law (de facto)** is what supreme court judgements declare for law (if the society and the legislator accept it).
- The justification of precedents:
 - **Equality** (in same cases same decisions, in different cases different decisions).
 - **Rationality** (a court's decision should source from objective and rational arguments, which are able to be controlled by a third person).
- Equality + Rationality = **Rule of law** (Germany: Rechtssicherheit, Willkürverbot).



GRAND CHAMBERS OF HIGHEST COURTS

- Case law should be:
 - **Unified** (no contradictions between judgements with the same topics).
 - **Stable** (older precedents should be followed by newer judgements).
 - **Clear and convincingly argued** (no „it is so because the court held it is so“).
 - **Changed** if the older case law no longer works (for any reason).
- The supreme court needs a mechanism to **unify, improve or change its own case law**. Such mechanism should be **not too easy** but also **not too complicated**.

GRAND CHAMBERS OF HIGHEST COURTS

- Who can change the case law of the supreme court?
 - **Any chamber** of the supreme court (it doesn't work – no stability of the case law)
 - **The majority of all** supreme court judges (problem: it could be a hunt for a majority of votes, not for convincing arguments)
 - **Grand Chamber** - compromise between high legitimacy (more judges in the chamber) and an ability to prepare a convincing reasoning of the judgement
- Something like Grand Chamber is a **very common option** at continental supreme courts (i. a. Czech Republic).



JUDGMENTS OF GRAND CHAMBERS

- A Grand Chamber is a lawful judge (gesetzlicher Richter) - rules about the **competence** of the Grand Chamber are **necessary**.
- The ambition of a Grand Chamber (and types of judgments):
 - **Single (unsophisticated) precedent** (it only rules what is the „right“ law in a certain type of cases).
 - Judgment with **theoretical and methodological ambition/approach**.
 - Judgment as **a scientific paper** (deep and wide argumentation, methodology, theoretical background, i. e. comparative approach, not only the ruling the case).



JUDGMENTS OF GRAND CHAMBERS

- **Much work** for a Grand Chamber?
 - If there is **no or only minor specialization** at the supreme court. The probability of contradictions between judgments in similar case is higher (an example: the Czech SAC – ca 12 cases per year).
- **Less work** for a Grand Chamber?
 - If the court has **specialized „monopolist“ chambers** in certain areas (contradictions are probably only in general law questions).
 - Even if the court has no specialization if it has a **sophisticated and effective database of supreme court judgments** (it helps to avoid unintentionally contradictions in similar cases)



CLOSING REMARKS

- Sometimes is a Grand Chamber a **real supreme court** above other „common“ supreme court chambers.
- Sometimes is a Grand Chamber **an „Yeti“** (you hear about it but don't see any of its judgment).
- The real power of Grand Chambers **depends on many special circumstances** (specialization of chambers, judges nomination rules for a Grand Chambers, rules about the competence of such chamber etc).
- **Theoretical and comparative research** about Grand Chambers is a very interesting academic area.





**THANK YOU FOR
YOUR ATTENTION!**

СЛАВА УКРАЇНІ!