Chapter 5

Croatia: Supreme Court between Individual Justice and System Management

Alan Uzelac and Marko Bratković

Abstract The Supreme Court of the Republic of Croatia is an excellent example of an overburdened supreme court. The prevailing opinion on the role of the Supreme Court in Croatia is that its adjudication in the further (second) appeal procedure serves both the individual and the public purpose, i.e. both individual justice and system management. The authors of this contribution are of the opinion that such an approach is unsustainable, and that unclear definition of the purpose of supreme adjudication makes the main cause of the case overload problem. Currently, Croatian civil procedure knows two means of recourse to the Supreme Court in civil cases: ordinary, value-based second appeal (*revizija*) which automatically regards as admissible all cases where the amount in dispute is higher than a certain threshold, and another type of second appeal, so-called exceptional second appeal, which can be launched against decisions irrespective of their value, but based on the finding that the decision raises an important issue of substantive or procedural law that is relevant for securing the uniform application of the law and the equality before the law' .

5.1 Introduction

The Supreme Court of the Republic of Croatia may look like an excellent example of an overburdened supreme court. However, adequate solutions for its case overload problem are yet to be implemented.

As for the role of the Supreme Court, the prevailing opinion reflected in the leading textbook on civil procedure (Triva and Dika 2004: 719) is that the adjudication by the

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Supreme Court in the second appeal procedure serves both an individual purpose (in terms of a legally and factually correct resolution of each individual case) (Lindblom 2000: 104) and a public purpose (in terms of system management that secures a uniform application of the law and offering guidance to lower courts) (Galič 2014a: 293).

Can the Supreme Court adequately, reasonably and expeditiously fulfil both individual and public purposes (Galič 2014a: 292)? The Croatian experience so far suggests a negative answer. The double role of the Croatian Supreme Court—to ensure individual justice and system management—seems to be unsustainable. At least, it is certainly the main cause of the current case overload problem. Additional explanations for this assertion will be presented later in this contribution. But before embarking on the issue of case overload, we will first give a few introductory remarks about Croatia and its court structure.

The Republic of Croatia gained independence in 1991 and belongs to the circle of successor countries of the former Yugoslavia established after the Homeland War in the 1990s. In 2013, Croatia became a member of the European Union. In terms of both population (about 4.2 million inhabitants[1]) and territory (about 56.5 thousand square kilometres of land territory with an additional 31 thousand square kilometres of sea surface area) it is a relatively small country (Uzelac 2014: 229).

The current structure of the court system in Croatia (see Fig. 5.1 below) reveals a relatively simple but dense court network consisting of courts of general jurisdiction (municipal and county courts) and specialised commercial, petty crime (misdemeanour) and administrative courts, and only one municipal labour court[2] located in Croatia's capital city Zagreb. As the result of a reform to rationalise the judicial system, Croatia is indeed gradually reducing the number of courts[3] although the number remains considerably high.

The municipal courts deal with all civil and criminal cases that are not expressly identified as falling within the jurisdiction of other courts. The courts at the second level are essentially courts of appeal, which, in the civil branch, deal almost exclusively with appeals from the lower courts. The relatively high number of courts of second instance (15 appellate

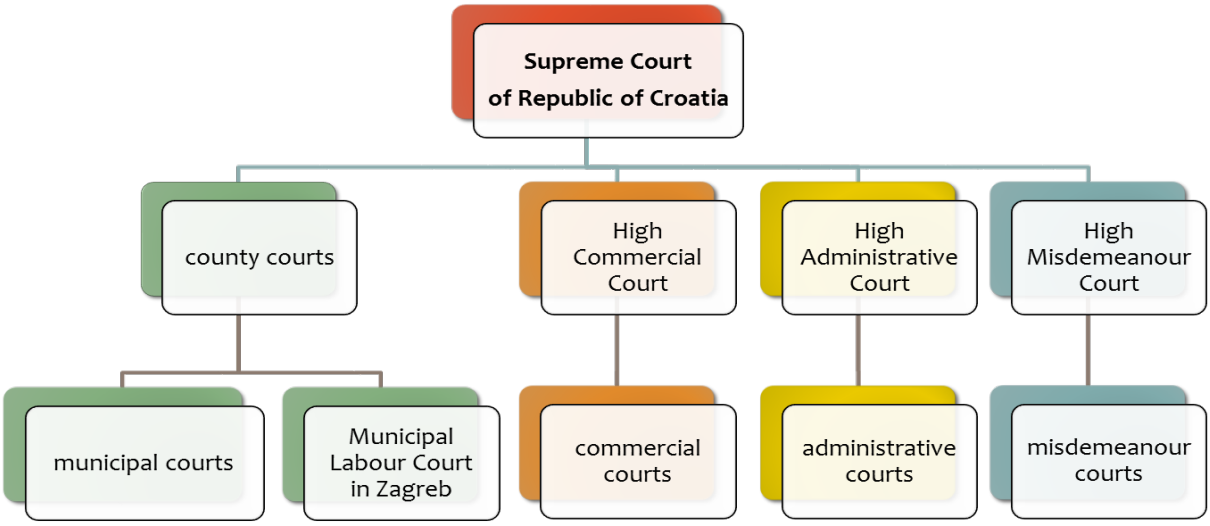
[1] Population on 31 December 2017 (end-of-year population estimate): 4,105,493. The exact figure from the 2011 census was 4,290,612 persons with permanent residence; overall 4,456,096 enumerated persons (Source: Statistical Reports of the Croatian Bureau of Statistics. http://www.dzs.hr/. Accessed 20 Jun 2019).

[2] In all other courts outside Zagreb, labour cases are within the jurisdiction of municipal courts as the courts of general jurisdiction. Uzelac (2014a: 230).

[3] Ibid. 229.

courts of general jurisdiction and one in commercial matters) in relation to the size of the population and their, in some aspects, conflicting opinions are two of the causes of the inconsistency in the application of the law in Croatia.

Fig. 5.1 Court Structure in Croatia



5.2 The Supreme Court of Croatia

The highest court is the Supreme Court. The Constitution defines the task of the Supreme Court as 'ensuring uniform application of laws and equality of all before the law' (Art. 119, para 1).[4] In civil and commercial cases, the Supreme Court acts as the third and final instance court, deciding on second appeals on points of law (*revizija*) against decisions issued by the courts at the second instance.[5]

Though a large majority of its cases are of a civil and commercial nature, the Supreme Court also plays an important role in criminal cases. For that reason, the court is divided into two divisions, civil and criminal (Uzelac and Galič 2017: 208). Here, we will only deal with its civil division. As the most profound changes in recent times have occurred in respect of

[4] *Ustav Republike Hrvatske* [Constitution of the Republic of Croatia], Official Gazette, 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.

[5] In rare civil cases where the county courts (or, potentially, the High Commercial Court) decide at the first instance, the Supreme Court also acts as the regular appellate body.

the court's civil jurisdiction, we will focus in particular on the second appeal on points of law (*revizija*) (Uzelac and Galič 2017: 208; Uzelac 2014a: 231).

History of the Supreme Court The long history of the Croatian Supreme Court can be roughly divided into three main periods: before 1945, 1945–1990 and from 1991 onwards.

The early stages of the court's history are for our purposes largely irrelevant. In the pre-World War II period the Croatian lands functioned more or less autonomously, first under Austrian and Hungarian rule and later under the royal rule of Serbian kings (Uzelac and Galič 2017: 209).[6] But the lack of national independence affected the status of the judicial institutions as well. The highest court in the country was therefore relatively weak, unable to be recognised as an independent judicial institution (Uzelac and Galič 2017: 210). Furthermore, the judiciary as a whole did not manage to reach the same degree of independence as the judiciaries in other European countries with a well-developed legal tradition (Čepulo 2006: 381).

The genesis of the Supreme Court in Croatia as we know it today was more affected by the developments in the period of socialist Yugoslavia after World War II, when Croatia was a constituent republic of a federal Yugoslavia.[7] In that period, however, the liberal democratic doctrine of separation of powers was rejected, and the judiciary was not conceived as an independent branch of government, but as another layer of executive bodies under the supremacy of the representative bodies (assemblies). In accordance with the doctrine of unity of powers, the judges of all courts were appointed for a limited term of office by assemblies at various levels to which they were accountable for their work and actions (Uzelac and Galič 2017: 210).[8] As a response to the lack of independence and the potential danger of political reprimand and sanctions, the socialist courts developed hyper-formal, slow and repetitive court procedures and a complex network of means of recourse, which allowed judges to avoid responsibility for final decision-making (Uzelac 2010: 377–

[6] For more on the organisation of the Yugoslav judiciary see Čulinović (1946: 95–96).

[7] In Yugoslavia, the apex of the judicial pyramid was in most cases the supreme court in each of the constituent federal units, among others the Supreme Court in Zagreb, and not the Federal Supreme Court (which after 1974 was renamed Federal Court), which had limited powers and did not function as a further court of appeal against the decisions of the republic's supreme courts. See Galič (2014a: 291); Uzelac and Galič (2017: 211).

