

# INTRODUCTION



## APPEALS AND OTHER MEANS OF RECOURSE AGAINST JUDGMENTS IN THE CONTEXT OF THE EFFECTIVE PROTECTION OF CIVIL RIGHTS AND OBLIGATIONS

### 1. General introduction

Nobody's perfect. Not even the people who have the right to be right. As popular wisdom confirms, even the judges can sometimes be wrong. Nevertheless, the public confidence in the justice system depends on our belief that decisions made in the judicial processes are reasonably correct and accurate. Since no one has a monopoly on ultimate correctness, a large part of our trust in the correct and objective nature of outcomes of any – not just the judicial – process is rooted in the trust in the mechanisms of quality control. However, the specific nature of the judicial process, encapsulated in the principle of judicial independence and in the right to fair and swift adjudication, requires specific control mechanisms that have to achieve a sensitive balance among various aims and goals.

An element common to all legal systems is the wish to minimise errors in adjudication. Voltaire's observation that 'the history of human opinion is scarcely anything more than the history of human errors'<sup>1</sup> finds its reflections in the design of the procedural means of recourse against judicial decisions. Nevertheless, another common element and common core value of civil justice systems is striving to end disputes efficiently and within a reasonable time. In Europe, this value is even elevated to the level of an enforceable human right, as confirmed by the case law of the European Court of Human Rights in Strasbourg. Thus, contemporary legal systems share a tension between the wish to remove errors by exposing judgments to several layers of control, and the wish to protect civil rights and obligations in a way that is concrete and effective, and not theoretical and illusory. A philosophical, but also a pragmatic point, is that high quality and accuracy of judicial decisions can only be achieved by the unlimited availability of means to challenge such decisions and correct eventual errors. Yet, the same striving for

<sup>1</sup> Voltaire, *Philosophical Dictionary*, § I.

quality and accuracy also means the death of effectiveness and legal certainty. A compromise is often the only practicable solution.

This is the place where divergences start. In different jurisdictions, the methods of achieving effective yet reliable foundations for the protection of civil rights and obligations may be conceived differently. Some might prefer control, quality and uniformity, while others might prefer certainty, efficiency and judicial independence.

Based on these observations, the present book focuses on the systems of appellate control of court judgments. The intention of the editors is to explore the relationship between the different approaches to appeals in national civil justice systems and their impact on the overall efficiency and effectiveness of the legal protection of individual rights. The right to obtain appropriate but timely protection of civil rights and obligations is at the core of the right to a fair trial within a reasonable time protected by Article 6 of the European Convention on Human Rights. Recognising that any approach to appeal has to strike a balance between the ideals of correctness, legitimacy and impeccable legal reasoning, on the one hand, and the ideals of legal certainty, effectiveness and efficiency, on the other, the contributors to this book were invited to discuss how contemporary justice systems deal with this problem. This would allow an evaluation of whether the issues in debate are rather disparate or whether, on the contrary, the procedural philosophies and approaches to appeal are converging.

The papers collected in this volume show that there are still large differences among systems of appeal in civil matters. In a way, the differences in the approach to appeals are even considerably greater than the differences in the approach to the judicial proceedings that gave rise to the decisions that might or might not be appealed. The differences were so plastic and obvious that the editors decided to group some of the contributions under two contrasting headings: 'less appeal, more efficiency', and 'more appeals, less efficiency'.

The best illustration of the two approaches is to be found in the opposition of the 'anti-appeal' attitude of English and American civil courts, and the 'pro-appeal fetishism' of the Socialist and ex-Socialist jurisdictions. While the former argue that 'the judicial system would become paralysed if parties could appeal every decision along the way',<sup>2</sup> the latter elevate the right to appeal against virtually any decision to the pedestal of a constitutional guarantee.<sup>3</sup>

How important is the availability of appeal, and why is this availability so different in different legal orders? There are some valid reasons to maintain appeals, just as there are some valid reasons to restrict them.

On the pro-appeal side, the most important arguments are the need to correct errors, assure the accurate and lawful results of civil proceedings, preserve public faith in the judicial system, secure the development of the law, and promote a uniform and consistent application of legal norms. Appeals, as argued by their

<sup>2</sup> R.J. Sharpe, cited by Andrews in this volume.

