ЦЕНТАР ЗА ПРАВНИ
ИСТРАЖУВАЊА И АНАЛИЗИ
CENTER FOR LEGAL RESEARCH AND ANALYSIS

MEASURING THE PROGRESS
OF JUDICIAL REFORMS

KEY PRINCIPLES, STANDARDS, &PRACTICES

IN MACEDONIA AND 7 EU MEMBER STATES:

Croatia, Estonia, France, Hungary, Lithuania,
Slovenia and the United Kingdom

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EXECUTIVE SUMMARY

The comparative study Measuring the Progress of Judicial Reforms: Key principles, standards, and practices in Macedonia and 7 EU member states: Croatia, Estonia, France, Hungary, Lithuania, Slovenia and the United Kingdom, is the first output of the project "Development of monitoring indicators for the justice sector performance" that the Center for Legal Research and Analysis (CLRA) is implementing with support from the British Embassy Skopje.

The Project objective is to devise an innovative and comprehensive system of indicators for measuring judicial reforms in Macedonia, based on internationally recognized standards for the judiciary and the strategic priorities of Macedonia in the justice sector for the next period. Implementing inclusive process of consultation with all relevant parties in the field, CLRA envisages designing a new measuring tool drawing on the experiences and key principles and standards applied during judicial reforms in other EU countries.

The main purpose of this comparative analysis is to provide an insight in the judicial reforms conducted in selected EU member states, including traditional ones as well as more recent EU member states, and understand closer the process of measuring the initiated reforms in the judiciary.

The main focus of the analysis is on the background of judicial reforms in every specific country, followed by the current situation encompassing trends and developments in the judicial sector, the relevant stakeholders involved in measuring the progress of judicial reforms, the challenges in the process of measuring judicial reform, and the aspects covered by the measurement including different methods that have been applied.

The comparative component of this study focuses on the different experiences of 7 EU member states and Macedonia regarding the reform processes in the justice sector. Each case study is consisted of a brief overview of country's historic background and development of the judicial reforms, especially the ones regarding the EU accession. Afterwards, the analysis of each country goes more thoroughly into the practice of monitoring and evaluating the reforms in the justice sector. The level of cooperation between various state institutions, such as are the judicial institutions, Ministry of Justice, Parliament, Universities, professional associations and groups and the specific role they play in the process of justice sector reforms, define the methodology of and the outcome of the measuring the conducted reforms in each specific country. This part also features the instruments used by the Council of Europe (CEPEJ), the European Union (EU Justice Scoreboard) and various other internationally recognized judicial and rule of law measuring instruments. In addition, experiences in the case of Macedonia have been highlighted, including various implemented activities by national institutions and CSOs engaged in this effort currently as well as in the past period.

The last section of this study includes experts' conclusions and recommendations

relevant for the Macedonian context. These recommendations derive from the experiences summarized from every country subject of analysis in this study.
The study concludes that in justice sector policy-making, administration and reforms' implementation is impossible without participation, consultation of all branches of powers (judicial, executive and legislative), nevertheless the extent of their influence in initial stage and further, responsibilities for successful implementation, etc. are different, depending on the system of justice management/administration. Countries (France, Hungary) are missing a rigorous framework for measuring judicial reform. There seems to have emerged a notion of a trade-off between efficiency on the one hand and justice as a value on the other, with no way holistically to express that balance. The focus should be on evaluating reforms which everyone agrees are designed and genuinely intended to achieve certain goals in relation to fundamental rights and democratic values. The experts support the idea that one must invest responsibility for measuring the progress of judicial reform in a body that is perceived as independent (as possible) from the reform process and provide state support to non-government actors (particularly reputable academics) to carry out evaluations.

Generally, different countries have applied country specific models of reforms and enforced various mechanisms of measuring the outcomes of these reforms; hence there isn't one single best model that can be applied by the others. Peculiarities of respected system of administration of justice must be considered and accordingly the process should be planned and managed. As a result, the recommendations combined with the practical experiences from the EU members, will inspire the approach for developing the matrix for measuring progress of the judical reforms in Macedonia.

