

The Role of the Grand Chambers of the Supreme Courts and of the Plenum of the Constitutional Court in Judicial Law-Making

Abstract

Grand Chambers (GCs) are considered to be the most authoritative judicial bodies within multi-panel supreme courts. They are said to secure the unity, continuity, and quality of these courts' decision making. This thesis explores these claims in relation to GCs of three Czech highest courts – the Supreme Court, the Supreme Administrative Court, and the Constitutional Court. What is the role of the GCs in the decision-making of these Courts and how do the GCs fulfil their role? The thesis addresses these questions from both doctrinal and empirical angles. Doctrinally, it analyses with respect to all three courts the criteria for selecting GC cases, the character of GC decisions, and the status of GC precedents. Empirically, it explores how many and what type of cases the case-selection mechanism generates and how the GC's decisions influence the decision-making of other Court formations.

On the basis of this analysis, the main argument of the thesis is that courts' use of GCs influences the way the multi-panel courts develop the law. The three key parameters of any GC that the thesis identifies are (i) the justification of its authority, (ii) the means of asserting its authority within the court, and (iii) the intensity of asserting the authority. Each of the analysed highest courts approaches these three aspects in a different way.

The concluding part of the thesis proposes changes in how GCs are used. The GC can have a positive influence on legitimacy, quality, transparency, and coherency of developing law by the highest courts. To fulfil this potential, however, it is necessary to construe and use the GC in a reflective way. The main proposed changes consist in (i) more flexible use of the GC, (ii) its creation in the way that it reflects the view of the whole court, and (iii) in the change of its perception – a GC is not an anomaly or necessary evil, but the key institution strengthening the basic values of the highest court decision-making.