[8] Though formally appointments and extensions of terms of office were made by the assemblies, an imporant (and often decisive) role in the decision-making was in the hands of the Communist Party.

396).[9] However, in the period between 1945 and 1990 the grip of political control on the judiciary fluctuated. In the final decade of socialist rule this grip was seen to gradually loosen, but it did not disappear.

In dealing with second appeals (*revizije*) the Supreme Court mostly focused on the review of the correctness of decisions in individual cases. Despite doctrinal views on the need to focus on only some categories of cases and only a few limited grounds for appeal which may have a broad relevance, for individual litigants the Supreme Court was *de facto* viewed as just another opportunity for appeal. The low monetary thresholds as filters for access to the Supreme Court and the extensive interpretation of grounds for appeal turned this means of recourse predominantly into a means of providing another chance for the applicants in individual cases to secure a favourable outcome (or delay in execution) after the appellate court's decision not to quash or overturn the original unfavourable outcome in the lower court.

While individual appeals largely focused on an individual (private) function, the systemic role of ensuring the uniformity of the law was mainly left to another instrument that the court had at its disposal. This was the power to issue 'interpretational statements' on legal issues by the court divisions or its plenary. Such opinions could be issued in an abstract manner upon initiative of the court presidents at the divisional or plenary sessions. The sessions of the civil division of the Supreme Court, or even a plenary session, could consider general issues of interpretation of the law if it was established (mainly by means of internal consistency checks) that different panels intended to pass decisions based on conflicting interpretations of the same legal issues. In such cases, the whole section or plenary would consider these issues *in abstracto*. Finally, the majority of judges (irrespective of whether they had ruled in cases where such issues were raised) could form a single 'interpretational statement'. Such a statement (i.e. interpretation of the law) was, at the level of the Supreme Court, binding on all judges of the court.[10]

After declaring independence in 1991, Croatia embraced the doctrine of separation of powers, according to which judicial power forms a separate branch of government, headed by

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[9] For similar features in Poland and other post-socialist Central European Countries see Mańko (2013).

[10] See Uzelac and Galič (2017: 212). A similar method for the resolution of inconsistencies in the interpretation of the law also existed at the lower courts. Only at the first instance were the majoritarian interpretational statements not binding on the judges of the court and had only persuasive power. In Croatia, more or less the same options for the issuance of interpretational statements have survived to the present day.

the Supreme Court (Galič 2014a: 291; Uzelac and Galič 2017: 213). In the new Croatian Constitution the Supreme Court was now clearly defined as the 'highest court' and entrusted with an apparently public function and purpose: to ensure the uniform application of the law and legal equality. Still, real changes in the approach to the court's role were slow and procedures and organisational design inherited from the previous socialist period remained largely unchanged, with a number of open issues still to be resolved (Uzelac and Galič 2017: 213).

Structure of the Supreme Court The judicial activities of the Supreme Court are carried out by its civil and criminal divisions, while its administrative work is conducted by the Office of the President of the Court. Each division is headed by a president, appointed by the President of the Court according to his annual plan of activities. Each division includes a special service tasked with the monitoring, recording and analysis of case law, all of which is posted on the court's frequently updated website.

In 2019, there was a total of 43 judges of the Supreme Court, of which 25 were in the Civil Division, plus the president.[11] The number of panels, panel presidents and members is determined by the President of the Court in his annual plan of activities, which he prepares at the end of each year for the upcoming year. In 2019, the Civil Division of the court had five panels of five Supreme Court judges. The work of the panels is carried out in panel sessions, chaired by the panel president, while the cases are presented by a judge rapporteur. The judge rapporteur's role is very important because he or she generally reports the case in the Supreme Court's session and prepares the text of the final judgment (Uzelac and Galič 2017: 224).

The Supreme Court also employs additional staff that contributes to the judicial work of the court, especially in preparing and drafting decisions. The lawyers employed at the court are called 'judicial advisers' (*sudski savjetnici*). In 2019, each judge of the Civil Division of the Supreme Court had at least one such adviser. Some of them were recruited from among the ranks of the lower court judges; they were invited to temporarily serve as advisers at the Supreme Court.

[11] See: http://www.vsrh.hr/EasyWeb.asp?pcpid=41. Accessed 20 Jun 2019.

5.3 *Revizija* as a Second Appeal on Points of Law

After 2003, when Croatia abandoned the option of the State Attorney intervening in civil proceedings,[12] *revizija* as a second appeal on points of law remained the only means of recourse before the Supreme Court in civil proceedings. Only the parties can bring an appeal to the Supreme Court in civil cases. The notion of *revizija* in the Croatian language is difficult to translate. It refers to a second appeal on points of law, similar to the remedy of *Revision* in, for example, German or Austrian law, but it can also be compared to cassation in, for example, French or Italian law. In our contribution, the expressions *revizija* and a (second) appeal (on points of law) before the Supreme Court will be used interchangeably.

Originally transplanted from Franz Klein's Austrian Code of Civil Procedure to Yugoslav civil procedure, *revizija* was in the Yugoslav (and still is in the Croatian) legal system conceived as a second appeal on points of law, available to the parties against most decisions of the courts of appeal (Uzelac and Galič 2017: 211). Since 1976, *revizija* has been considered to be an 'extraordinary' legal remedy because it is launched against decisions that have become final and binding (*res iudicatae*).[13] This means that it does not prevent the enforceability of the judgment it is directed against (Art. 384, para 1 Croatian Code of Civil Procedure (CCP))[14] nor does it prevent the judgment from becoming *res iudicata* (Galič 2008: § 305).[15]

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[12] See Art. 239 of the Code of Civil Procedure (*Zakon o parničnom postupku*) Amendments (Official Gazette, 117/03). Until this time, the State Attorney could file an independent recourse against most final judgments and some other decisions in civil proceedings if it was suspected that substantive or procedural law was wrongly applied. Such a 'request for the protection of legality' originally seems to be related to the procedure of *nadzor* that existed in the Soviet Union and remnants of which can still be found in the Russian Federation and some former Eastern Bloc states (in a restricted form in Slovenia, as well). In Yugoslav law, it was introduced after World War II, motivated by the protection of state interests in private law disputes (Zuglia 1957: 573). However, as early as the 1980s and 1990s the practical relevance of such a legal remedy in Croatia was only minor. Unlike in certain European procedural models where the *procureur public* can also submit a special remedy in civil proceedings (e.g. France, Italy, the Netherlands), the judgment of the Supreme Court following the 'request for the protection of legality' might lead to the quashing or altering of the impugned decision, hence affecting the civil rights of the individual parties in the case at hand (which seems to be problematic for the ECtHR in terms of violation of the principle of *res iudicata*). See more in Uzelac (2004: 29); Galič (2014a: 312–313).

[13] The CCP was originally enacted in 1976 as Yugoslav federal law. It continued to be in force as Croatian law, but was later subject to many amendments. See n. 40 below.

[14] However, the enforcement court may postpone the enforcement in the enforcement proceedings upon a proposal by the respondent if he proves that enforcement would cause irreparable damage or violence. See *Ovršni zakon* [Enforcement Act], Official Gazette, 112/12, 25/13, 93/14, 55/16, 73/17, Art. 65, para 1.

[15] For a brief overview of the theory of legal remedies and their classification in Croatian legal theory in English see Uzelac (2014a: 236) and in Croatian Dika (2010: 13–14).

Since *revizija* before the Supreme Court can only be requested against second instance decisions, not against first instance judgments, there is no possibility of leapfrog appeals (*Sprungrevision*) to the Supreme Court that avoid the regular appeal before a second instance court. For this reason, considerable time is sometimes needed for a decision at the highest level to be reached, as the case has to 'travel' through all three instances (Uzelac 2014a: 246–247).

In addition, *revizija* before the Supreme Court (if available) is regarded as a part of the domestic remedies that have to be exhausted for an application before the Constitutional Court of the Republic of Croatia or the European Court of Human Rights in Strasbourg to be admissible.[16]

Representation of the Parties before the Supreme Court In the civil branch of adjudication, since 2008 the parties generally have not been able to appear before the Supreme Court unrepresented. Unless the party himself is a practising lawyer, or has passed the state judicial exam, the second appeal (*revizija*) must be filed by an attorney-at-law.[17] If this requirement is not met, a second appeal is rejected as inadmissible. However, compared to some other European countries (e.g. France or Germany), the limitations on the pleadings and representation before the Supreme Court are still relatively modest. All attorneys-at-law can file for a second appeal (*revizija*) on behalf of their clients. There are no restrictions nor is special permission required. Nevertheless, the rules on representation have not decisively affected access to the Supreme Court.[18] Moreover, new rules have not caused any tangible improvement in terms of either the efficiency of the proceedings or the stricter selection of incoming cases (Uzelac and Galič 2017: 215).