<sup>3</sup> On the constitutional right to appeal in post-Yugoslav countries, see e.g. the contributions of Sladič and Uzelac in this volume.

proponents, serve both the interests of individual litigants, who profit by obtaining a judicial decision whose quality is controlled and certified, and the interests of society as a whole, which profits from the chance to build, refine and advance the interpretation of the law.

On the anti-appeal side, the main reasons for restricting appeals are the need to secure the finality of judgments, foster legal certainty, avoid excessive costs and duplication of court actions, shorten the length of proceedings and prevent financially stronger parties from molesting their adversaries by entangling them in an endless loop of judgments and appeals.<sup>4</sup>

Economic reasons may also play a role in the context of constructing or dismantling appeal structures: broad availability of appeals may contribute to the overcrowding of court dockets and may be burdensome for the state budget.<sup>5</sup>

## 2. Regular Appeals and Effective Legal Protection

One of the most prominent motives for restricting appeals, i.e. the human right to a trial within a reasonable time, is addressed in the first paper of this book, in the part entitled 'Defining the Issues', written by Jon T. Johnsen. After summarising the evils of unreasonable court delays, Johnsen analyses the case law of the European Court of Human Rights, attempting to distil from it the 'European standards for time management' as guidelines for the (in)compatibility of time use at the appellate level with the requirements of Article 6(1) ECHR. Concluding that the criteria for time use set by the European Court of Human Rights are 'discretionary, flexible and complicated', the author nevertheless finds that the length of proceedings has to be evaluated from the background of the total time use at all stages of the proceedings, and that unusually complicated and time-consuming appeal structures do not justify extended time use. Equally, the unreasonable length of proceedings can be justified neither by insufficient measures against delaying tactics, nor by the legitimate wish to maintain consistency, e.g. by the appellate courts' desire to join similar cases in a common hearing.<sup>6</sup> The threshold of 'reasonable' time is, following an analysis of the case law of the ECtHR, as a rule of thumb up to two years per appeals instance. Based on (still fragmentary and insufficient) judicial statistics submitted to the CEPEJ, Johnsen undertakes to compare the average time use in a series of countries of Northern and Southern Europe, inquiring whether the length of appeal proceedings gives rise to concern from the perspective of human rights standards. The provisional and indicative results presented by Johnsen are illuminating. While the countries of Northern Europe (such as Norway) dispose of appeals within three to seven months, the jurisdictions of Southern Europe (e.g. France, Cyprus or Italy) need an *average* disposition time at the appellate levels of two to six years – enough to conclude that the time use in a large number of cases in these jurisdictions is in conflict with human rights standards. The inference from

<sup>4</sup> For more, see Andrews in this volume.

<sup>5</sup> See e.g. Kodek in this volume.

<sup>6</sup> Johnsen in this volume.

this finding is, according to the author, the need for more refined time management instruments warning that time use on appeal approaches the point where it becomes a human rights violation. Inevitably, repeated violations of the right to a hearing within a reasonable time on appeal may be a sign that the system of appeals suffers from a systemic deficit, which should be addressed at a systemic level.

The potential human rights issues in current European practices of appeals are also addressed by Judge Georg Kodek, this time not only within the context of the right to a hearing within a reasonable time. The author observes that restrictions on the right to appeal as such do not *per se* give rise to concern, as Article 6(1) ECHR 'does not require the existence of courts of further instance'.<sup>7</sup> But, if appeals are available, they are also in principle subject to the same standards as first instance proceedings – the standards of public and oral hearings in which each party is given full opportunity to present his case in court. The practice of various civil law countries is, however, that some appeals are decided *ex parte*, and a large part of these appeals are being disposed of on the basis of written evidence alone, with no hearings and no publicity at all. Such practice is problematic also from the perspective of the right to the public pronouncement and public tendering of judgments of Article 6(1) ECHR. The substitute methods, such as publication in an official gazette or an electronic database, may be problematic due to routine anonymisation and/or shortening of judgments. For all these reasons, a broad availability of appeals and a large number of appeals per capita seem to be more a curse than a blessing, and many legal systems move in the direction of legitimising and even encouraging limitations or exclusions of appeals.

Fokke Fernhout and his students address the topic of evaluating the impact of appellate decisions in a given jurisdiction. They introduce what they describe as 'a more sophisticated tool for evaluating appellate decisions than the usual tool of counting the number of first instance judgments that are reversed on appeal. This new tool 'not only gives a better picture of the impact of appellate proceedings, but also allows for a quantification of the reallocation of financial means as the result of decisions in appeal'. The authors hold that the way the costs of appeal proceedings can be balanced against the volume of this reallocation, which will give a solid foundation to policy decisions as regards appellate procedure.