The case studies of the 7 EU member-states were prepared by the international experts Reda Moliene from Lithuania, Adam Weiss from United Kingdom, and Toni Vukicevic from Croatia, while the case of Macedonia was developed by the Center for Legal Research and Analysis.

INTRODUCTION

All countries worldwide have experienced the process of judiciary reforms. Some have had lesser success; some have been doing better than others. The initiation of the judicial reforms can be influenced by various processes and necessities of the society - legal, economic, technological or political. It is generally assumed that countries experience these changes searching for higher quality work of the judiciary, a justice system that could respond to citizens' needs, based on the universally established standards and principals.

The development of the judicial reform in Europe has its own historic specifics[1], being constantly challenged with greater legal and societal complexity, higher expectations (service delivery, organization, transparency, accountability, fairness, etc.) and dynamic legal internalization. Therefore the courts, as central judicial institutions, aim to maintain the highest professional standards in their case administration, decisions and other services.

An important international response of the needs of the CoE countries for continuous reform of the judiciary against certain cross country benchmarks, was CEPEJ (European Commission for the Efficiency of Justice) that was set up in 2002 by the Council of Europe to improve the functioning and efficiency of justice in the CoE Member States, through common statistical criteria and means of evaluation[2]. The EU Justice Scoreboard is another available tool for all EU member states and candidate countries to understand better their position compared to others and against their own set goals.

But how does one measure and evaluate quality standards in the domestic judicial system? What exactly should be measured? And what kind of tool or methodology should be used? Who should be involved in the measurement process? What will be the main benefit from the outcome? What are the factors that must be considered in order for the measurement to be considered relevant and correlative with the universal principles of quality justice? Should the measurement tool be developed and presented as a simple device, or should it be exhaustive in regards to all recognized relevant factors that influence the quality of the judicial system? Should we measure efficiency or quality of the reform? Which factors, which institutions influence mostly the final outcome of the reforms, and bear the responsibility for the same? Should the public opinion be surveyed in the process given that the public confidence in the judicial system in a modern democratic society is of utmost importance?

1By the 1980s and 1990s all European judiciaries were facing challenges: slow processing, backlogs, general institutional inefficiencies, and a general weakening of enforcement. All countries responded in their own fashion.

2CEPEJ's main taks is: to examine the results achieved by the different judicial systems in the light of the principles referred to in the Preamble to Resolution 2002 (12) […of efficient court proceedings, … administration of justice and management of courts, use of information and communication technologies] by using, amongst other things, common statistical criteria and means of evaluation

All these numerous queries have been raised in and considered by all those countries that had genuine intention in conducting serious and planned judicial reforms, inspired by their own imperfect, inefficient or opaque justice systems.

This comparative study, prepared in the frames of the Project **"Development of monitoring indicators for the justice sector performance"**, which main purpose is development of reliable and comprehensive indicators matrix for tracking the progress of the judicial reform in Macedonia, features the challenges that 7 select and diverse EU countries have experienced during their reforms of the judiciary, and especially taking into account the effects of the initiated changes against some main indicators.

The comparative study is contemplating several perspectives: it considers significantly the judicial reform measurement mechanisms available in EU and CoE, and in other organizations and institutions globally, as well as looks into the specifics of each of the select countries, with different and unique historic background, finding out more about the best strategies they have individually succeeded to implement during the evaluation of the judicial reforms. The study shows that different countries have applied different models of reforms and enforced various mechanisms of measuring the outcomes of these reforms. There isn't one perfect model that could be applied in all countries as many factors influence the successfulness of the various measures undertaken to improve just one or more aspects of the judiciary.

In addition, the study explores the role of various relevant players in the select countries vis à vis the judicial reforms and assesses the methods and mechanisms they have applied during the evaluation of the implemented reforms. As a general principle, performance measurement is not viewed as interfering with or influencing the judicial independence. Therefore, the measurement should be carefully planned and conducted, providing non-threatening conditions for the institutions and the administrators of justice during the performance measuring process.

The importance of measuring the factors, such as **competency, transparency, independency, efficiency** and **impartiality of the judiciary** has direct impact on the protection of the human rights, on the country economic growth and even employment, and therefore courts should fulfil their role in upholding to these principles in the frame of the constitutionalism and the rule of law.