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[16] See Art. 59, para 3 of the Constitutional Act on the Constitutional Court (Official Gazette, 99/99, 29/02, 49/02); see also the admissibility criteria in Art. 35, para 1 of the European Convention on Human Rights. Uzelac (2014a: 233).

[17] Alongside several other categories of persons who have passed the state judicial exam. Art. 91a CCP as amended in 2008 (Official Gazette, 84/08).

[18] The Constitutional Court rejected the arguments submitted by over 25 applicants questioning the constitutionality of stricter representation rules before the Supreme Court. See Constitutional Court decision U-I-4365/08 of 26 March 2013. However, it seems that even such a modest requirement for representation was interpreted by the Supreme Court in an overly formalistic manner. Thus, in its judgment in *Omerović v Croatia* (no. 2), 22980/09, §§ 42–43, 5 December 2013, the ECtHR found that the Croatian Supreme Court's rejection of the appeal launched by an applicant (who was a lawyer by profession) due to the fact that he did not attach a copy of his judicial exam certificate in the process before the Supreme Court violated his right of access to that court since 'simple skimming through the case file would suffice to detect that the first applicant was admitted to the Bar in 2003' (the applicant had submitted proof thereof in the earlier proceedings).

Grounds for an appeal before the Supreme Court (revizija) Only a party that raised its claims and defences in the earlier stages of the proceedings, but did not succeed with them before the lower courts, has a legitimate interest in launching a second appeal (Uzelac 2014a: 240). The time limit for filing an appeal before the Supreme Court is 30 days from the service of the second instance judgment.[19] Otherwise, a second appeal is rejected as inadmissible.

As for the grounds for an appeal before the Supreme Court, *revizija* is admissible only on points of law; it cannot be motivated by errors of fact. It can be launched only to correct legal errors (*errores iuris*) and the gravest procedural errors (*errores in procedendo*; so-called 'absolute violations of procedure'[20]). Most 'absolute violations of procedure'[21] may be invoked and also those 'relative violations'[22] which were committed in the proceedings in the appellate court (Uzelac 2014: 243; Uzelac and Galič 2017: 218). Factual issues generally cannot be appealed before the Supreme Court. However, the differentiation between questions of fact and questions of law is, in certain aspects, difficult. Errors of fact, although *ex lege* inadmissible as grounds for filing a second appeal (*revizija*), can sometimes still be discussed before the Supreme Court through alleged 'inconsistencies in the grounds of the judgments', which fall within an 'absolute violation of procedure' that could be raised as grounds for a second appeal (and in practice are quite commonly invoked by appellants). Another back-door strategy to introduce findings of fact for the consideration of the Supreme Court is through the concept of legal standards (general clauses), which are considered to raise questions of law (Uzelac and Galič 2017: 218).

Revisionary and Cassational Powers of the Supreme Court The principle of party disposition commands that the Supreme Court deal only with the appealed part of the judgment. The Supreme Court therefore examines the judgment only in respect of the impugned parts and only within the limits of the reasons stated in the appeal. In proceedings before the Supreme

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[19] The service of judgments often poses problems. Postal delivery is the most commonly used means of service, but often unsuccessful. Sometimes several months (or, in some cases, even longer) can pass before the judgment is successfully served on the party. Uzelac (2014a: 242).

[20] 'Absolute violations of procedure', unlike 'relative violations of procedure' (see n. 23 below), automatically lead to the nullity of the judgment.

[21] Minor errors related to territorial or *in rem* jurisdiction or double litispendence prevent a second appeal before the Supreme Court to be launched although these errors are among the 'absolute violations of procedure'.

[22] For such 'relative violations of procedure' the applicant has to prove that the error has actually had an impact on the correctness and legality of the judgment.

Court, no oral hearings are held, and the entire proceedings are limited to the examination of the case file in so-called closed sessions of court panels.

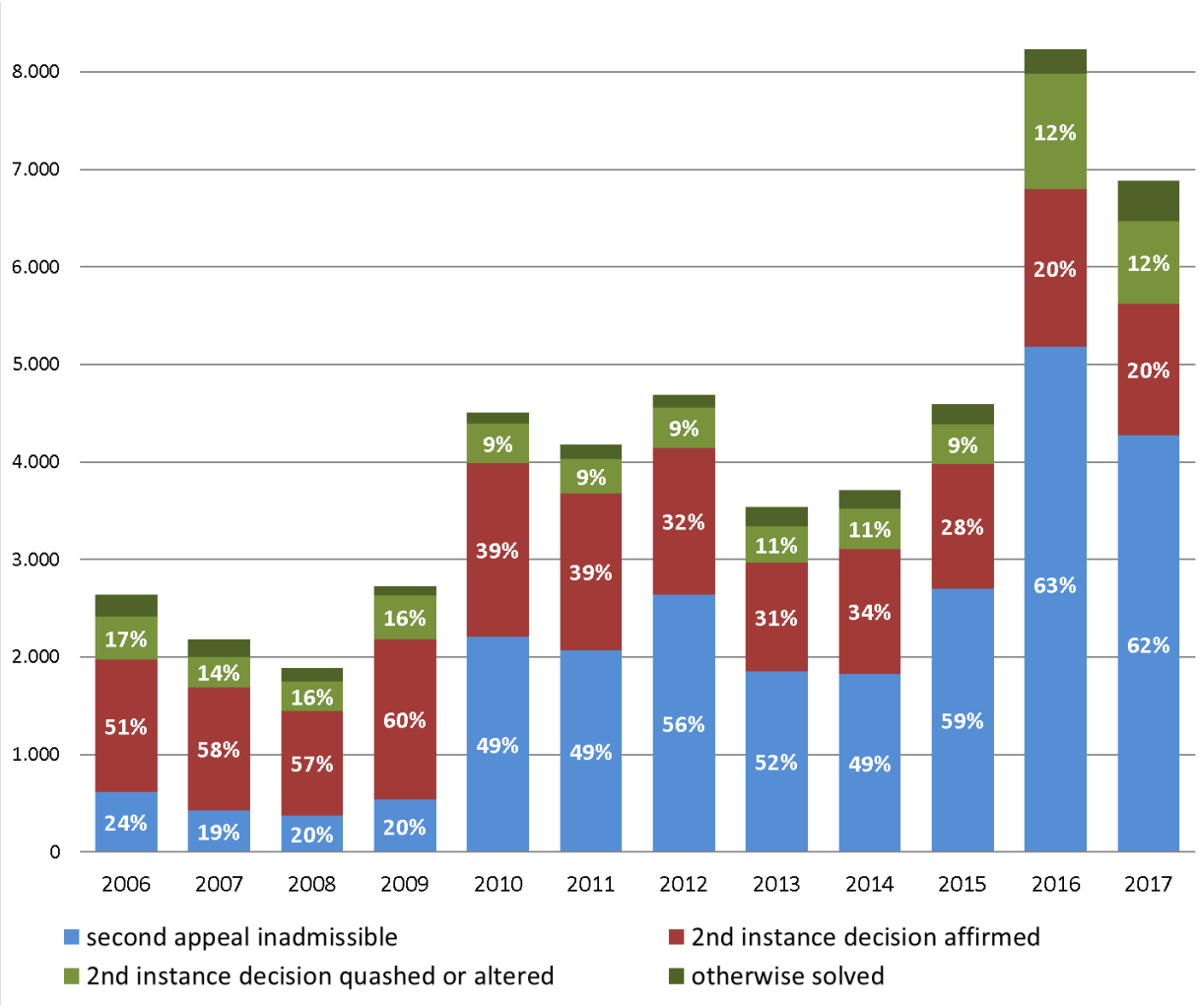
Doctrine argues that the Croatian system of appeals is a mixed system[23] that has two options—to alter the appealed judgment (the system of revisionary powers) as well as to quash the impugned decision (the system of cassational powers) (Triva and Dika 2004: 671; Uzelac 2014a: 247). This is also true for the appeals at the Supreme Court. If a second appeal (*revizija*) is well founded, the Supreme Court is (unlike, for example, the French Court of Cassation (Cadiet 2008: 48)) empowered not only to quash but also to replace the impugned decision with its own (Galič 2014a: 291).

The following chart (Fig. 5.2) shows data regarding the outcomes of the second appeal proceedings before the Croatian Supreme Court in the period between 2006 and 2017.[24]

Fig. 5.2 Outcome of Second Appeals Against the Decisions of the Lower Courts before the Supreme Court of Croatia

[23] It should be noted that a similar system in Austria cited as an inspiration for the current Croatian law of civil procedure is considered to be revisionary; Uzelac (2014a: 247). On the decreasing importance of the distinction between cassation, *Revision* and the appeal model of the supreme court see Jolowicz (1999: 2–3); Merryman and Perez-Perdomo (2007: 122); Bravo-Hurtado (2014: 321).

[24] Data extracted from the VSRH Report 2016, p 122, and VSRH Report 2017, p 64.



