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Pablo Bravo-Hurtado
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Supreme Courts Under Pressure

Controlling Caseload in the Administration of Civil Justice

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Abbreviations

BGB	German Civil Code (*Bürgerliches Gesetzbuch*)
CPC	Civil Procedure Code
CPQ	Constitutional Priority Question
DDR	German Democratic Republic (*Deutsche Demokratische Republik*)
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
GDP	Gross Domestic Product
GDR	German Democratic Republic
GG	Basic Law (*Grundgesetz*)
GVG	Judicature Act (*Gerichtsverfassungsgesetz*)
HGB	Commercial Code (*Handelsgesetzbuch*)
JN	Statute on Jurisdiction (*Jurisdiktionsnorm*)
JCPC	Judicial Committee of the Privy Council
QPC	Constitutional Priority Question (*Question Prioritaire de Constitutionnalité*)
UK	United Kingdom
UKSC	United Kingdom Supreme Court
US	United States (of America)
ZPO	Code of Civil Procedure (*Zivilprozessordnung*)

Part I
Introduction

Introduction

Pablo Bravo-Hurtado and Cornelis Hendrik van Rhee

Abstract The book discusses civil litigation at the Supreme Courts of nine jurisdictions: Argentina, Austria, Croatia, England & Wales, France, Germany, Italy, Spain and the United States of America. It focuses on the problem of excessive caseload and measures to keep caseload within acceptable boundaries. This introductory chapter analyses, from a comparative perspective, the different dimensions of the problem. The first and most evident dimension of an excessive caseload is undue delay. The problem, however, also exhibits a second dimension in which a heavy caseload affects the performance of Supreme Courts, especially where it concerns the balancing of the private and public purposes of adjudication at these courts. Solutions to an excessive caseload need to take into account both dimensions. Solutions may go in the direction of increasing the capacity of the court to resolve more cases or reducing the number of cases. A variety of factors—ranging from different understandings of the caseload problem, local conceptions about the purpose of the Supreme Court, strong entitlement to a right to appeal, budgetary restrictions and rigidity of legal rules—may explain why some jurisdictions prefer certain solutions over others. A comparative analysis shows that the implementation of similar solutions, such as access filters, in different jurisdictions may not have similar effects, but effects even opposite to those sought. Since the problem of overburdened courts is multifactorial and context-dependent, reforms need to be multifactorial and context-dependent too.

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1 'Under Pressure'

Supreme courts—i.e. courts situated at the apex of the judicial hierarchy issuing final decisions at the domestic level[1]—serve various purposes. Since the Rule of Law commands the application of the law in an equal manner to everyone,[2] Supreme Courts should ideally serve as shining beacons that guide us in the (sometimes obscure) interpretation of the law. Rulings of Supreme Courts should shed light on ambiguities and loopholes in the law, while updating the legal criteria to current circumstances.[3] Supreme Courts should be the key players for increasing legal certainty, maintaining a well-working justice system and contributing to predictable 'rules of the game.'

Having the final word means that Supreme Courts are the last stop in the appeals route.[4] Supreme Courts are often the only chance that remains (at least at the domestic level) to reverse an unfavourable judgment. In principle, appeals at the Supreme Court are meant to concentrate on erroneous decisions issued by lower courts.[5] Litigants, however, tend to consider unfavourable judgments as mistakes that should be amended on appeal. As a result, Supreme Courts may receive large numbers of complaints filed by thousands of litigants eager to roll the dice one last time.

Consequently, Supreme Courts may face an increase in their caseload if no adequate access filters are in place. In some jurisdictions the increase may be steady—e.g. at the Austrian *Oberster Gerichtshof* discussed in the chapter "Access to the Austrian *Oberster Gerichtshof*: Attempts to Strike a Balance Between Adequate Workload and Adequate Review"—while in others the caseload may 'explode'—e.g. at the Italian *Corte Suprema di Cassazione* discussed in the chapter "Finding a Cure or Simply Relieving Symptoms? The Case of the Italian Supreme Court." Certain Supreme Courts may have reduced their caseload several decades ago—e.g. the US and UK Supreme Courts discussed in the chapters "The Supreme Court of the United Kingdom and the Court of Appeal in England and Wales: Sharing the Appellate Load" and "A Happy-Go-Lucky Story: The American Supreme Court and Overload Problems," respectively—while for many other jurisdictions this is still a pressing problem—e.g. the Croatian *Vrhovni sud Republike Hrvatske* discussed in the chapter "Croatia: Supreme Court Between Individual Justice and System Management." In either situation, a heavy caseload compromises

[1] Other definitions of 'Supreme Court' in Van Rhee and Fu (2017), pp. 1–5; Yessiou-Faltsi (1998). Similar denominations such as 'top courts' in Le Sueur and Cornes (2000); Taruffo (1998), p. 102; 'highest courts' in Huls et al. (2009), Muller and Loth (2009) and Muller and Richards (2010), or 'court of last resort' in Silvestri (1986) and Mitidiero (2015).