In the last decade, after the major judicial reforms have taken place in Macedonia, there were several attempts of measuring different aspects of the reform progress and the level of quality of justice (judiciary). However, the plurality of approaches and owners of these initiatives have led to a situation where the main judicial institutions have been left out from the debate about their own needs and expectations from the reforms. In addition, the rapid change of legislation has even more complicated the possibilities for reflecting on the sweeping reforms.

The new Justice Sector Reform Strategy for the next period of 5 – 7 years will set new priorities for the judicial reforms and developments; therefore, it is of utmost importance that suitable and measurable criteria, indicators and expectations are agreed by all players in the judicial reform processes, in accordance to the European standards and practices, in order to establish baseline for systematic measurement of the progress towards the goal/s embedded in the strategy. Keeping the Macedonian vision for EU membership should further present a driving force and strengthen the readiness of all involved to become vital and active particles in this joint effort. Considering some experiences from other countries from the EU family could potentially inspire and guide the debate and put more light during the creation of a domestic measurement tool for the judicial reform.

In supporting the creation of an innovative and comprehensive system of indicators based on internationally recognized standards for the judiciary and the legal profession, the Project will invite all relevant institutions to contribute to the content of the measurement index through series of consultative round tables and a web forum.

METHODOLOGY II

For the purposes of this comparative study, CLRA invited 3 experts from EU member states, to conduct desk research, analyses of relevant strategic and legal documents, milestone cases and literature from 7 select EU countries, and describe countries' specific experiences in conducting reforms of the judicial system. In addition, two national experts have been engaged to compile the collected comparative data and also present the case of Macedonia.

During the selection of the 7 countries, the experts used comparative analysis of the judicial reform processes in the "old" EU member countries (France and United Kingdom), newer EU member countries (Estonia, Lithuania, Hungary and Slovenia) as well as the newest EU member country (Croatia). This method contributes to a wider perspective and closer insight into the judicial reforms initiated as a result of countries' specific needs and developments in the judiciary as well as provides information of the strengths, the weaknesses and the obstacles that different countries have faced during the planning and the evaluation of the reforms.

The experts were focusing their research in the following segments:

Background of judicial reforms in the specific countries
Current situation – trends and developments
Parties Involved in measuring the progress of judicial reforms in the select countries
Challenges for the process of measuring judicial reform
What has been measured in relation to judicial reform?
How has judicial reform been measured?
Key Conclusions and findings

For presenting the historical background of the judicial reform processes in the selected countries, the experts used historic method, presenting all important events and activities which happened during the process, and the main milestones that led to the progress, considering also strategic and legal documents, and case studies.

Minor part of this study, mainly in the case of Macedonia, was developed from meeting discussions with representatives of the relevant stakeholders, who had some experiences in measuring or influencing the reforms of judicial system in Macedonia. The experts conducted meetings with key representatives from the international community, as well as leading national bodies and organizations.

At the end, the experts provided conclusions and recommendations that could be considered for the Macedonian context and that would present a solid ground for starting the process of discussions and debates with all relevant stakeholders in respect to creating and developing a new tool for measuring and evaluating the process of the reform of the judicial system in Macedonia.

PREVIEW OF THE JUDICIAL REFORMS BY COUNTRY III

CROATIA

Background of Judicial Reforms in Croatia

The first serious legal and judicial reforms in Croatia took a place in 1991 when it became an independent state after dissolution of former Socialist Federal Republic of Yugoslavia with the main aim to strength democracy and uphold the rule of law. Although in the beginning of that process the Republic of Croatia decided to keep certain legal and judicial standards of former system but the major changes were introduced before Croatia became a member of European Union in 2013. However and in despite of pending judicial reform the Republic of Croatia is still facing certain judicial problems which are highlighted in this paper:

- **Reform of the judicial map.** The main purpose of introduced reform was to reduce the inefficiencies in former justice system resulting from a huge number of courts established in Croatia which number per citizen was much higher in comparison with EU member states. In other words, intention of judicial reform was to adopt number of courts and personnel in accordance with practical demands of the justice system and reduce lengthy court procedure which caused backlog of cases.