In cases in which the Supreme Court rules on the merits of the impugned lower courts' decisions, only about 10 per cent of the submitted second appeals are considered to be well founded. In approximately 30 per cent of the cases the Supreme Court affirms the decisions of the lower courts. However, most of the second appeals filed with the Supreme Court are found to be inadmissible (according to recent statistics, almost 60 per cent of second appeals filed with the Supreme Court).[25]

Filtering Access to the Supreme Court To ensure that its supreme court is able to function, every legislature has to create rules to restrict access to the court (Domej 2014: 277). In Croatia, there are two filters for access to the Supreme Court. Accordingly, *revizija* before the

[25] More on that below (Sect. 5.4).

Supreme Court has since 2003 been admissible both in the 'ordinary' form (which was the only form of that recourse up to 2003) and in the 'exceptional' form.

In the 'ordinary' form (in German, *Wertrevision*) the filter for access to the Supreme Court is the value of the claim (more precisely, the value of the challenged part of the decision). *Revizija* is admissible if that value is above approximately €25,000 in civil cases and €66,000 in commercial cases (200 and 500 thousand Croatian kunas, respectively). Apart from the value of the dispute, for certain types of disputes (e.g. paternity claims and disputes regarding illegal termination of an employment contract) *revizija* is admissible without exception. Accordingly, if a set of conditions provided by the law are met and *revizija* has been launched, the Supreme Court can neither admit cases not covered by those conditions nor refuse to hear a case if it was admissible under the express rules of the law (Uzelac 2004: 30).

It is clear that such an 'ordinary' *revizija* serves primarily for checking whether the law was applied correctly in the lower courts (Bobek 2009: 40ff.; Dika 2010: § 36; Galič 2014a: 292); in other words, it primarily serves the individual interests of the litigants in the case at hand. Conversely, the 'exceptional' appeal (*izvanredna revizija*; in German, *Zulassungsrevision*) is mainly in the service of the Supreme Court's system management. Its primary purpose is to facilitate the uniform application and development of the law, i.e. to help the Supreme Court carry out its public function (Bratković 2016: 323).

Since 2003 in Croatia the 'exceptional' appeal before the Supreme Court has been available in parallel with the above-described 'ordinary' appeal before the Supreme Court. The 'exceptional' appeal can be launched against a court decision based on the finding that 'the decision raises an important issue of substantive or procedural law that is relevant for securing uniform application of law and equality of all people in its application' (Art. 382, para 2 CCP).[26] This new form of appeal is based on the constitutional function of the Supreme Court. The law contains several typical examples of legal issues that are important for the uniformity of case law, e.g. contradictory case law in different courts of appeal; departure of the courts of appeal from the well-settled case law of the Supreme Court; as well

[26] A similar provision can be found in Austrian law. According to § 502 of the Austrian *Zivilprozessordnung*, an appeal to the *Oberster Gerichtshof* is only admissible if the decision depends on the answer to a question of law which is of significant importance for ensuring the uniformity of the law, legal security or the development of the law. See more in Geroldinger (2012: 68ff.).

as the need to develop the case law (in particular if this is necessary to bring it into line with international standards or decisions of the Constitutional Court or the European tribunals).

Who decides whether the question at stake is important enough to be discussed before the Supreme Court? Initially, permission to appeal had to be given by the court of second instance. Its decision on the admissibility of such 'exceptional' appeal against its own judgment had to be contained in its appellate judgment, with a full statement explaining the reasons for its decision. Since the CCP 2008 Amendments, permission to appeal has been taken out of the hands of the courts of appeal and transferred directly to the jurisdiction of the Supreme Court.

However, the filtering of cases by the Supreme Court has not been without difficulties either. The continuing increase in the number of 'exceptional' appeals demanded some changes in the law and practice. In the period between 2008 and 2011 a panel of three judges of the Supreme Court had to evaluate whether an application raised an important issue. The panel could reject an application for a second appeal as inadmissible by a decision that had to contain a full statement of the reasons for the rejection (Uzelac and Galič 2017: 220).

In 2011, new rules in that regard were introduced. The power to reject a second appeal as inadmissible was now given to a panel of five judges of the Supreme Court. However, they were allowed to reject an application for a second appeal without stating the reasons for deciding that the issues raised in the case are not of importance for the uniform application of the law and the equality of all before the law (former Art. 392b CCP).

The lack of a full statement of the reasons for the rejection of a second appeal seemed to be an efficient filtering mechanism. However, very soon after its introduction it was impugned before the Constitutional Court, which ultimately declared the provision unconstitutional.[27] The Constitutional Court found 'no valid reasons' for avoiding a reasoned decision, and stated that such a regime deprives not only the parties, but also the general public, including the whole system of lower courts, from obtaining any insight into the reasoning of the Supreme Court on the importance of particular legal issues to the national legal system. However, the Constitutional Court added that the reasons for rejection stated in the decision to reject an application for a second appeal finding the issue of 'little relevance'

[27] See Constitutional Court decision U-I-885/2013 of 11 July 2014.

'might be of varying lengths' and that they may even be 'compressed into a single sentence, if such a sentence clearly sets out relevant arguments'.[28]

Nevertheless, in its later rulings the Constitutional Court did not find the appellants' right to a fair trial to be violated where the Supreme Court merely listed in its decision to reject the required statutory elements for second appeal, without further providing an actual statement explaining its reasoning.[29]

All in all, despite the access filters (or, conversely, precisely because of them) and the fact that the constitutional right to appeal only relates to second instance proceedings, not to third instance proceedings, the Supreme Court is generally regarded as a regular third instance court that is widely available to the parties as a matter of their individual rights. It is thus hardly surprising that the Supreme Court of the Republic of Croatia belongs in the group of overburdened supreme courts. Such a situation renders the Supreme Court unable to fulfil its constitutionally determined role of supreme judicial authority responsible for the unifying of case law in a timely and accurate manner.

5.4 Symptoms of Case Overload

Backlog Backlog is the most obvious symptom of the case overload of the Croatian Supreme Court. The Supreme Court, plagued with a large number of cases even before 2008, after the introduction of the so-called 'exceptional' second appeal (*izvanredna revizija*), became overwhelmed by its caseload, and started to produce and further increase significant backlog (see Fig. 5.3 below) (Uzelac and Galič 2017: 216).

[28] Ibid., § 12. Uzelac and Galič (2017: 221).

[29] For instance, Constitutional Court decisions U-III-3859/12 of 4 November 2014, U-III-380/13 of 19 March 2015, U-III-3204/13 of 9 June 2015, U-III-870/15 of 7 October 2015 and many others. Bratković (2016: 338–339).

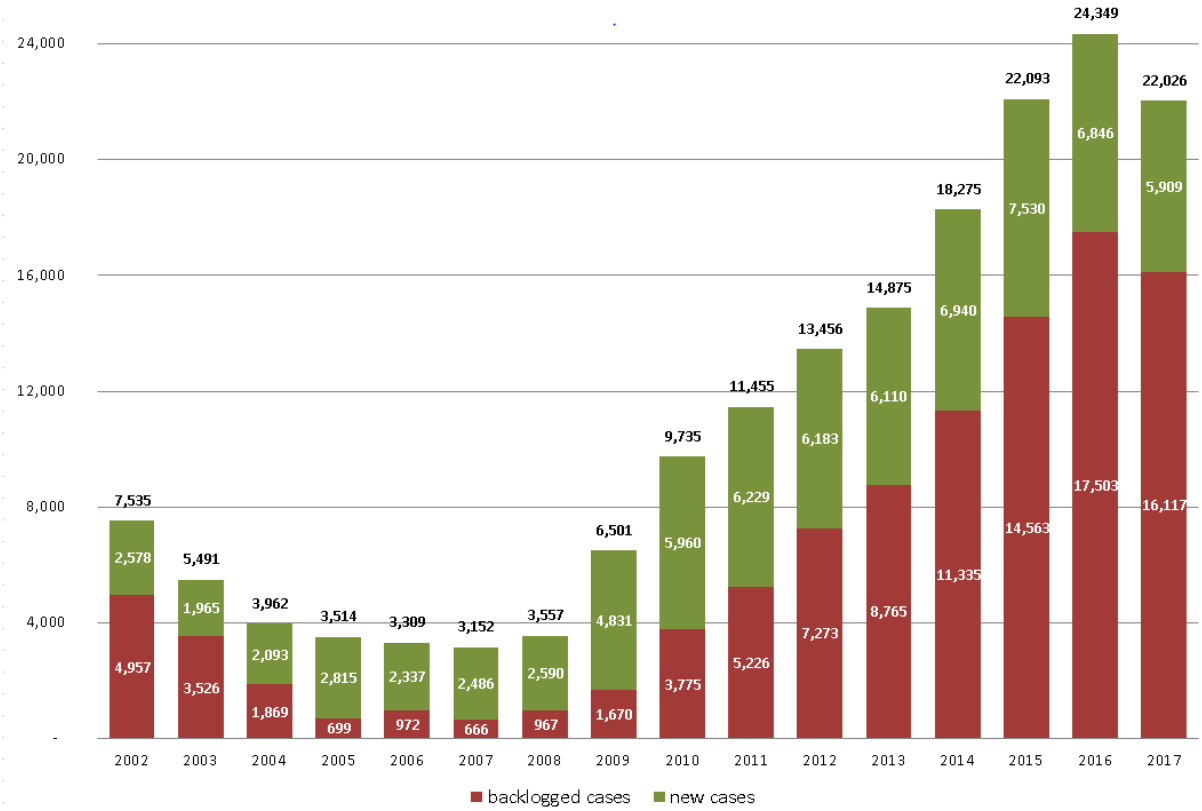


Fig. 5.3 New and backlogged second appeal cases (*revizija*) before the Supreme Court of the Republic of Croatia (2006–2017)[30]