Among the jurisdictions that go far in restricting or limiting appeals, England is traditionally one of the most prominent examples. In the paper of Neil Andrews, opening the second part of this book entitled 'Less Appeal, More Efficiency', six main restrictions to appeals in English law are enumerated: '(i) time-limits for the bringing of appeals; (ii) the need for permission to appeal; (iii) unwillingness to second-guess factual findings of the first instance court, in particular its assessment of witness evidence; (iv) restrictions on introduction of new evidence; (v) refraining from review of 'discretionary' issues, except in case of grave and fundamental errors or wildly aberrant decisions; and (vi) reluctance to review matters which have become purely academic, or hypothetical issues.' On top of this, the author observes that the direction of the whole civil justice reform in England 'was against

<sup>7</sup> *De Cubber v Belgium* (Series A-86), para. 32. Cited by Kodek in this volume.

appeals'.<sup>8</sup> Appeals that have no real prospect of success will be regarded as inadmissible. Moreover, some appeals that may in principle get permission to be heard have slim chances of success, e.g. when only a lower court's findings of fact are challenged. The underlying rationale for restrictions to appeals is in most cases the finality principle (*interest reipublicae ut finis sit litium*), and reluctance to open judicial decisions to 'endless re-litigation of the same issues'.

Limits on the right to appeal are also strong in the United States of America. In her contribution Andrea Saltzman describes appellate review in American state courts, using the example of California. The exceptional nature of appeals is obvious from the first glance at the judicial statistics in California. While there are almost 9 million final dispositions of filed cases in California courts annually, there are only about 25,000 filed appeals, out of which only about 10,000 are decided by issuing a written opinion, and less than one thousand of appellate decisions reverse the trial court. In other words, only one out of every 9,000 decisions of California state courts is successfully attacked on appeal. In small claims cases appeal is available, in a limited form, only to the defendant. The appeal is open only against final judgments and not against 'intermediate' or 'interlocutory' decisions, based on the formula that 'piecemeal disposition and multiple appeals in a single action would be oppressive and costly'.<sup>9</sup> The statistical probability of success may also work discouragingly. 'Given this small chance of success on appeal, and given the high cost of appealing and the delay inherent in appealing, it is hardly surprising that many litigants would opt not to appeal from a judgment, no matter how unsatisfactory it may be.'<sup>10</sup> To that extent, the level of limitations on appeals may, in fact, 'preclude a meaningful appeal'.<sup>11</sup>

The same features that characterise California civil justice can be found not only in the state courts, but also in the federal courts. Richard Marcus explains the exceptional and special nature of American appeals from the background of the two ideal-types introduced by Mirjan Damaška. The comparably weak and limited character of appeals is according to Marcus due to the absence of strong hierarchical and policy-implementing structures in the American judiciary, where judges are regularly appointed after several decades of successful practice in other branches of the legal profession. Thus, routine and frequent review of their decisions by more 'senior' judges does not make much sense. On the contrary, frequent or even automatic appeals as a right of the litigants 'might even be criticized as undercutting the central importance of the trial court', as feeding 'the notion that they are inferior' to appellate courts. This is reflected in the typical American trial court judge's attitude. Trial judges do not care much whether they are affirmed or reversed on appeal, and might even 'feel a slight disdain for appellate judges', who lack their direct trial insight and experience.<sup>12</sup> Moreover, as appeals are regularly admissible only against 'final judgments', and not against intermediate decisions

<sup>8</sup> See Andrews in this volume (citing *Copealand v Smith*).

<sup>9</sup> Saltzman in this volume, citing *In re Baycol Cases I and II*.

<sup>10</sup> Saltzman.

<sup>11</sup> Saltzman.

<sup>12</sup> Marcus in this volume (citing *Harlan Dalton*).

(which are viewed as ‘forbidden piecemeal dispositions’), in the great majority of cases before the American courts appeal is *never* available, due to the fact that most cases get settled before the court has opportunity to issue a judgment on the merits.<sup>13</sup> Interestingly, it does not seem that the globalisation processes have contributed to the convergence of the U.S. attitude towards appeals with the practice in other, more bureaucratised and hierarchical national judiciaries. On the contrary, the rise in the number of appeals despite their very low success rate has led to the *de facto* transformation of appellate courts into *certiorari* courts, i.e. courts that allow appeals only on a discretionary basis.