- **Legal Frame for implementation of the Judicial Reform.** In order to create a legal preconditions for enforcement planed reform measures the Croatian Parliament has adopted and amended the Law on Organization and Scope of the Ministries and Other Central Bodies of the State Administration[3], the Law on Croatian Government[4], the Law on Courts[5], the Law on the State Judicial Council[6], the State Attorney's Law[7], the Law on Judicial Academy[8], the Attorney's Law[9], Notary's Public Law[10], the Law on Judicial Clarks and Judicial Examine[11].

1. Description of the Croatian Justice Model

Deriving from the historical development of the Croatian judiciary (based on tradition of continental legal system i.e. mainly old Austrian model) in Croatia there is "judicial justice" system, and administrative justice system.

The Constitution of the Republic of Croatia[12] affirms the independence of the judiciary set in Article 115 and refers only to the system of judicial justice (Article 115 – 122), and the system of administrative justice is vaguely mentioned in Article 107 and 114 of the Constitution regarding Governmental power and Article 128-131 regarding administration of local territorial units.

There are three levels of jurisdiction in Croatia and they are divided as follows:

- First-instance courts: municipal courts (which are the general courts of first instance for matters when jurisdiction is not assigned elsewhere). Administrative courts and Commercial Courts (which sit within the regional courts).
- County courts: these can serve as first-instance courts in criminal cases when punishment is legally prescribed over 12 years and in certain situations prescribed by law in civil cases, otherwise hear appeals from the municipal courts both in criminal and civil matters.[13]
- Commercial Courts are deciding in cases which involves commercial matter and disputes regarding establish on liquidation of commercial companies and among their member. Also they are in charge of issues arisen from implementation of Maritime and Aircraft Law, industrial property issues, author and innovation rights.[14]
- High Commercial Court in exceptional situations may be a court of first instance

3 Croatian Official Gazette No.150/11, 22/12
4 Croatian Official Gazette No.150/11
5 Croatian Official Gazette No. 150/05, 16/07, 113/08, 153/10, 122/10, 27/11, 57/11, 130/11.
6 Croatian Official Gazette No. 116/10, 57/11, 130/11.
7 Croatian Official Gazette No. 76/09, 153/09, 116/10, 145/10, 57/11, 130/11.
8 Croatian Official Gazette No. 153/09, 127/10.
9 Croatian Official Gazette No. 9/94, 117/08, 50/09, 75/09, 18/11.
10 Croatian Official Gazette No. 78/93, 29/94, 16/07, 75/09.
11 Croatian Official Gazette No. 84/08, 75/09.
12 Croatian Offical Gazette No. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10.
13 Article 19c of the Criminal Procedural Law - Official Gazette No.152/08, 76/09, 80/11, 121/11, 9/12, 143/12, 56/13, 145/13, 152/14.
14 Article 34 of the Civil Procedural Law -Official Gazette No.59/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13, 89/14.

in commercial matters, but mostly serves as the appeal court which decides about legal remedies submitted against decision of the Commercial Court as courts of first instance.[15]

- The Supreme Court: Croatian highest court has civil, criminal, commercial and administrative law departments split into various chambers. It ensures the uniformity of the application of the law across the country and decides about submitted appeals against decisions of the country courts in criminal matters and revisions in civil matters.[16]

Administrative cases on the level of first instance are led in front of administrative authorities who legally are in charge of certain fields of administrative matter, while different Governmental Ministries are acting as appeal instance or that role regarding issues appearing from the work of the local territorial units performs separate authorities prescribed by law.[17] Administrative decisions of second instance may be challenged in front of the Administrative Court, while appeals against them are deciding by High Administrative Court introduced on 1.1.2012.[18]

Croatia also has a Constitutional Court, whose powers are set out in Article 122 of the Constitution. The Constitutional Court has wide powers to review the constitutionality of legislation prior and after to its adoption, resolves disputes among jurisdiction of legislative, execution and judicial power, to hear individual complaints about legislation or judicial decisions after exhaustion of the normal appeals process and performs other powers regarding President of the Republic responsibility and legality of elections and political parties work.