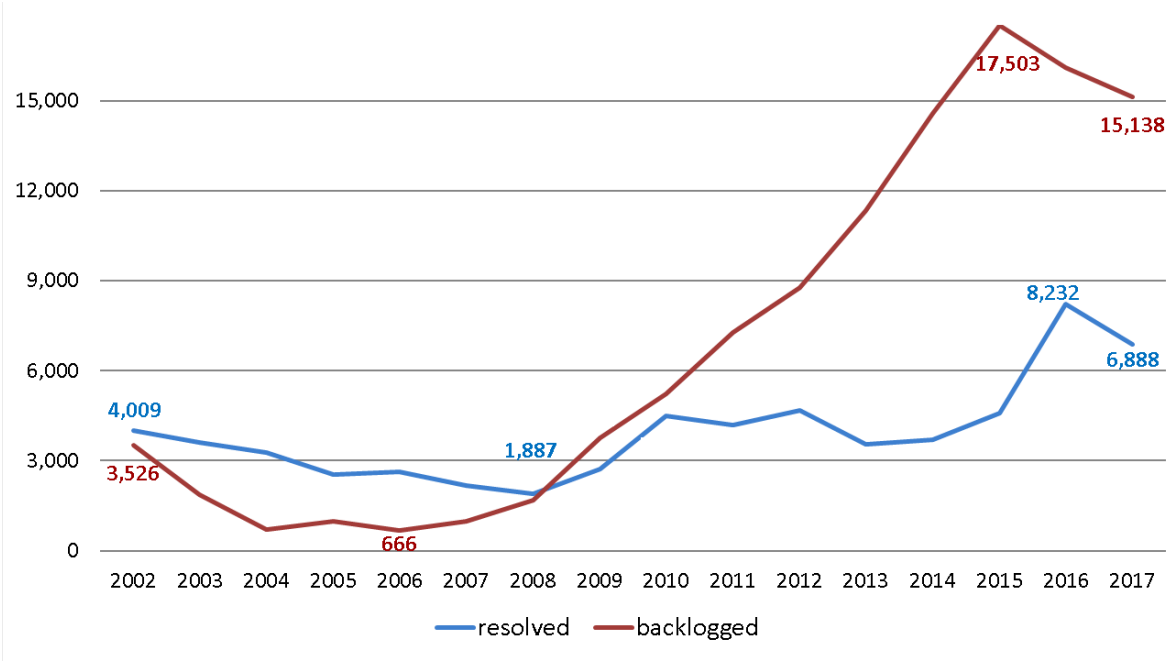
It should be noted that data pertaining to the numbers of filed 'ordinary' and 'exceptional' second appeals are not processed separately. It is clear, however, that the increase in the total number of filed second appeals is for the most part caused by the increase in the number of filed 'exceptional' second appeals. Paradoxically, even though the introduction of the 'exceptional' second appeal was supposed to facilitate case filtering and allow only such cases as are relevant for the uniform application of the law and the equality of all people in its application to reach the Supreme Court, it led to a flood of cases inundating the Supreme Court.

The case backlog in the Croatian Supreme Court has been rapidly growing from 2008 to 2015 (Fig. 5.4). In the period between 2006 and 2015 the number of filed second appeals (*revizija*) with the Supreme Court per year increased threefold (from about 2,500 to 7,500 cases), while the backlog increased almost 15 times (from about 1,000 to almost 15,000

[30] Data extracted from the VSRH Report 2016, p 122, and VSRH Report 2017, p 64.

cases). In 2016, the Supreme Court of Croatia had a workload of over 24,000 cases, of which approximately 72 per cent were unresolved cases from the previous period. At the end of 2016 the number of backlogged cases was slightly reduced, probably due to second appeal cases being assigned to judicial advisers. Interpretational statement of the Supreme Court adopted at the end of 2015 finding all second appeals against costs orders inadmissible also contributed to the reduction of the backlogged cases.

Fig. 5.4 Resolved and Backlogged Second Appeal (*revizija*) Cases Before the Supreme Court of the Republic of Croatia (2006–2015).[31]



The Volume, Quality and Consistency of the Supreme Court's Case Law The huge volume of case law of the Croatian Supreme Court is another symptom of its overload. In the modern era of computerisation, electronic databases have made the court's case law widely available (Uzelac and Galič 2017: 216).[32] This is undoubtedly a positive trend. However, the lower courts, the parties and their attorneys still seem to be having difficulty finding the relevant decisions. The volume of the Supreme Court's case law is simply too great to be properly studied, analysed and monitored.[33]

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[31] Ibid.

[32] See https://sudskapraksa.csp.vsrh.hr/search Accessed 21 June 2019.

[33] Similar Galič (2014b: 6) for Slovenia (and other post-socialistic countries). Bobek (2009: 44).

By the end of 2015 a total of 166,985 decisions of the Supreme Court had been published on the court's website.[34] More than 17,000 decisions were published just in 2015. These numbers, however, do not pertain only to the decisions of the Civil Division, but to all the court's decisions; nevertheless they are still illustrative. Considering the enormous number of cases the court is handling, it would not be realistic to expect the court's case law to be coherent, well reasoned and comprehensible (Jolowicz 1999: 332, 348). The overwhelming number of decisions, albeit publicly available, does not really contribute much to legal certainty and predictability in the decision-making of the lower courts (Bobek 2009: 33–34; Galič 2014a: 293). What is more, the unpredictability attracts more litigation and generates a vicious circle with an ever-increasing number of cases.

Consequently, Supreme Court judges, often overburdened with routine matters, cannot devote enough time and attention to important cases that raise complex legal questions. For this reason their decisions, drafted in a copy-paste manner, repeat the court's already well-established positions, without much added value that may guide future litigants.[35] On the other hand, due to its heavy caseload and its 'short-term memory' the Supreme Court is not even able to keep track of its own case law.[36]

The case overload problem thus threatens not only the proper exercise of the public function of the Supreme Court, but also any individual interests of the parties. Due to the heavy caseload, a decision in a second appeal procedure takes on average more than two years.[37] Moreover, the Supreme Court decides in more than 1,000 cases per year in which the original lawsuit has been pending for ten or more years.[38]

To sum up, the legal regulation of 'ordinary' and 'exceptional' appeal on points of law facilitates the carrying out of the Supreme Court's private and public functions, but this only works well on paper. In reality, as supported by the statistics presented above, the Supreme Court is failing to fulfil either of its primary functions. It is precisely the ambition

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[34] VSRH Report 2015, p 113. Incidentally, the total number published by the end of 2014 was 149,688.

[35] Similar Galič (2014b: 6) for Slovenia and Bobek (2009: 33–34) for the Czech Republic.

[36] For example, the decisions of the Croatian Supreme Court concerning the calculation of costs in the event of partial success of a party in a civil procedure have been very inconsistent.

[37] According to a lecture by the President of the Supreme Court delivered on 23 October 2013, the average duration of unresolved *Rev* (second appeal) cases was 845.12 days (or 28 months). Due to the increasing number of received and delayed cases, the average duration of an unresolved case before the Supreme Court is currently even longer, about three years.

[38] VSRH Report 2017, p 61. Such cases carry a special signature: *Rev-x*.

for the court to simultaneously carry out a private function (individual justice) and a public one (system management) that is the principal cause of its overload (Galič 2014a: 293).

It is generally agreed that the Supreme Court is not functioning as it should. The problem of case overload affects the judges, the parties and their lawyers alike. However, opinions vary as to the appropriate measures which would relieve the court's burden. It appears that some legal actors are motivated by the protection of their own (particular) interests, which renders a general consensus about such measures next to impossible.

5.5 Case Overload Solutions and their Effectiveness

The Supreme Court was overburdened with a high volume of cases even before 2008, when the number of cases started to grow beyond control. For this reason, from the 1990s onwards frequent legal amendments have been made in order to keep the number of incoming second appeal cases under control.[39] The Croatian people traditionally seem to think that it is only by legislative changes (and not by changes to the construction of existing provisions) that reforms can take place. Amendments to the law of procedure are so frequent that they look more like panic-driven and messy crisis-management measures than well-thought-out reforms. Such urgently passed measures often have unwanted and undesirable effects, which, in turn, call for new amendments, ensuring a vicious circle of changes devoid of a clear direction.