Significant restrictions on appeals that enhance efficiency of the judicial process and affirm the authority of the trial courts do not exist only in the common law world. A detailed survey of the national law on appeals in Dutch courts by Remco van Rhee demonstrates that some European civil justice systems, in spite of their more pronounced bureaucratic and career judicial structures, value efficiency and regulate appeals in a cautious way. To that extent, several features of the appeals in the Netherlands justify its placement under the heading ‘fewer appeals, more efficiency’. One of such features is the focus on effective case management and the fight against delaying strategies of the parties achieved by ‘severely limiting the possibilities of interlocutory appeals’.<sup>14</sup> The appeals against final judgments on the merits are also limited in some aspects, and for some cases even excluded (e.g. in cases regarding claims of less than €1,750, or in judgments involving the dissolution of employment contracts).<sup>15</sup> If regular appeal is admissible, the parties may agree to skip it, agreeing on a so-called ‘leapfrog appeal’, on a direct submission of their case to the highest court. The success in the limitation of appeals is underlined by the statistical figures. The low number of appeals in the Netherlands might also in part be due to relatively high court fees in civil procedure at second and third instance, as well as to mandatory legal representation which adds to the overall costs of the appeals proceedings.

A dramatically different portrait of the attitude towards the means of review against civil judgments is contained in the third part of this book entitled ‘More Appeal, Less Efficiency’, where the appeals systems of the People’s Republic of China, Slovenia, Croatia, Italy and Spain are examined. The contribution of Peter C.H. Chan may be taken as a complete contrast to the papers describing the strong and even slightly arrogant position of common law trial judges whose work and decisions rarely get successfully attacked and reviewed. In the system of justice in Mainland China, ‘the individual Chinese judge is institutionally weak’<sup>16</sup> – he is a disciplined part of the overall adjudicatory machinery that needs to blend into a bureaucratic hierarchy led by politically appointed Supreme Court judges. The review of all kinds of judicial decisions therefore takes place at multiple levels, even before the decisions have been made. For instance, judges are encouraged to resort to *qingshi* (advisory request) to the higher judicial authorities, which should provide

<sup>13</sup> Marcus.

<sup>14</sup> Van Rhee in this volume.

<sup>15</sup> Van Rhee.

<sup>16</sup> Chan in this volume.



guidance as to the content of decisions in concrete cases. The adjudicatory process is also under the supervision of the court leadership and – directly or indirectly – under the supervision of the political authorities. The appeal to the higher court, in spite of being only one among many review opportunities, is not limited – it may be launched against *any* finding of the first instance court, and in principle leads to full repetition of the fact-finding exercise before the higher court, also *ex officio* and on the basis of new evidence and new points of law.<sup>17</sup> The review may result in a situation in which an appellant ends up in a worse position than before his or her appeal. Indeed, the time limits for decision-making in the Chinese courts are short and the whole process seems to be *prima facie* very fast (even extremely fast), but the issue of efficiency in this radical pro-review model of civil procedure still arises. Namely, as argued by Chan, ‘final’ judgments in China are never truly final.<sup>18</sup> Any ‘final’ judgment is subject to the possibility of adjudicatory supervision, either by party application, or upon initiative of the court president and the adjudicative committee of the court. Ultimately, the purpose of the appeal is to contribute to mediated solutions, coherent with the social policy of ‘social harmony’ advocated by the ruling elites and the highest judicial authorities.

Though very different, the judicial systems of China and Slovenia share one similarity in the appeals system: the review of judicial decisions may end up in never-ending challenges of judicial decisions. The particular feature of the Slovenian appeals system, pronounced by the European Court of Human Rights as ‘procedural deficiency’, is the possibility that appeals result in an ‘endless cycle of remittals’. In his paper, Jorg Sladič analyses why, despite numerous procedural reforms, the endless cycle of remittals upon appeals has not been avoided in Slovenian civil procedure. As explained based on statements from case law, the problem lies less in legislation, and more in the self-imposed limitations of the reformatory powers of the higher courts, rooted in the perception that ‘appellate proceedings only exist to legally review the challenged judicial decision of the court of first instance, and appeals are not deemed to be a way of closing the litigation’.<sup>19</sup> Therefore, irrespective of the fact that the law permits the courts of appeal to *either* reform (reverse) the challenged judgment, or set it aside (quash it), the courts prefer quashing the judgments and remitting them to retrial in the first instance.<sup>20</sup> The underlying rationale is the constitutional right to appeal that is construed (also) as the right to have *any* decision of the lower court – be it on factual or legal issues – reviewed at the higher instance. This right, so the argument goes, would be violated if the courts of appeal were to conduct hearings and evaluate (new) evidence, since their assessments would thus remain uncontrolled. The consequence is that, according to Sladič, Slovenian appellate courts effectively consider themselves to be courts of cassation.<sup>21</sup> Consequently, the repeated quashing and remitting of cases to