2. Current Situation in Croatia – Trends and Developments

The first judicial reform introduced between 1991 and 1992 with 200 mostly experienced judges being replaced by young, inexperienced and mainly politically loyal judges, which resulted in eroded judiciary and quality of judicial work, contributing to increase number of unsolved cases. Aiming to repair this situation, major judicial reforms are underway based on Governmental Strategic Judiciary Reform and Action Plan both brought in 2006 and improved in 2008 and 2010 for future period i.e. until 2018[19], which reform is focused on establishing higher European Union standards i.e. judicial independency, impartiality, transparency and effectiveness of the courts, in order to fulfil criteria prescribed in Chapter 23, Judiciary and Basic Human Rights brought by the Government in 16.2.2010[20] Croatian authorities are enforcing these standards in the following way:

15 Article 34c of the Civil Procedural Law, Official Gazette no. 59/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13, 89/14.
16 Article 119 of the Contitution, Croatian Offical Gazette no. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10.
17 Article 15 Of the Administrative Procedural Law, Offical Gazette no. 47/09.
18 Articles 12 nd 72 of the Law on Administrative Disputes, Official Gazette no. 20/10, 143/12, 152/14.
19 narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3085.hotmail
20 www.mvep.hr/costompages/static/hr/files/pregovori/4/23.pdf.

Independency of judges is improving by new system of judges' appointment and their obligation to get extra education attending the State School for Judicial Official which has become compulsory starting from 1.1.2013. The judge may be elected to higher court only on the basis of marks given by Court Council in accordance with methodology prescribed by the State Judicial Council. In order to improve their status at The Constitutional Court[21] has canalled provisions which limit judges first mandate on 5 years including right of the Croatian Parliament to elect members of the State Judicial Council and State Attorney's Council so today they are elected by judicial officials who are voting directly and secretly. Also the authorities brought Codex of Judges Ethic[22] and Ethic Codex of State Attorney's and Their Deputies.[23] In order to avoid corruption all judges and State Attorneys are obliged to submit regular reports about personal property and property owned by their family members, otherwise they may be disciplinary punished and excluded from their work.

Corruption Departments of the Courts are established in 4 biggest cites in Croatia i.e. Zagreb, Split, Rijeka and Osijek in order to deal with corruption and organised crime.[24] For the first time judges elected to work in that Department of the Courts are exposed to strict security test with the intention to eliminate any suspicion over capacity of their work.

The Law on Judicial Academy is introduced in 2010 in order to ensure permanent judicial education of judges and state attorneys and acceptance of new legal standards which are adopted recently as integral part of judicial reform.

Reduction of lengthy cases i.e. those which are pending longer than 3 years are trying to be achieved by unification of court practice and investments in judicial IT infrastructure which enables Ministry of Justice to follow status of each pending court case. Also judicial authorities intend to improve judicial inspections and ensure better communication with publicity appointed court public representatives. In order to achieve that goal all important procedurals laws i.e. the Criminal Procedural Law, Civil Procedural Law, Administrative Procedural Law, and Enforcement Law have been changed[25].

Reduction of court and state attorneys number – As result of rationalisation measure the number of Municipal courts in Croatia is reduced from 108 to 67, number of Disciplinary Courts is reduced from 114 to 63, number of Municipal State Attorney offices from 71 to 55, number of the County Courts from 21 to 15 and number of County State Attorney Offices from 20 to 15 and the Commercial Courts from 13 to 7.[26] Simultaneously the Ministry of Justice is following fair distribution of cases among the judges, insisting on their specialisation for certain judicial fields and faster litigation process.

Technological modernization intends to ensure more effective monitoring of court activities and better statistic research of successes of their work. For that purpose the authorities have introduced so called e-file ICMS – Integrated Court Case Management System i.e. a

21 Decision no. U-I-695/94, U-I-146/96, U-I-508/96, U-I-589/99 of 15.3.2000 and U-I-508/96 of 21.4.2005.
22 www.vsrh.hr/CustomPages/Static/HRV/.../KodeksSudackeEtike_2006PDF...,
23 Official Gazette no. 25/08.
24 Article 31 of the Law on Office of Coruption and Organised Crime, Official Gazette no. 148/13.
25 Official Gazette no. 112/12, 25/13, 93/14.
26 narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3085.hotmail

unique managing system of court files, while State Attorney introduced CTC – Case Tracking System.

