Court Practice Analysis as an Innovative Tool to Improve Judges’ Training

Margit Vutt, PhD
Tanel Kask

The experience of the Supreme Court of Estonia

Judicial trainers often face difficult questions. Which topics should be handled at the training courses? What are the real problems judges have to deal with daily? How to distinguish between general and solitary problems? Have previous training sessions had a positive impact? Which sources give the best and quickest answers to the previous questions?

Court practice analysis (hereinafter CPA) used in Estonia is an innovative, effective and one of the objective tools that can, in addition to all other methods, be used as a source of information to identify the training needs of judges and to evaluate the training effects. The aim of the article is to introduce CPA and the possibilities to integrate it to judicial training.

The nature of court practice analysis

CPA is a process of studying court decisions (and if necessary, other court documents as well) in all of its aspects in order to identify problems in the uniform application of the law by the courts. In the course of such a research an analyst ascertains the scope of problems that exist in the field of application of material and/or procedural norms. The results of an analysis will be presented in an analysis document with the length of usually from 10–30 pages including conclusions on 1–2 pages.

CPA is not counting numbers (though quite often we use numbers collected by the authorities of the Ministry of Justice to illustrate some of our findings) – it’s more like studying the cases and drawing essential conclusions on how courts apply certain norms and how they interpret them.

The uniqueness of Estonian court practice analysis

The Estonian CPA is something quite unique and it is probably because of the fact that Estonia has quite a young, but modern law and has therefore not yet had the possibility to develop a long tradition of legal research at the universities or other scientific institutions. Of course we have highly qualified legal scientists, but judges need the answers to their problems quicker than any academic can give. Two years ago we collected information from a
number of other European countries and found something a little bit similar to CPA only in Ireland which is a country representing not the civil law but the common law system. As the common law system is based on the case-law rather than on legislation, the attention they draw on studying court cases is understandable. But nowadays the court practice has become an important source of the law also in civil law countries (though we often refuse to admit it).

Why would it be an interesting tool for civil law countries as well? Estonia initially started this project because we had to manage with a quickly developing legal system of our own (and we needed quick legal interpretation). Though the “old” European countries seem to have stable legal systems of their own, the development of the European Union brings lots of quick changes in the field of legislation and court practice everywhere. The court practice analysis would allow the judges to go along with such quick changes – to compare and disseminate their opinions and experiences.

We have been often asked how does our research differ from the academic research carried out at universities. The answer is: our analysis is a more practical research and its aims are directly derived from the needs of the court system. The object of a particular research is usually wider, the materials are large-scale and the research questions are more of a practical nature. And we do not have too much time for carrying out a certain analysis – usually only 2 to 4 months. One must emphasize that CPA can never replace an academic research and vice versa. Legal academics, first and foremost, must carry out the discussion with the academic researchers of other countries. We, on the contrary, must keep in mind the interests and needs of the court system. In conclusion: the difference between CPA and academic research is quite similar to the difference between teaching students and training practitioners – the leading idea is the aspect of practicality.

Court practice analysis as a valuable tool to improve the quality of justice

CPA is a valuable instrument for the courts and judges of all three levels – first of all, the results of an analysis can be signals for the Supreme Court that some specific issues should be handled and expressed in their decisions (sometimes even in order obiter dictum). Secondly, court practice analysis allows all judges to get information about the court practice and to find out how their colleagues interpret certain norms and how they actually judge.

CPA can be an important tool for court management as well. For example, in the course of an analysis it can become evident that in some district the same kinds of proceedings take significantly more time than in another. Such findings allow the court leaders to take relevant decisions in court management – to allocate resources more carefully or to provide support in case management.

How are analysis topics chosen?

The research topics arise from the legal reality: for example, a judge can call to an analyst and describe the problem she or he has encountered. Several topics arise when national or international lawyers’ conferences or meetings take place. Also the chambers of the Supreme Court often suggest special issues to be studied. And last but not least – analysts themselves often ascertain problems that need to be studied more thoroughly since they read several court decisions every day.

Ways how court practice analysis helps to improve judges’ training

CPA is especially useful in training needs assessment and impact analysis.

Firstly, CPA helps to identify training needs (to find out the problems that exist in the uniform application of the law). The more information sources the training unit has, the more
profoundly the information gathering can be conducted and the more reliable the results of the training needs analysis – determining whether and on what topic the training should be organized – are. In 2006, shortly after the completion of the first analysis, emerged the need to introduce them in judges’ training courses. This fact illustrates vividly the great gap CPA has filled.