[2] On the Rule of Law, Dicey ([1979] 2013).

[3] Chiarloni (2014), p. 82; Bravo-Hurtado (2014), pp. 322–325.

[4] In jurisdictions with separate constitutional courts, however, the 'last-resort' at a domestic level could be disputed between the Supreme Court and the Constitutional Court, see Garlicki (2007).

[5] Uzelac and Van Rhee (2014), p. 3; Shapiro (1980), p. 629.

the Supreme Court's performance, resulting in lower quality standards or undue delay (or both). Sooner or later, changes are needed in order improve the situation.

1.1 Two Dimensions of Case Overload

This book finds its inspiration in the 'bewildering variety'—using Professor Jolowicz's words[6]—among jurisdictions when dealing with the problems just mentioned. The most fundamental difference is due to the standard according to which local actors evaluate what counts as an 'overloaded' Supreme Court. Let us imagine a Supreme Court that is burdened with deciding around 4000 cases per year. For the US Supreme Court, which hears 100–150 cases annually,[7] this would count as an unprecedented crisis. For the French *Cour de cassation*, however, accustomed to resolve around 22,000 cases a year in civil matters only,[8] (just) 4000 cases per year may sound, quite the contrary, as though the court is 'underused.' And for the German *Bundesgerichtshof*, close to 4000 cases would be considered normal according to current practices.[9]

Jurisdictions also diverge as regards the reasons for heavy caseloads and, perhaps more interestingly, as regards the reasons that need to be addressed urgently in order to solve this problem. Undue delay is the most palpable result of an overloaded court. When the number of cases brought to the Supreme Court exceeds the number that can be resolved within an acceptable period of time, waiting lists start to grow longer. The delay can be measured from the number of cases that remain unresolved every year.[10] Undue delay, thus, can be a symptom that the court is receiving too many cases in proportion to its working capability.

The disadvantages of undue delay are also palpable. The aphorism 'justice delayed is justice denied' means that the court becomes irrelevant when it cannot address relevant cases in a timely manner.[11] A result may be that fewer people are willing to bring appeals before the Supreme Court or will desist continuing appeals that have already been lodged. Gravelle—among many other economists—holds that 'paying' for access to justice through waiting time has a regressive effect.[12] Undue delay excludes litigants whose cases are so urgent that they cannot pay the price in waiting time, and it excludes litigants without enough financial means to endure a long and expensive procedure.

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[6] Jolowicz (1998), p. 35.

[7] US Supreme Court – Caseload (2020).

[8] Ferrand (2017), p. 196.

[9] See in this book Stürner (Chapter "Sharing Responsibility: The German Federal Court of Justice and the Civil Appellate System").

[10] Pastor Prieto (1993), pp. 235–237.

[11] From a comparative perspective, Van Rhee (2004).

[12] Gravelle (1990), pp. 255–270. See also, Barzel (1974), pp. 73–95.

To consider undue delay to be the only symptom of case overload, however, would lead to serious misunderstandings. From this perspective, a court would be overloaded only in the case of undue delay. Vice versa, the court's caseload would not be problematic if delays were reduced, usually to less than a year. The consequence of this approach would be that reforms will mainly aim at reducing delay.[13] However, Jolowicz rightly pointed out that case overload has more dimensions than only delay. In his words:

> A court is overloaded not only if it has a growing backlog of pending cases, but also if it cannot adequately fulfil the purpose or purposes for which it exists.[14]

The problem of case overload, thus, has other dimensions. Superior Courts obviously serve public and private purposes. On the one hand, the private purpose responds to the natural desire of the losing party to have the case reconsidered by a court higher in the court hierarchy. The public purpose, on the other hand, is supervision of the lower courts and to contribute to the unification of case law and the development and clarification of the law.[15]

The latter dimension is important since it affects the role played by Supreme Courts in modern society. The development of the Rule of Law requires guarantees that similar cases are judged according to equal legal criteria and that these legal criteria should be known in advance.[16]

Appeals of last resort are meant to serve both purposes, at least to some extent.[17] When resolving a dispute, the Supreme Court aims to correct the misapplication of the law by the inferior court, but at the same time to provide the public at large with information on the legal criterion that should be applied in future similar cases.