Judicial Inspection exercises by the Ministry of Justice prove its effectiveness by sudden inspections aimed to discover ineffectiveness of judicially and its administration, including inspection of the State Attorneys' work and its administration. When found missing the, inspection is drawing deadline within it needs to be removed.

Legal aid system is established all around Croatia in order to ensure each citizen free access to court in accordance with EU instructions set in Article 6 of the European Convention on Human Rights and Freedoms.

Other reform measures are focused on reform of imprisonment system and education of prison officials and prisoners, construction of new prison capacities, enforcement of newly brought Probation Law in order to decrease number of prisoners. In addition, the authorities have established in Country Courts Zagreb, Split, Rijeka and Osijek, Departments specialised for the war crimes cases which provides testimony via video link and offers protection of witnesses and victims of the crime on the basis of amended Penal Code.[27]

3. Parties Involved in Measuring the Progress of Judicial Reforms in Croatia

Croatian Parliament is legislative authority composed of citizens' representatives in charge of approving new laws including laws important for implementation of legal standards necessary for enforcement of juridical reform. Also it decides about budget resources and determines strategy of future juridical development once when all involved authorities in that process agree about it.

Croatian Government is authority in charge of enforcement for agreed strategy of juridical development in practice and draft of laws and budget proposal important for implementation of the above mentioned strategy. In addition, it coordinates work of state administration involved in that process and follows enforcement of all agreed reform steps.

Ministry of Justice has a key role in organisation and work of juridical administration in civil, criminal, commercial and administrative courts. It is responsible for education of judges and judicial officials, amnesty of sentenced persons and their probation release, coordination of relationship between courts, attorneys and notary publics, inducing care about court technological information, realisation of national and international legal aid, as well as representation of the Republic of Croatia interest in front of international courts and other legal authorities. The Law on Courts and Law on State Attorney's gave Ministry of Justice main position in drafting laws important for effective functioning of court administration,

27 narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3085.hotmail

leading role in court statistics and inspection power over work of all court officials and responsibility for resolution of individual complaints submitted against court administration work. Due to wide range of granted activities and given obligations the Croatian Ministry of Justice become almost the core factor in enforcement of approved judicial reform.

The Supreme Court legally treats as the highest court in Croatia which task is to insure unified implementation of law around the country and equal treatment of all who are included in its enforcement. Therefore the president of each court in Croatia, especially president of the Supreme Court, is very important figure in the process of enforcement of pending judicial reform. He/she has a right to inspect each judge's work and simultaneously is responsible for their education. The Supreme Court uses its General Sessions to issue suggested opinions, draft the laws regarding courts and prepare annual reports to the Croatian Parliament about the state of Croatian judiciary. Due to his/her authority and rights the President of the Supreme Court also has influential role in enforcement of judicial strategic activities.

The State Attorney is considered as an independent and impartial judicial authority responsible to prosecute perpetrators of criminal acts and protect state property interest. Within judicial reform the State Attorney administration activities are almost equalised with duties of court administration, while Main State Attorney of the Republic of Croatia who is appointed by Croatian Parliament and coordinates all State Attorney offices around the state also has a key role in creation and implementation of judicial reform activities.

The State Judicial Council is in charge of election, replacement and dismissal of judges, including establish of their and court presidents' disciplinary reasonability. As independent authority also contributes in education of judges and has a huge impact on their impartiality and professional work. The Law on Judicial Academy has entitled the Council to elect successful candidates who are applying for the State Scholl for the State Judicial Officials, improving on that way quality of court administration work.

The State Attorney's Council is independent authority which almost has the same right as the State Judicial Council since it's in charge of election, replacement and dismissal of State Attorneys on municipal and county level, including right to establish they possible disciplinary reasonability. As independent authority also contributes in State Attorneys education and has a huge impact on their impartiality and professional work. Like the State Judicial Council, the State Attorney's Council is entitled to decide about successful candidates who applied for the State Scholl for the State Judicial Officials and also improving in that way the quality of entire judiciary works.

