

Summary

The phenomenon of the case law and publication of the case law reports has been present in our legal culture at least since the 13th century, as well as in some other European countries. Court decisions in writing occurred through several types of documents and sources.

We can trace the case law documents in the public royal records („the plates“), the law books and the first constitutional codifications of law. There is even particular group of the law collections which we can actually name as the original case law reports. The case law reports were designed even before this period of time. Unfortunately, no such original law reports survived up to the present day. We can strongly state the sustainable tradition of typical case law collections in the Czech legal culture since the medieval times.

The very first case law reports in modern sense of meaning came in late 1850`s. But the periodicals case law reports in the Czech language eventually appeared with the year of 1918 when the Czech state was restored.

Creating the case law reports and its headnotes falls within the process of court decisions publication. The courts, which constitute the top of the judicial pyramid, operate with their special individual instruments on their case law publication. The official law reports have been established due statutory obligation.

The process within the edited version of court decision is adopted through various scholarly comments is called „approval procedure“. There is no uniform law reports process within the top courts in our legal system. Standard rules should be set to design this procedure.

The supreme courts with their collective bodies possess the authority to vote on every case to be chosen for official publication. The courts also may establish a specific type of abstract decision called „interpretative opinion“. This unique phenomenon can be found as quite peculiar in the terms of standard legal system of law and might cause significant disputes. While it serves the uniform interpretation of legal provisions on one hand, on the other hand the application of abstract case without specific facts of case might lead to some problems when applying the law.

Non uniform quotation of case law is another problem which might be found in praxis. There is a malpractice in quotations of judicial case law in court`s reasonings what makes research of the specific case quite unfeasible.

Even more appealing application problem dealing with the proper citation seems to be citation of unpublished cases. Such a citation obviously can not be perceived as formally

relevant while there is no chance for case parties to reach the proper text of such particular decision. Text of unpublished decision can be present within the scope of a proper court but not available to lawyers outside of court.

Another practical misinterpretation can be raised in the light of citation with reference to a „the regular decision practice“ or „the set case law“. Such a practice can cause a significant application problems.

The electronic legal documents databases prevail in current daily practice. Non-edited texts of decisions fall within their content. With respect to a still growing bulk of legal information present in daily legal practice, there is no other option how to store and edit the legal information. These databases provide a chance not only to store information but also to edit them, as well as make the research within their content.

A new modern approach of broader judiciary transparency is present through the compilations of lower courts decision in the central register of justice department.

The state stepped in recently to establish the central register of court decisions. It is quite possible to hope that it will serve to greater transparency in the decision-making processes in the judiciary.

It is quite urgent to finally set the uniform standards how to structure the texts of court decisions and case law. Currently, those texts vary with respect to an author of such text.

While compiling case law documents for electronic legal databases we can use several variables as f.e. the relevance (practical validity) of a case or the current applicability of a case.

Various practices in writing and editing of a case law can cause lack of transparency and inconsistency of the court decision making process. The predictability of judiciary decision process and access to information is thus made more difficult.

The headnotes should capture the key elements of a case. Those abstracts are made up from the case reasoning text and shall interpret the ratio of a case. In theory, any headnotes can be written either by author of a decision or any other editor. The headnotes have no legally application relevance and they do not cause any binding consequences. They should be seen only as application tool in the law interpretation process. But there is the fast growing approach to overestimate the application of headnotes. This practical approach can cause situation called as „the general application of the headnotes“.

The copyright protection of case law reports, headnotes and electronic legal research databases comes as emerging problem. This quite sensitive legal issue seems to be seen as rather ambiguous problem for current legal practice. So far no legal expert in our legal

practice tried to resolve this topic. There are some legal doctrines which find the case law reports, headnotes or electronic legal databases as copyrightable. On the other hand, a respectable number of lawyers claim case law texts not to be an object of copyright.

Alongside with still present official case law reports practice comes also the dispute trying to come up with some balanced position concerning the concept of case law official publication. An objective standard test for choosing the appropriate decision for publication should be designed.

The „democratization“ of published case law can be resolved through a new practice of amendments to the edited decision texts. Such „concurring opinion section“ is lacking in official case law reports currently.

The central register of judicial decisions administered by department of justice, which was launched recently, could serve as a general uniform base in field of official legal research tools. Standard rules set by this system could serve as a new common practice in practice of making case law texts. Specialized publication court teams can educate and coach judges. The main point is how to write a proper decision from formal point of view. The very next practice could be how to design potential case law text with an abstract as a headnote.

Uniform case law texts should be accompanied by some kind of abstract („the annotation“) from decision which should provide basic information about the case. We can find an inspiration in common law countries practice with their „casenotes“.

Comparing with the United States practice and their paper and electronic case law research tools with strong tradition of citators and digests the Czech legal practice lacks many essential legal research tools. We can not find any relevant citator tool. It is quite urgent for every day law practice to be provided with such information on case law as which case have been overruled or which are the other relevant cases can be used. There is a huge gap in our legal practice which needs to be filled.

Special law expert teams based in official justice institutions or private legal publishers shall monitor and edit these legal information databases. They should provide us with up-to-date information on case law. Those experts have to be able to create the casenotes and follow the evolution in particular field of law.

Eventually, the discussion on current need of the official case law reports and their publication system should be brought in. Modern practice is overwhelmingly based on use of electronic research legal tools. It is quite crystal clear, the complete case law publication process should be transformed into the electronic version. What's more important the whole case law reports field need to be paid much more attention in future.