This dimension of case overload needs to be taken into account seriously because an overburdened Supreme Court cannot fulfil its tasks in a meaningful manner and various aspects of the Rule of Law may be infringed. With too many cases to resolve, the court will need to reduce the time spent on individual cases, and the quality of judgments will suffer. The Supreme Court may end up concentrating on formal mistakes in order to close cases as quickly as possible. For the appellant that scenario is risky. An overburdened Supreme Court makes it likely that cases will be resolved on the basis of erratic criteria. The court will not be able to provide justice in individual cases, nor will it be able to give guidance to the uniform interpretation and development of the law. An overburdened court may not be able to provide for internal consistency[18] since it does not have enough time to analyse previous,

[13] See, e.g., Pekkanen et al. (2012), pp. 94–103.

[14] Jolowicz (2000), p. 55.

[15] Ibid., pp. 31–32.

[16] Cotterrell (1992), p. 158.

[17] For instance, Woolf (1996), p. 153; Jolowicz (1998); Taruffo (1998); Galič (2014); Norkus (2015); Ferraris (2015), pp. 6–7.

[18] Bravo-Hurtado (2014), p. 328.

pertinent case law. If internal consistency is lost, the externalities of Supreme Court judgments will be negative, increasing uncertainty.

The various dimensions of case overload are not necessarily correlated. In one extreme, a small number of cases may be brought before the court, allowing it to spend sufficient time on each case, but even so undue delay may occur in resolving cases. It may also happen that delay is minimal, but at the cost of spending insufficient amounts of time on individual cases. Therefore, it is not a good idea to focus solely on reducing backlogs at the cost of reducing the court time available for individual cases. Case overload is a problem that needs a balanced approach in order to be solved in a satisfactory manner.

1.2 Various Solutions

The jurisdictions discussed in this book exhibit not only a variety of understandings of the problem of case overload, but also a variety of proposed solutions. In general, the solutions can be clustered in two groups: (1) increasing the capacity of the Supreme Court and (2) reducing the number of cases.[19]

The various measures that can be implemented may have counter-productive effects. GRAVELLE, for instance, argues that:

> With a given supply of trials, the aims of reducing the delay and cost of the legal process are contradictory since any reduction in litigant's costs stimulates demand and increases delay.[20]

In other words, it should be kept in mind that measures increasing the capacity of the Supreme Court may have the side effect of a further increase in the number of cases. Obviously, in the long run this may aggravate the problem of case overload.

Increasing Capacity Increasing the number of judges is one of the most common approaches that is being chosen to increase the capacity of Supreme Courts. However, there are other measures that may have the same effect. For example, judges could be given more support staff to whom specific tasks may be delegated. One may also think of dividing the court into smaller chambers or sections. Additionally, procedural reforms may be introduced to accelerate litigation. For example, eliminating oral hearings or creating different tracks for different types of cases may result in more efficiency.

Reducing the Number of Cases Where it concerns a reduction of the number of cases that are brought before Supreme Courts, access filters have received considerable attention in comparative legal studies.[21] Important aspects of such filters are

[19] See also Del Rio (2015) on Chile.

[20] Gravelle (1995), p. 289.

[21] For instance, Taruffo (2001), Silvestri (2001), Amrani-Mekki (2014), Drago et al. (2015), Ferraris (2015), and Norkus (2015), among many others.

the selection criteria, the procedure of filtering cases and whether the screening is done by the lower court that issued the judgment, the Supreme Court itself, or both courts. Other solutions that deserve attention are increasing court fees[22] and determining a select group of Supreme Court lawyers. Provisional enforcement of the judgments of the lower courts may also reduce Supreme Court cases since litigants will not be able to postpone enforcement simply by filing an appeal.