The Judicial Academy is considered as central institution for education and improvement of court officials' knowledge. It offers education program prepared by so-called Program Council which is available to all judges, judicial officials and court practicing lawyers i.e. assistants. In order to cover all fields of legal practice the Academy is cooperating with private judges, the State Attorneys, Croatian Bar Chamber and Notary Public Chamber, Faculties of Law and different international institutions mainly EU institutions.

The Croatian Bar Chamber composed of all practicing attorneys in Croatia follows and researches relationships and phenomena which are of interest for protection of human rights and freedom as well as rights of the attorneys' interest. Using that date it issues reports, proposes legal changes and measures important for effective functioning of the Croatian judiciary playing in that way an influential role in strategy of judicial development.

The Croatian Notary Public Chamber which represents all notary publics in Croatia, although legally described as independent and impartial profession in certain procedures is replacing courts acting as their commissioner since it is in power to lead inheritance and enforcement cases. Performing that task the notaries contribute easier judiciary work and legal security of each citizen and legal entity. They have a huge importance for development of Croatian judicially since notaries' rights and permanently legally extending.

Committee for Following Enforcement of the Strategy of Judicial Reform[28] is established in 2006 and composed of representatives of all authorities mentioned before i.e. Ministry of Justice, President of the Supreme Court, Main State Attorney and State Judicial and State's Attorney Council, Presidents of Croatian Bar and Notary's Public Chambers, including Head of Judicial Academy. Its main purpose is to develop coordination and cooperation among these authorities which are responsible for enforcement of strategic development of the judiciary.

Department of Strategic Development of the Judiciary[29] as a part of the Ministry of Justice is body in charge of strategy and reform data collection and its analysis, preparation of reports and professional help to the previously mentioned Committee.

Other Actors - The process of judicial reform is permanently followed by EU institutions which are from the beginning actively involved and surely will be included during all period of enforcement of standards set in the Strategic Judiciary Reform and Action Plan. Besides them there are different national and international NGOs, which are following results of so far taken judicial reform steps issuing annual reports, pointing on weak parts of applied reform and giving regular proposals for future judicial activities.

4. Challenges for the Process of Measuring Judicial Reform in Croatia

Judicial reform in the post socialist period after dissolution of former Yugoslavia was a part of major reforms introduced in order to ensure Republic of Croatia as new established European country transition to democracy and secure future EU membership. Therefore certain early judicial reform steps during post war period were more cosmetic then they really served to improvement of judicial independency and impartiality. However, as Croatia moved closer to its EU membership taken reform steps become more systematic and serious bringing better results which were possible to follow through the European Commission annual reports. However, although today Croatia is a full member of EU attempts to influence judiciary work

28 narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3085.hotmail
29 narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3085.hotmail

still exists among two main political parties. Therefore the Constitutional Court was forced to change certain provisions of the State Judicial Council member i.e. authority in charge to elect judges, so that Law was amended and provision which provided that members of the Council are elected by the Croatian Parliament and Croatian politicians become cancelled. However, politicians are permanently trying to keep control over judiciary although aware that Croatian Constitution strictly separates judicial from executive power and prohibit any influence among them.

5. What Has Been Measured in Relation to Judicial Reform in Croatia?

- Supreme Court President's report on judiciary in 2014.[30] The implicit methodology of the report was to examine the reform qualitatively from the perspective of those affected (mainly judges, but also lawyers and court users i.e. citizens). Expressed report's conclusions [31]are slightly critical about archived reform results regarding the number of employed judges which is still among the biggest in EU i.e. 1.903, while in judicially in Croatia totally is employed 8.669 officials. Although number of unsolved cases is decreasing (currently they are in total 616.968 pending cases which also includes land and court registry cases). The number of newly received cases in 2014 is still higher than in comparison with other EU member states i.e. 1.322.643 new cases, but despite introduced structural changes the worst situation with backlog of cases is in front of the Administrative Courts. There is quantitative part of analysis which proves that the reform was not fully cost-effective since debt over intellectual services of appointed defendants in criminal cases through the legal aid system and engaged experts still exists. Also there is lack of resources for specialization of judges for certain type of cases and additional IT technology improvement. This report was widely reported in the media and it was presented to the Parliamentary Committee for Jurisdiction which accepted it on its 67. Session was held on 19.5.2015.