Raising the Minimum Amount of the Claim for a Second Appeal In contemplating measures for reducing the caseload of the Supreme Court, the easiest choice initially seemed to be to raise the statutory minimum amount of the claim for second appeals to the Supreme Court. The minimum amount set for a second appeal in the 1990s was rather low, as the prescribed nominal sums, owing to an extremely high inflation rate of about 1,000 per cent at the annual level, soon amounted to the equivalent of only a few euros. Raising the minimum amount in accordance with the comparable Austrian model seemed to be in order. After 1999, the threshold for a second appeal was set at about €13,000. In 2011, it was doubled and set at the

[39] Cf. amendments to the CCP pertaining to a second appeal are marked in bold. *Official Gazette SFRY*, **4/77**, 36/77, 36/80, **69/82**, 58/84, **74/87**, **57/89**, **20/90**, **27/90**, 26/91, 34/91, 35/91; *Official Gazette RC*, **53/91**, **91/92**, **112/99**, **117/03**, **02/07**, **84/08**, 96/08, 123/08, **57/11**, 148/11, 25/13, **89/14**.

current level, which is the equivalent of about €26,000. The threshold is higher in commercial cases: about €66,000 (Uzelac and Galič 2017: 218).

The tinkering with the monetary threshold for a second appeal can certainly help to reduce the number of cases arriving at a supreme court, but not without creating a new set of problems. Firstly, it is questionable whether the cases involving high amounts of claim are necessarily cases that raise important issues of law. Some comparable legislatures (e.g. Germany) eliminated the value in dispute as a criterion for the admissibility of appeals to the supreme court, as it was considered to be unfair to use economic criteria for measuring the importance of legal cases (Domej 2014: 279). Rather, important issues of law may arise in cases of small value,[40] while 'big' value litigations may contain only routine legal issues and questions that were settled in case law long ago (Uzelac and Galič 2017: 219).

Furthermore, as cases in Croatian courts often take years to be resolved, and the rules regarding the amount in dispute are not always fully transparent (and the courts tend to apply them in an overly formalistic manner),[41] satellite litigation and violations of due process may occur while deciding on the value-related admissibility of the second appeal. Some cases have even led to human rights violations as established in proceedings before the European Court of Human Rights in Strasbourg.[42]

Increasing Capacity of the Supreme Court Parallel to raising the minimum amount of claim for a second appeal, the problem of case overload has also been addressed by increasing the number of judges of the Civil Division. The number of judges in the Civil Division of the Croatian Supreme Court rose from 19 in 2008 to 28 in 2014 (see Table 5.1 below). The number of judicial advisers grew simultaneously.

Table 5.1 Number of Judges and Second Appeal Cases per Judge of the Civil Division of the Supreme Court of the Republic of Croatia (2006–2016)[43]

[40] See, for instance, the Christmas bonus case in Sect. *Introduction of Special Permission to Appeal* below.

[41] On an excessively formalistic and restrictive approach to the calculation of the value of the claim see e.g. the decision of the Croatian Constitutional Court U-III-2646/07 of 18 June 2008. Galič (2014a: 296).

[42] See *Egić v Croatia*, 32806/09, 5 June 2014 and *Vusić v Croatia*, 48101/07, 1 July 2010.

[43] VSRH Report 2016, p 121.

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
number of judges	21	21	19	22	21	23	23	25	28	25	24
number of cases per judge	158	150	187	296	464	498	585	595	653	884	1,015

However, this measure was equally unsuccessful in achieving the desired results. Moreover, it made the tracking and harmonisation of the case law of the highest tribunal even more difficult (Bobek 2009: 37; Uzelac 2014b: 11). In addition, it does not seem realistic that a country of only 4.2 million people can produce a sufficient number of judges who will meet the highest professional and ethical requirements expected of judges at the highest court of the judicial network (Bratković 2016: 331). The relatively large number of Supreme Court judges has likely negatively affected the esteem afforded them (Galič 2014a: 294). On top of that, Croatia is already among those countries with the largest number of supreme court judges per capita in Europe.[44]

Both measures described above (the raising of the minimum amount of claim for a second appeal and the appointment of additional judges to the Supreme Court) focus on the preservation of the private function of the Supreme Court. Its public function, although guaranteed by the Constitution, only came to prominence in 2003. However, the events from 2003 to the present day have shown that the mere introduction of the new form of second appeal, based on the partially new understanding of the role of the Supreme Court, is not in itself sufficient to change day-to-day practice. This was largely a result of the attitude inherited from the former period, which had its ideological roots in socialist legal theory, in particular the adherence to the principle of material truth[45] and the perception that there should be as many levels of 'control' as possible (Uzelac 2010: 390).

Introduction of Special Permission to Appeal After the minimum amount of claim for a second appeal was set relatively high in the early 2000s, it was thought necessary to create

[44] One supreme court judge is appointed in Croatia per 50 thousand to 100 thousand inhabitants. In most European countries, one supreme court judge serves between 200 thousand and 500 thousand people. Uzelac (2014b: 9).

[45] This was an expression of judicial paternalism, but also of the ideological view that courts (that is: the State) are omnipotent and should be able to find the truth in order to provide for substantive justice and to affirm the 'socialist legality' without any hindrances (Uzelac 2004: 300).

the possibility for the parties to cases which did not meet this criterion to have recourse to the highest judicial instance. The Austrian model of 'exceptional' second appeal was used as a source of inspiration for the Croatian legislator.

The new form of second appeal (*izvanredna revizija*) was supposed to serve as an instrument for the harmonisation and unification of case law at the national level. However, in the Croatian environment major flaws came to the surface in the practical application of this instrument. Initially, as already explained, Croatian law introduced the system that made the admissibility of a second appeal dependent on the special permission of the court of appeal.[46] In general, the courts of appeal were very reserved about allowing appeals against 'their' judgments (*inter alia*, also due to performance measurement systems that penalised judges who had a high number of judgments quashed or altered) (Uzelac and Galič 2017: 220). Moreover, some categories of cases could not come within the reach of the Supreme Court because they were expressly excluded by law, such as small claims cases.

So, for example, when the Croatian government ceased to apply the collective labour agreement in force in 2000, and refused to execute the payment of special annual wage supplements to state employees (the so-called Christmas bonus, equalling approximately €150 per person), no appeal to the Supreme Court was available despite the fact that the courts of appeal had developed conflicting case law in those cases. This led several thousand petitioners to turn to the Constitutional Court.[47] Not surprisingly, on petition that questioned the constitutionality of the new rules on second appeal, the Constitutional Court found that the new legal regulation of second appeal did not enable the Croatian Supreme Court to fulfil its constitutional role efficiently and effectively.[48]

In response to the critique by the Constitutional Court, in 2008 the access to 'exceptional' second appeal was significantly reshaped. The impossibility to grant leave to file a second appeal before the Supreme Court in small claims cases and other excluded

[46] Unlike the Austrian legal model, Croatian law did not provide for the possibility of reviewing the decision of a second instance court concerning granting or rejecting permission to appeal.

[47] As the Constitutional Court sometimes exercises a liberal approach to the notion of 'constitutional rights', in practice, the Constitutional Court is often seen as a court of fourth instance. Uzelac (2014a: 234).

[48] Decision of the Constitutional Court of the Republic of Croatia U-I-1569/2004, etc. of 20 December 2006 (Official Gazette, 2/07). Uzelac and Galič (2017: 221).

matters was removed.[49] At the same time, permission to appeal was taken out of the hands of the courts of appeal, and put into the hands of the Supreme Court (Uzelac and Galič 2017: 221).

Most of the second appeals filed with the Supreme Court after 2008 (decided on by the court since 2010) are found to be inadmissible (see Fig. 1). What is the cause of this? Opinions vary widely, and the real answer probably lies somewhere in the middle. The Supreme Court puts at least part of the blame on the quality of the petitions filed by lawyers, arguing that the attorneys who represent the parties are generally only repeating the arguments from their previous appeals, repackaging them to fit the conditions of admissibility.[50] On the other hand, the parties and their lawyers believe that the high number of rejected applications for second appeal due to inadmissibility is nothing more than an excuse created by the Supreme Court for excluding cases in order to get rid of its backlog.

Effectiveness of Case Overload Solutions In any event, the reduction of the backlog, although a desirable objective, should not be the focus, but rather a by-product of a higher goal. The problem lies in the fact that the goal of the measures introduced remains unclear. It is for this reason that none of the applied solutions managed to improve the position of the Supreme Court in the fulfilment of its duties—neither private nor public. Different measures would be appropriate for each of these functions, but a combination thereof rarely yields good results. On the contrary, a hybrid system, with two separate tracks and functions within the, basically, same means of recourse, does not enable all the actors—judges, parties and their lawyers—to recognise what is actually required and expected of them (Uzelac and Galič 2017: 225). A 'hybrid' system can thus easily become a 'confused' system (Uzelac and Galič 2017: 225).