Different Approaches The contributions to the present volume provide information on various approaches to counter case overload at the Supreme Court:

(a) Some jurisdictions focus on measures reducing delay. When delay is under control, no further measures are introduced even though the quality of the Supreme Court judgments may be under threat.
(b) Some jurisdictions focus on the private purpose of Supreme Court litigation. Increasing the capacity of the court instead of reducing the number of cases is then preferred. However, where the predominant conception is the public purpose of the Supreme Court, reducing the quantity of cases is a more acceptable approach.
(c) Some jurisdictions are under the threat of sanctions due to problems related to case overload. Jurisdictions that face sanctions, for example due to infringement of the right to a judgment within a reasonable time, may opt for measures solving the problem of delay without concentrating on the quality of judgments.[23]
(d) In some jurisdictions, obvious solutions to case overload may not be feasible. A strong entitlement to a right to appeal—for example enshrined in the Constitution—will be problematic where access filters are under discussion.
(e) Some jurisdictions have stricter rules than others where it concerns changing the court's organisation and procedure. If every change affecting the court requires legislative intervention, such change can only be introduced at a slow pace, if at all. On the contrary, in jurisdictions in which the Supreme Court may itself provide for its rules, changes are easier and faster.
(f) Budgetary restrictions may hinder Supreme Court reform as well, for example where it concerns appointing more judges, clerks and other staff, and where it concerns improving the infrastructure of the court.
(g) Finally, lobbying by interest groups should not be underestimated. Lawyers litigating at the Supreme Court may oppose the introduction of access filters. Frequent litigants may oppose an increase of court fees or the introduction of additional fees. And Supreme Court judges may lobby in favour of (or against) certain solutions, for example against an increase in the number of judges at the Supreme Court when they feel that such an increase will affect the power-balance within the court.

[22] On the effect of costs and fees on litigation, see Vogenauer et al. (2010), pp. 110–115.

[23] See Van Rhee (2010) for a historical perspective.

Obviously, this list is not exhaustive. Further historical, political, cultural or economic circumstances may need to be analysed. However, the goal of this comparative introduction is not to exhaust the topic of case overload, but to provide a theoretical framework to facilitate further debate on the matter.

1.3 Content

This book covers nine jurisdictions: Argentina, Austria, Croatia, England & Wales, France, Germany, Italy, Spain and the United States of America. Therefore, the experiences of jurisdictions on both sides of the Atlantic, and belonging to both the civil law and the common law worlds, are discussed. The authors of the contributions to this volume have been asked to address at least four questions:

- To what extent is case overload a problem at the Supreme Court in your jurisdiction?
- Which solutions to this problem have been discussed and/or introduced?
- Have these solutions proven to be effective?
- Has use been made of legal transplants to solve the problem of case overload?

For reasons of convenience, this book consists of an introductory part (I) and three additional parts (II-IV) devoted to three legal traditions (or families).[24] Part II is devoted to the Romanic legal tradition (France, Italy and Spain). Part III discusses systems belonging to the Germanic legal tradition (Germany, Austria and Croatia), while Part IV addresses the Anglo-American legal tradition (England & Wales, the United States of America, and, perhaps surprisingly, Argentina).

2 Romanic Legal Tradition

2.1 France

From an outsider's perspective, the French *Cour de cassation* is clearly overburdened. The court has to cope with around 30,000 cases on a yearly basis. However, in his contribution Emmanuel Jeuland explains that caseload is not viewed as the main problem of the court. The approximately 200 judges are able to keep the average duration of cassation cases close to a year. The main problem the French Court of Cassation faces is, according to Jeuland, the increasing relevance of other courts—both at the national level (*Conseil d'état* and *Conseil constitutionnel*) and at the international level (ECJ and ECtHR). These other courts seem to eclipse

[24] On legal families, see Zweigert and Kötz (1998); David and Brierley (1978); Glenn (2006); Örücü (2007), pp. 169–187.

the *Cour de cassation* as the ultimate instance in the French court hierarchy. In order to increase the relevance of the Court of Cassation, reforms such as extending the grounds of the court's judgments in important cases and focusing on the most relevant cases only are considered.

2.2 Italy

The Italian *Corte Suprema di Cassazione* is, as is commonly known, an overburdened court with around 87,000 cases per year. Combined with other factors, this overload has increased the duration of cases far beyond the reasonable-time standard of Article 6 ECHR and Article 47 of the EU Charter of Fundamental Rights. In his contribution, Federico Ferraris analyses the latest reforms that have been introduced in Italy to counter this situation. The creation of a specialised chamber entrusted with the task of filtering cases and new admissibility rules will not, in Ferraris's opinion, cure the disease but merely provide some temporary relief. A strong entitlement to a third instance in the Italian legal culture, together with a right of access to cassation enshrined in the Constitution, tend to frustrate any efforts to reduce the incoming caseload of the Supreme Court. Italy, in this regard, is a good example of how reforms may face cultural and constitutional barriers which are difficult to overcome despite the fact that the case overload reaches critical levels.