<sup>17</sup> Chan.

<sup>18</sup> Chan.

<sup>19</sup> See Sladič in this volume.

<sup>20</sup> Sladič refers to the practice of Slovenian courts as a history of ‘deliberate misapplication of the reformed civil procedure’.

<sup>21</sup> Sladič.

the court of first instance is not merely possible: in some cases this vicious loop is regarded as inevitable. The civil procedure reforms of 2004 and 2008 attempted to address this deficiency and stimulate reformatory decisions and the definitive closure of litigation at the appeals level. These attempts have, however, been circumvented in practice, demonstrating that – at least for the time being – an endless cycle of remittals still cannot be broken in the current legislative and institutional framework.

Stemming from the same legal tradition, Croatia shows the same features and experiences the same problems as Slovenia, including the problem of an endless cycle of remittals. Again, the right to appeal under national law goes beyond the usual ‘principle of two civil instances’ and expands into a universal, fundamental right guaranteed by the Constitution against all kinds of judicial decisions, be they intermediate or final, procedural or meritorious. As described in the contribution of Alan Uzelac, the wide availability of appeals also means that the doors are wide open for delaying strategies. The statistics on the use of appeals displays how broadly appeals are utilised in Croatia: compared with the annual figure of 16,000 civil appeals in the Netherlands, four times less populated Croatia has annually over 70,000 civil appeals (80,000 if appeals against decisions of the commercial courts are included). Between 18 and 26 per cent of all appeals end up with quashing of the decisions and their remittal to the lower court, while the ratio of reversed decisions was two to five times lower. Just as in Slovenia, many attempted reforms aimed at enhancing efficiency of the appeals in Croatian civil procedure have so far resulted in only weak and half-hearted changes, with many still outstanding issues to be addressed in the future (if ever).

Another example of reoccurring reforms without visible improvements is certainly Italy. Francesca Ferrari describes in her contribution the ever-changing Italian procedural rules on appeals, with a special focus on the reforms of 2011 and 2012. Questioning the appropriateness and compatibility with Italian legal culture of the most recent amendments, she concludes that several apparently far-reaching changes, such as the introduction of filtering mechanisms and the limitation of new evidence, have poor chances of success. The Italian appeals system, just as the other elements of Italian civil procedure, remains an exemplar of one of the most inefficient civil procedure systems, but also provides examples of quite generous mechanisms for recourse against judicial decisions. In the Italian case, there is no constitutional right to appeal, but there is a constitutional peculiarity which also results in inefficiency: the constitutional right to challenge every decision or order by way of a petition (*ricorso in Cassazione*) to the Supreme Court (*Corte Suprema di Cassazione*).<sup>22</sup>

<sup>22</sup> Ferrari in this volume, referring to Art. 111(7) of the Italian Constitution.

### 3. Recourse to the Highest Judicial Authorities - 'Secondary Appeal' or the Review of Court Judgments at Third Instance

A group of three texts in this book deals specifically with 'secondary appeals' - the means of recourse to the highest echelons of the judicial hierarchy.

The first one is written by Tanja Domej and is devoted to the concept of the admissibility of appeals to the supreme courts in Germany, Austria and Switzerland. All three German-speaking jurisdictions have dealt with the same issue: how to restrict access to the Supreme Court for the sake of efficiency, but in a way that preserves the main function of the court; that only the 'right', i.e. the 'important' cases, reach the Supreme Court.<sup>23</sup> While the goals and ambitions are the same in the jurisdictions under discussion, the final outcome is not: Tanja Domej concludes that among the three analysed jurisdictions, 'today the divergence is perhaps greater than ever'.