If we accept the line of reasoning (supported by the statistical data presented) that the Croatian Supreme Court cannot at the same time carry out both its public and its private functions to a satisfactory degree, and if we argue that its public function, which is, *inter alia*, provided for in the Constitution, should have precedence, it remains only to find a model

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[49] Supporting the claim that the Croatian legislator is devoid of a clear vision, in 2011 (Official Gazette, 57/11) the system that makes the admissibility of the second appeal dependent on the special permission of the court of appeal was reintroduced for small claims cases.

[50] See also Dika (2010: 839). The same conclusion can be drawn from a number of the reasonings of the Supreme Court justifying their rejection of a second appeal because the applicant only invoked the erroneous application of substantive law, failing to specify the legal issue which constitutes the grounds for the second appeal **(**Rev-x-228/09-2 of 8 July 2009. See, by analogy, Rev-r-183/2009-2 of 29 April 2009).

which will enable the Supreme Court to carry out its constitutional task by resolving second appeals. The constitutional role of the Supreme Court, as we have demonstrated, may be frustrated not only in the event that access to the Supreme Court is totally closed, but also if the law leaves the doors to the Supreme Court open too wide (Galič 2014a: 297–298).

We can conclude that the Croatian Supreme Court needs a real and openly recognised paradigm shift[51] towards due fulfilment of its public function of ensuring the uniform application and development of the law, which sees a reasonable number of carefully selected cases of second appeal as a means to an end, and not an end in itself.

5.6 An Embrace of the Public Function of the Supreme Court?

The reasons just outlined motivated a new legislative project which, for the first time, emphasised the public function of the Croatian Supreme Court.[52] The provisions contained in the draft proposal are mostly inspired by the Slovenian regulation of second appeals of 2008, the main difference being that, unlike the Slovenian law, the minimum amount of the claim as a criterion for access to the Croatian Supreme Court is absent.[53]

According to the proposed model, permission to appeal is to be subject to separate proceedings in which admissibility is examined, followed by another set of proceedings on the merits if leave is granted. In the first phase, the applicant has to seek permission to appeal from the Supreme Court and raise only the issues that are relevant for that purpose. If the Supreme Court grants permission to appeal, then in the second phase the party must, within another time limit, submit a fully and extensively reasoned second appeal on points of law (Galič 2014a: 301ff.).

In certain circles of legal professionals and academics, such a two-stage process has been met with considerable criticism, not only in Croatia, but in Slovenia as well. Some scholars argued that it was impossible to know whether a certain legal question was important unless it was established that the lower court had decided on it incorrectly, neglecting the fact

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[51] See Lindblom (2000: 105, 136).

[52] As of June 2019 the proposal is still in the second reading.

[53] The removal of monetary thresholds was, however, an element of the later amendments to the Slovenian CCP of 2017.

that the qualification of a particular issue of law as important from a public perspective is quite different from the question of whether the lower courts have decided it incorrectly.

Opponents of the proposed model were even more critical of the proposal according to which the Supreme Court would be authorised to reject a second appeal without the need to give the full reasoning for its decision. Few have noted that the aim of this provision was to enable the court to rationally organise its work and dedicate the majority of its time to important legal issues in cases in which a second appeal was granted. Conversely, it was argued that new rules on admissibility 'would lead to arbitrariness which opens the gates for inevitable violations of fundamental rights of the parties'. Such statements are based on the fear of abuse of power by the Supreme Court, and the belief that the court would dismiss most applications without proper justification merely for the purpose of reducing its workload, and regardless of the actual relevance of the issues at stake in second appeal cases (Bratković 2016: 335).[54] All these criticisms reflect the low degree of trust the general public (but also the legal profession)[55] has in the judiciary, with no exception made for the highest judicial instance.[56]

Regardless of any sociological and political causes of this state of affairs,[57] it should be noted that the proper functioning of the rule of the law is not possible without trust in the (highest) courts, which should be composed of experienced legal experts who observe the highest ethical standards (Bratković 2016: 335, 338).[58] Yet trust needs to be deserved (and

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[54] It should be noted that on numerous occasions the ECtHR has confirmed that a mere summary reasoning (or even the absence thereof) of a decision finding an application for an appeal with a supreme court inadmissible does not constitute a violation of the Convention (*Nerva* v *UK*, 42295/98, 11 July 2000; *Øvlisen v Denmark*, 16469/05, 30 August 2006; *Persson v Sweden*, 27098/04, 27 March 2008; *Kukkonen v Finland*, Nr. 2, 47628/06, 13 January 2009; *Wnuk v Poland*, 38308/05, 1 September 2009; *Nersesyan v Armenia*, 15371/07, 19 January 2010). However, in *Nersesyan* and *Wnuk* the ECtHR approved the decisions of the Armenian and Polish Constitutional Courts' rulings that their respective supreme courts must provide the reasoning for their decisions finding applications inadmissible, considering it a higher standard of protection of human rights. Galič (2014a: 311).

[55] Some data indicate that the level of trust in the judiciary in Croatia is among the lowest in Europe. In 2016, as many as 68% of Croatian citizens had a generally negative view of the functioning of the judiciary, 59% of them said they did not trust the courts, and 40% considered corruption to be widespread in the judiciary. Bratković (2019: 162).

[56] See Bratković (2018: 339, 344).

[57] See *amplius* Uzelac (2010: 377–396); Mańko (2013: 207–233) (for Poland); Bobek (2009: 50, 55–57) (for the Czech Republic); Zobec (2015: 932ff.) (for Slovenia).

[58] It was evidently a lack of trust in their supreme courts, i.e. a fear of arbitrariness in their work, that led the constitutional courts in Armenia, Poland, the Czech Republic (for more detail see Bobek (2009: 55ff.), Hungary, but also Croatia to conclude that the legal provisions permitting the supreme courts not to provide the reasoning for their decisions finding a case inadmissible are not constitutional. Galič (2014c: 165ff.); Zobec (2015: 932–933); Galič (2014b: 17).

maintained), which can be best achieved by the consistency of case law and the force of arguments in judicial decisions, and by a careful selection of judges who are appointed to the Supreme Court (Zobec 2015: 937). Retaining the *status quo ante* of the second appeal and producing several thousand decisions every year will certainly do little to enhance the reputation of the court.

In searching for better legislative models, one should seize the rare opportunity to take into consideration the successes of a comparable reform in a comparable system. The Croatian and Slovenian legal systems are comparable in their essential features, both in terms of their legal culture and traditions and in terms of their legal and political environments. In such a situation, there is little chance that legal transplants from one system would become legal irritants in the other. Indeed, it goes without saying that the operation should be carried out in an appropriate manner.

However, despite all indicators that prove the success of Slovenian second appeal reforms (Bratković 2016: 329ff.), a significant part of the Croatian legal community—mainly consisting of practising lawyers, but also of some academics—still has difficulty in accepting the shift in the Supreme Court's role. It seems that it is hard to detach oneself from the accustomed perception under which access to a supreme court is a matter of right, even a constitutionally protected right (Galič 2014a: 298; Bobek 2009: 48). It remains to be seen whether (quasi)constitutional arguments about the 'unconstitutionality' of the limitation of access to the Supreme Court will have an adverse effect on the planned reforms (Uzelac 2014a: 254). Some encouragement can be seen in the positive attitude of the majority of the Supreme Court judges, and their general support for the introduction of the new model of second appeal. However, it also remains to be seen whether this will be sufficient for a decisive 'paradigm shift' and full acceptance of the model that underscores the public function of the Supreme Court.

5.7 Conclusion

In a perfect world, supreme courts would be exactly what their 'supreme' designation implies: almighty and omnipotent. They would provide protection to the individual rights of every litigant, and they would diligently and swiftly control the accuracy and legality of adjudication of all the lower courts in each case. At the same time, they would give clear and well-reasoned judgments in all issues of public interest, wisely and profoundly developing

the law. They would eliminate all inconsistencies in legal interpretation and ensure uniform application of the law in each individual case.

So far, however, no supreme court has ever come close to this ideal. Every success story has been based on a trade-off, and in most cases the trade-off was based on the prevalence of the supreme court's public purpose. Most of the systems that desired to preserve both the public and the private functions of the supreme court produced disappointing results, often leading to a situation in which neither of the two functions were able to be exercised in a satisfactory manner.

The Croatian experience with the two types of second appeal ('ordinary' and 'exceptional') suggests that a combination of different criteria for the admissibility of cases to the supreme court does not yield the desired results, but rather has the effect of confusing both the parties and their attorneys as to the actual purpose of each of the two types of second appeal.