2.3 Spain

Marco De Benito provides a historical account of the Spanish Supreme Court (*Tribunal Supremo*) and its current interaction with the Constitutional Court. Since its early conception in 1812, Spanish cassation appeal has gone through several reforms with different effects as regards case overload. Reforms from the 1990s, for example, were mainly focused on increasing the capacity of the court by speeding up the cassation procedure, increasing the number of panels by reducing the number of judges per panel and limiting the scope of review. Following these reforms, the *Tribunal Supremo*'s caseload increased rather than decreased. This necessitated further reforms. In 2000 and 2011, filters based on 'cassational interest'—i.e. selecting cases based on infringements of fundamental rights, contradictory case law and a monetary threshold—were introduced and subsequently reinterpreted. This approach seems to have solved the case overload problem in Spain. Subsequent reform proposals aimed at restricting access to the *Tribunal Supremo* even further have been rejected.

3 Germanic Legal Tradition

3.1 Germany

Germany provides an example of successful attempts to solve the problem of case overload. Michael Stürner holds that this is not exclusively due to restricting access to the German Supreme Court (*Bundesgerichtshof*) in civil and criminal matters by way of access filters. Apart from the introduction of permission to appeal, the 2001 Reform introduced major changes to appeal proceedings at the lower courts. Moreover, a small and highly qualified cassation bar guarantees rigorous selection of cases since the professional prestige of the members of that bar depends on the quality of the services provided. Even though the German Supreme Court still conceives its role as serving both private and public purposes, in recent years the balance has clearly shifted towards the latter. As a result, the German Supreme Court now has a caseload that remains constant, whereas the caseload in civil matters of the lower courts is decreasing due to the popularity of ADR. The popularity of ADR results, according to Stürner, in a situation in which not every important case may reach the German Supreme Court, which is problematic in itself.

3.2 Austria

Florian Scholz-Berger analyses the Austrian Supreme Court (*Oberster Gerichtshof*). The Austrian legal system often draws inspiration from reforms in Germany and vice versa. Nonetheless, as regards appeal at last resort (*Revision*), at least three important differences may be observed between Austria and Germany. First, apart from qualitative filtering criteria ('significant question of law'), Austria has maintained a monetary threshold. Second, a lower court's positive decision as regards granting permission to appeal does not bind the Austrian Supreme Court. Third, in proportion to the Austrian population, the size of the Austrian Supreme Court is much larger than the German *Bundesgerichtshof* (60 full-time judges for 8.3 million inhabitants). These differences are very relevant when it comes to case overload, a problem that in Austria—according to Scholz-Berger—has been countered by way of frequent reforms of proceedings and court organisation without reaching a state of crisis.

3.3 Croatia

Croatia is the last jurisdiction discussed in the section on the Germanic legal family in this volume. In their contribution Alan Uzelac and Marko Bratković state that the evolution of the Croatian Supreme Court (*Vrhovni sud Republike Hrvatske*) was

influenced by ideas from the Socialist era. Particularly interesting are the efforts at this court to combine the private and public purposes of adjudication at the highest level by way of two separate means of recourse: ordinary and extraordinary revision (*revizija*). However, the Croatian experience demonstrates that combining these two purposes may have counterproductive effects. In fact, since the introduction in 2003 of extraordinary revision, the caseload of the Croatian Supreme Court has increased dramatically. On top of that, a low level of trust in the judiciary combined with a constitutional court reluctant to introduce access filters hinder solutions for the caseload problems in Croatia.