Different ways of reshaping recourse to the supreme courts in several jurisdictions that share the same legal roots is the topic of another paper in this volume. This time, Aleš Galič analyses the diverging paths of the procedural reforms in the successor countries of ex-Yugoslavia (Slovenia, Croatia, Serbia, Montenegro, Bosnia & Herzegovina and Macedonia). All of these jurisdictions started with near-unlimited access to the supreme courts inherited from the former common law and practice, and have attempted in different ways to filter access and introduce 'permission' or 'leave' to secondary appeal. The author concludes that, for the time being, the reform of the Supreme Court jurisdiction from an instance for correction of errors in the interest of individual litigants (individual purpose) to the public interest function (public purpose) has only been embraced in a half-hearted way.<sup>24</sup>

This part of the book concludes with a paper that presents research of Pablo Bravo-Hurtado. He discusses recourse to the Supreme Court from a more comprehensive comparative perspective, arguing that the civil law and common law approaches to appeals at the highest judicial instances serve the same purpose, i.e. to achieve uniformity in judicial decision criteria. While presenting global models and typologies, Bravo-Hurtado also discusses features of his home jurisdiction, Chile, and suggests probable historical reasons for divergent paths to the same goal. According to his interpretation, common and civil law traditions have different, yet equally risky presuppositions - in his words 'leaps of faith' - one concerning the willingness to follow the highest courts' criteria, the other concerning the capacity of the highest court to find its own internal consistency despite a huge and chaotic caseload.<sup>25</sup>

<sup>23</sup> Domej in this volume.

<sup>24</sup> Galič in this volume.

<sup>25</sup> Bravo-Hurtado in this volume.

#### **4. Special Issues Regarding Appeals in Specific Sectors: Consumer ADR, International Jurisdiction, Family Law**

This collection of papers concludes with three papers that address issues of appellate control in some specific areas. The first one, written by Christopher Hodges, deals with an area that has been discussed and promoted at the EU level – the area of alternative dispute resolution in consumer matters (consumer ADR or CDR). While CDR structures become more and more developed and utilised, two issues arise in relation to the eventual control of their outcome – first, whether any rehearing by a higher tribunal should be available, and second, to what extent legal issues may be reviewed at the appellate level. The analysis of Hodges demonstrates that, for historical and doctrinal reasons, the rehearing in CDR processes is not desirable, and that, equally, no serious review of the correct application of the law is necessary in those matters.

The paper of Gina Gioia presents difficulties arising in the review of decisions of national courts on issues of international jurisdiction. In particular, the author discusses how decisions on international jurisdiction (or the lack thereof) work within the common EU area of justice, where – in spite of the general striving towards the mutual recognition of judgments – the decisions on jurisdiction made in one EU country generally cannot be recognised on the territory of another EU country. In this context, national systems of recourse against decisions on international jurisdiction in four EU Member States are analysed: the systems of England & Wales, Germany, France and Italy.

Finally, the contribution of Slađana Aras discusses appeals in the context of child maintenance procedure. Her topic is analysed using the example of the past practice and recent developments in Croatian family law. Based on her empirical research conducted in four large Croatian courts, the author concludes that, if an appeal is launched, decisions on child maintenance need at least one to three years from commencement of the procedure until the legal effectiveness of the judgment (and sometimes even longer, causing a violation of the right to a trial within a reasonable time).<sup>26</sup>

#### **5. Conclusion**

The contributions collected in this volume clearly show that, when reforming the means of recourse against judgments, the national justice systems should pay attention to the effectiveness and speed of legal protection. The key points are to keep the efforts and costs of the legitimate control and review of court decisions proportionate to the meaning and value of the underlying issues, and to design an appeals system that has the capacity to process the incoming cases in a speedy and effective manner, without delays and backlogs.

Perfection in the factual accuracy and ultimate consistency of legal reasoning at the national level are fine and noble tasks. However, in real life we have to learn

<sup>26</sup> See Aras in this volume.

to live with moderate imperfections. Therefore, hardly any legal system can afford the luxury of full and unlimited review of judicial decisions. In constructing a satisfactory appeals system, the available options are broad, ranging from limiting to filtering appeals, and ultimately to the exclusion of appeals altogether in matters that are not of fundamental importance. Indeed, *repetitio est mater studiorum*, and therefore the review of decisions may help to improve quality. The better solution, however, is to concentrate on improving court decisions at first instance, reducing the need for appeals altogether.

A. Uzelac & C.H. van Rhee  
Zagreb / Maastricht, December 2013