In order to facilitate a system of second appeal which would allow the Croatian Supreme Court to rule only in cases which are relevant for the uniform application of the law and the equality of all before the law, the number of decisions delivered should be relatively small, but publicly well-publicised and available. A reduction in the number of cases admitted by the Supreme Court should not, however, be an end in itself, but a necessary prerequisite for carrying out the court's public role. If the Supreme Court duly fulfils its public duty, the resulting higher degree of consistency and clarity of its case law will provide a higher level of protection for the individual rights of the parties to the proceedings before the lower courts.

The power of the Supreme Court to summarily dismiss applications for second appeal should by no means be used solely as an instrument for a reduction of its caseload, but rather as a means for the court to rationally organise its work and dedicate the majority of its time to important legal issues arising from the cases in which second appeal has been granted.

But, a caveat is also in order. An indispensable condition for a successful implementation of the new model (and of the rule of law in general) is public trust in the judiciary and particularly in the Supreme Court.

The Supreme Court should be duly and deservedly recognised as the centre of legal knowledge, wisdom and integrity. At present this remains an unfinished project in Croatia.

References

Bobek M (2009) Quantity or Quality? Reassessing the Role of Supreme Jurisdictions in Central Europe. American J of Comp Law 57(1):33–58

Bratković M (2016) Revizija po dopuštenju: hrvatske dvojbe i slovenska iskustva (Admitting Further Appeals to the Supreme Court: Croatian Uncertainties and Slovenian Experience). In: Rijavec V et al (eds) Zbornik radova s II. međunarodnog savjetovanja Aktualnosti građanskog procesnog prava – nacionalna i usporedna pravnoteorijska i praktična dostignuća. Pravni fakultet Sveučilišta u Splitu, Split, pp 319–351

Bratković M (2018) Roots of the Resistance to the Change in the Supreme Court's Role. In: Uzelac A, Van Rhee, CH (eds) Transformation of Civil Justice. Unity and Diversity. Springer International, pp 333–349

Bratković M (2019) Građansko pravosuđe u službi građana (Civil Justice as a Public Service). In: Barbić J (ed), Europska budućnost hrvatskoga građanskog pravosuđa. Hrvatska akademija znanosti i umjetnosti, Zagreb, pp 161–183

Bravo-Hurtado P (2014) Two Ways to Uniformity: Recourse to the Supreme Court in the Civil Law and the Common Law World. In: Uzelac A, Van Rhee CH (eds) Nobody's Perfect. Comparative Essays on Appeals and other Means of Recourse against Judicial Decisions in Civil Matters. Intersentia, Cambridge, pp 319–335

Cadiet L (2008) El sistema de la casacion francesa (The System of French Cassation). In: Ramos MO (ed) Los Recursos ante los Tribunales Supremos en Europa. Difusión Jurídica, Valencia, pp 21–54

Čepulo D (2006) Izgradnja modernog hrvatskog sudstva 1848–1918 (Building-up of the Modern Croatian Judiciary). Zbornik Pravnog fakulteta u Zagrebu 56(2-3):325–383

Čulinović F (1946) Pravosuđe u Jugoslaviji (Yugoslav Judiciary). Nakladni zavod Hrvatske, Zagreb

Dika M (2010) Građansko procesno pravo. Pravni lijekovi (Civil Procedure. Legal Remedies). Narodne novine, Zagreb

Domej T (2014) What Is an Important Case? Admissibility of Appeals to the Supreme Courts in the German-speaking Jurisdictions. In: Uzelac A, Van Rhee CH (eds) Nobody's Perfect. Comparative Essays on Appeals and other Means of Recourse against Judicial Decisions in Civil Matters. Intersentia, Cambridge, pp 277–289

Galič A (2008) Civil Procedure. Slovenia. In: Blanpain R (ed) International Encyclopaedia of Laws. Civil Procedure. Suppl. 49. Kluwer Law International, Alphen aan den Rijn, pp 1–222

Galič A (2014a) Reshaping the Role of Supreme Courts in the Countries of the former Yugoslavia. In: Uzelac A, Van Rhee CH (eds) Nobody's Perfect. Comparative Essays on Appeals and other Means of Recourse against Judicial Decisions in Civil Matters. Intersentia, Cambridge, pp 291–317

Galič A (2014b) A Civil Law Perspective on the Supreme Court and its Functions. Paper presented at the conference on the functions of the Supreme Court – issues of process and administration of justice, Warsaw University, Warsaw, 11–14 June 2014. Available http://colloquium2014.uw.edu.pl/wp-content/uploads/sites/21/2014/01/Ales-Galic.pdf

Galič A (2014c) Does a Decision of the Supreme Court Denying Leave to Appeal Need to Contain Reasons? In: Adolphsen J et al (eds) Festschrift für Peter Gottwald zum 70. Geburtstag. CH Beck, pp 159–173

Geroldinger A (2012) Der Zugang zum OGH in Zivilsachen (Access to the Austrian Supreme Court in Civil Matters). In: Kodek G (ed) Zugang zum OGH. Manz, Vienna, pp 65–81

Jolowicz JA (1999) Introduction. Recourse against Civil Judgements in the European Union: A Comparative Survey. In: Jolowicz JA, Van Rhee CH (eds), Recourse Against Judgements in the European Union. Voies De Recours Dans l'Union Europeene. Kluwer Law International, The Hague, pp 1–23

Lindblom PH (2000) The Role of the Supreme Courts in Scandinavia. In: Lindblom PH (ed) Progressiv Process – Spridda uppsatser om domstollsprocessen och samhällsutvecklingen. Iustus Förlag, Uppsala, pp 87–149

Mańko R (2013) Survival of the Socialist Legal Tradition? A Polish Perspective. Comp Law Rev 4(2). Available SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2332219

Merryman JH, Pérez-Perdomo R (2007) The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America, 3rd edn. Stanford University Press, Stanford

Triva S, Dika M (2004) Građansko parnično procesno pravo (The Law of Civil Litigation). Narodne novine, Zagreb

Uzelac A (2004) Accelerating Civil Proceedings in Croatia – a History of Attempts to Improve the Efficiency of Civil Litigation. In: Van Rhee CH (ed) The Law's Delay. Essays on Undue Delay in Civil Litigation. Intersentia, Cambridge, pp 283–313

Uzelac A (2010) Survival of the Third Legal Tradition? Supreme Court Law Rev 49(2):377–396

Uzelac A (2014a) Features and Shortcomings of Appellate Review in Civil and Administrative Cases in Croatia. In: Uzelac A, Van Rhee CH (eds) Nobody's Perfect. Comparative Essays on Appeals and other Means of Recourse against Judicial Decisions in Civil Matters. Intersentia, Cambridge, pp 229–258

Uzelac A (2014b) Supreme Courts in the 21st Century: Should Organization Follow the Function? Paper presented at the conference on the functions of the Supreme Court – issues of process and administration of justice, Warsaw University, Warsaw 11–14 June 2014. Available http://colloquium2014.uw.edu.pl/wpcontent/uploads/sites/21/¬2014/01/UZELAC_Supreme-Courts-in-the-21st-Century.pdf

Uzelac A, Galič A (2017) Changing faces of post-socialist Supreme Courts: Croatia and Slovenia compared. In: Van Rhee CH, Fu Y (eds) Supreme Courts in transition in China and the West. Adjudication at the service of public goals, Springer International, pp 207–228

VSRH Report (2015) Izvješće predsjednika Vrhovnog suda o stanju sudbene vlasti za 2015. godinu (Supreme Court President Report on the State of the Judiciary in 2015). VSRH, Zagreb. April 2016. http://www.vsrh.hr/CustomPages/Static/HRV/Files/2016dok/izvjesce_predsjednika_o_stanju_sudbene_vlasti_2015.pdf Accessed 21 Jun 2019

VSRH Report (2016) Izvješće predsjednika Vrhovnog suda o stanju sudbene vlasti za 2016. godinu (Supreme Court President Report on the State of the Judiciary in 2016). VSRH, Zagreb. April 2017. http://www.vsrh.hr/CustomPages/Static/HRV/Files/2018dok/izvjesce_predsjednika_VSRH_o_stanju_sudbene_vlasti_2016.pdf Accessed 21 Jun 2019

VSRH Report (2017) Izvješće predsjednika Vrhovnog suda o stanju sudbene vlasti za 2017. godinu (Supreme Court President Report on the State of the Judiciary in 2017). VSRH, Zagreb. April 2018. http://www.vsrh.hr/CustomPages/Static/HRV/Files/2018dok/izvjesce_predsjednikaVSRH_o_stanju_sudbene_vlasti_2017.pdf Accessed 21 Jun 2019

Zobec J (2015) Od individualnega do javnega (precedenčnega) namena Vrhovnega sodišča: ustavnopravni vidik (From an Individual to a Public (Precedent-setting) Purpose of the Supreme Court – a Constitutional Perspective). Podjetje in delo 6-7, pp 919–937

Zuglia S (1957) Građanski parnični postupak Federativne Narodne Republike Jugoslavije (Civil Procedural Law of the Federal People's Republic of Yugoslavia). Školska knjiga, Zagreb