CPA is an important and reliable source of information for the training unit. The analyst reads not only the decisions of the Supreme Court, but also the decisions of the courts of first and second instance. The reason for compiling an analysis is the existence of a particular hypothesis or just the need to map and explore some aspects of the case-law. A specific analysis is not a priori aimed at finding shortcomings or bottlenecks in the decisions, but it also enables to identify areas, to which it is necessary to draw the judges’ attention.

In addition to the fact that CPA helps to identify the training needs, it also has a positive effect on training impact analysis. For assessing the training impact, all available information sources that provide information about the training are used. Feedback immediately after the training shows whether the judges were satisfied with the training, and the test at the end of the training helps to determine what the participants can remember from the training. But neither of those methods provides information on whether the training had a long term impact on the work of the courts and judges. The measure of success of the training is the actual use, in daily work, of the knowledge and skills acquired through training. The impact assessment of training is integrated with the needs assessment – by identifying the impact of the previous training it can also be ascertained what was missing and where an additional training might be helpful. CPA is one of the most effective tools for assessment of long-term impact of the training. Changes in the case-law, on which information is provided by a re-analysis carried out in the same field following the training, is a good indicator of the influence of the training. We already have such an experience – we carried out such an evaluation once regarding compensation for non-patrimonial damage.

Last but not least, CPA has an impact also on design and delivery phases of the training process. The analysis unit provides further support for the training in one important area – finding trainers. An analyst who is preparing analytical materials in the respective field is in a very suitable position to introduce the topic for judges also during lectures, seminars or round tables. In this way, the training unit supplements the base of lecturers. Analyses can be used and are widely used as training materials.

**Practical outcomes of CPA activities**

CPA has helped us to develop a new form of training seminars which are based on cases and composed on the basis of real cases judges actually have to deal with on daily bases.

For example, this spring we had two pilot seminars specifically for judges who deal with company law cases. The idea was to try to make the learning situation more similar to the work situation. First of all we conducted a brief case study in our electronic database, court information system in order to find out what kind of company law cases judges most often have to solve. Additionally we asked the judges whether they have some specific company law issues they would like to discuss. It came out that there are three main types of company law cases that circulate in courts right now:

1) information claims of shareholders,
2) claims to challenge the company’s decisions and
3) damage claims against the company’s directors.

Secondly, based on those three fields we composed “example cases” for discussion, using real cases as models. The cases were sent out to participating judges and two seminars (with
ca 12–15 participants) were held. And finally, after the seminar an analysis document based on the real cases was composed and sent to the judges as an additional training material.

The feedback was very positive, the judges were happy to discuss their own cases without actually having to admit they are “their cases”.

A valuable experience to move on

It was in 2006 when CPA as a permanent activity was introduced in the Supreme Court of Estonia. Since then we have carried out over 50 analyses, produced relevant compendiums and lots of articles in legal magazines as well as in magazines of social science.

We are also constantly improving our methods and distribution forms.

In the beginning of 2011, when it was the 5th anniversary of the beginning of our analytical research unit, we issued a book that included the analyses carried out in 2010 as well as the feedback collected from our target group (mainly judges, but also other lawyers and partners). One of the judges wrote: within these years a new format of analysis has evolved – something that has quite a remarkable intersection with learning materials and research.

The prerequisites for a successful start of CPA are:

1) **good analysts** (someone the judges would trust as knowledgeable, especially as regards the court system and administration of justice);
2) **good database** of decisions to select, collect and carry on research;
3) **good communication** between analysts and judges.

When starting CPA, the following questions might arise:

1) **Can CPA be a form of an evaluation of judge’s work?** (Answer: definitely not, because CPA focuses on the issue-specific areas rather than on the decisions of any particular judge);
2) **How big are the expenses of introducing CPA?** (Answer: we are of the opinion that CPA can be arranged very flexibly, starting with a small-scaled pilot project);
3) **Where to find the appropriate analysts?** (Answer: a new exciting initiative can attract more people than expected, for example, there might be practitioners who would like to do some research in addition to their ordinary work).

Our experience shows that a thorough rethinking of these topics in advance helps to successfully overcome the doubts and hesitations.

Integration of CPA into the judicial training has created a new dimension that provides extra value and has led to an increase of the quality of judicial training. Or as Märt Rask, Chief Justice of the Supreme Court of Estonia has aptly said – the Estonian court system now asks itself: how could we manage without CPA before?

Interested in trying? Everybody who wants to get more detailed information has the possibility to contact the authors as mentioned below. We are happy to consult and explain!

---

**Margit Vutt, PhD**
*Court Practice Analyst*
The Supreme Court of Estonia
Lossi street 17
50093 Tartu
tel +372 7309062
margit.vutt@riigikohus.ee

**Tanel Kask**
*Head of Judicial Training Department*
The Supreme Court of Estonia
Lossi street 17
50093 Tartu
tel +372 7309075
tanel.kask@riigikohus.ee