4 Anglo-American Legal Tradition

4.1 England & Wales

John Sorabji analyses the UK Supreme Court and the English Court of Appeal. The civil justice system in England and Wales is hierarchical in terms of both its first instance jurisdiction and its appellate jurisdiction. Appeals lie from first instance decisions to either the next judicial tier within a court or to a superior court. The High Court has both a trial jurisdiction and is the appellate court for appeals from the County Court. The Court of Appeal, while it has no trial jurisdiction, hears appeals from first instance decisions from the High Court or, exceptionally the County Court. It also hears second appeals from the High Court. The House of Lords, which exercised judicial appellate jurisdiction from the middle ages, and its statutory successor the UK Supreme Court, only hear appeals from inferior territorial appellate courts within the United Kingdom. This hierarchical structure has, historically, ensured that neither the House of Lords nor the UK Supreme Court have suffered from a surfeit of appeals. Furthermore, the fact that appeals to the House of Lords and the UK Supreme Court (*a*) are limited to appeals on questions of law, and only those which raise issues of general public importance, and (*b*) are only permitted if permission to appeal is granted, has ensured that the number of appeals they hear has remained relatively static historically. By way of contrast, the appellate jurisdiction of the Court of Appeal in England and Wales has undergone periods of severe increases in its caseload; it is currently undergoing such an increase, and reforms have been introduced to reduce its burgeoning caseload. This increase comes despite appeals to the Court of Appeal being subject to a permission to appeal requirement, albeit one that is not as restrictive as that to the UK Supreme Court.

4.2 United States of America

The situation in the United States of America is to some extent similar to that in England & Wales, since the highest court, i.e. the US Supreme Court, has a

'shrinking docket' while the Courts of Appeal receive larger numbers of cases. This is, according to Richard Marcus, the result of a combination of historical, political and constitutional circumstances. Originally, the US Supreme Court had limited relevance. When its relevance increased it attracted a larger number of cases, but quickly many cases were diverted to the Federal Courts of Appeal that were created to absorb part of the burden. Consequently, the present Supreme Court may focus on the most important cases and has gained (almost) full control of its docket, especially due to reforms in the 1930s. As a result, case overload at the US Supreme Court is not a matter of concern. Matters of concern exist, but they are different in nature. For example, the fact that the Supreme Court is a highly politicised court is a matter that is becoming more and more problematic.

4.3 Argentina

Argentina obviously does not belong to the Anglo-American legal family but to the civil law legal tradition. From a comparative perspective, however, the current Supreme Court of Argentina (*Corte Suprema de la Nación Argentina*) is more comparable to the US Supreme Court than, for instance, the French *Cour de cassation.* Argentina is a federal state and its Supreme Court has strong powers where judicial review of legislation is concerned. It has adopted the US writ of certiorari, but as Leandro Giannini explains in this volume, case selection at the Argentinian Supreme Court is different from case selection at the US Supreme Court. The Argentinian version of the writ of certiorari provides for a discretional selection of cases based on the criterion of 'transcendence' or relevance beyond the individual case submitted to the court. The particularity of this Argentinian certiorari is that, instead of excluding cases, the Supreme Court has used its discretionary powers to grant permission to appeal in cases that do not meet the requirements of transcendence or relevance. According to Giannini, this may be due to an interpretation of the court's discretional selection powers in accordance with the public purposes of adjudication at the Argentinian Supreme Court.

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Part II
Romanic Legal Tradition

Towards a Reform of the French Court of Cassation?

Emmanuel Jeuland

Abstract The French judicial system seems to be in a transitional phase. In France, the Court of Cassation, the Council of State and the Constitutional Council compete for the status of 'Supreme Court.' Nowadays, however, these three courts not only compete with each other but also with the European Court of Justice and the European Court of Human Rights. A new consensus is emerging in France about the need to reform the organisation or practices of these Supreme Courts in some way. The French Court of Cassation, particularly, has suffered detrimental consequences of the existing situation over the course of the last few decades. The main consequence is that the Court of Cassation seems to have lost part of its traditional influence. The court is no longer the undisputed highest authority in settling national legal debates. As a reaction, in recent years discussions on changes have been under way inside the court. Several working groups have been organised: one on access filters, one on grounds of cassation judgments, one on public prosecutors and one on the principle of proportionality. All of these topics are in some way connected and could lead to a major reform of the court. This contribution presents an overview of the French judicial system, it describes the place of the Court of Cassation within the system and it discusses the on-going reforms aimed at enabling the court to regain its traditional influence.

1 The French Court of Cassation in Its Context

Today, there are about 8000 professional judges in France. In relation to the total population, that means there are 9.1 judges per 100,000 people. The proportion of the public budget spent in the administration of justice represents 0.18% of the total French GDP. In civil and criminal matters, the court of last resort in France is the Court of Cassation (*Cour de cassation*), located within the premises of the Palace of

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