- Council of Europe Commission for the Justice System report on EU Justice system 2014 Efficiency and quality of Justice.[32] This study examined the phenomenon of reforming judicial maps in Croatia and other European countries. The study acknowledged that reforms of judiciary in Croatia were primarily about efficiency and described the process as effort to move close to EU judicial standards, highlighting legislative reform, implementation of ICMS, rationalization of judicial bodies as central points. The main indicators used were quantitative, looking at coverage areas of courts, the speed of justice, and access citizens to court.

30 www.sabor.hr/izvjesce-odbor-pravosudje-s-rasprava-o-izvj0006
31
32 www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/croatia_2014.pdf.

6. How Has Judicial Reform in Croatia Been Measured

There are two approaches applied in monitoring the work of the judiciary:

- Quantitative tools - measuring judicial reform focus intensely on data and statistics have looked at the effectiveness and expenses of the judicial system, as well as efficiency of judiciary work. Significant attention has been also given to the relationship between changed court structure and the distribution of cases among them as part of strategy on reduction of case-backlog.

- Qualitative tools: Although there is no explicit model for measuring satisfaction of introduced judicial reform steps this kind of measurement follows both satisfaction of citizens with the judicial system and satisfaction of authorities with the way how that system works. The satisfaction of citizen measurement is not well developed and has relied primarily on statistics about court attendance and use, and surveys of the public. The second model is more intensive way of scrutiny where authorities are measuring all reform activities and their results in accordance with EU guidelines in order to satisfy standards which sometimes ignore specific needs of Croatian judiciary. The measuring satisfaction of people working in the justice system i.e. mainly judges and other court employees is missing since they are viewed as those who purely serve to enforce reform measures established by the authorities. However, that approach needs to be changed since they play influential role during judicial reform process and have a better overview of results achieved by taken judicial steps.

7. Key Conclusions and Findings

Introducing judicial reform since justice is considered as important constitutional value, Croatian authorities are primarily trying to short current length of court procedure but they miss carefully to analyse type of procedures and courts which are producing biggest backlog of cases. Without appropriate analysis of weakness of introduced judicial reform and identification of main problem is impossible to select adequate measures which can solve them. Also without clear indicators of existing judicial situation is hard to follow whether introduced measures are giving willing result and targeting to the core part of actual judicial problems. Current reorganisation of judicial system is focused on pure change of court territorial structure, its technological i.e. IT improvement and informatization, new internal organisation of courts, introduced change of the appeal procedure by new Law on Court Areas and Residences and new Civil Procedural Law, are not followed with appropriate data on effectiveness of court work expecting to be gained by proposed reform measures. The lack of such information is preventing future evaluation of provided reform steps once they become implemented in practice.

New territorial structure of courts which plans to reduce their number from total 208 to 95

does not explain whether this reduction is sufficient to get expected result. Knowing that Croatian economy partly is stacked due to non-reasonable long trials pending in front of the Commercial Courts it is hard to understand why that Courts do not treat as focal points of introduced judicial reform and why Croatian authorities failed to establish High Criminal Court in order to unify lower courts' practice in that type of cases, including introduction of special employment-issue courts on the county level. Promoted territorial judicial changes are more focused on easier shift of judges between different courts without matter of the acceptance, instead of care about a distance which citizens are forced to travel in order to reach the court and amount of appeared travel costs, which should not be ignored in existing crisis situation in Croatia. In addition, effectiveness of court administration cannot be improved only by fusion of different courts and introduction of Director of Judicial Administration without developing his/her and court presidents' manager skills.

The improvement of the appeal procedure via electronic delivery of second instance judgements and opportunity of any higher court in Croatia to be chosen to decide about appeal submitted against first instance court judgment hardly can reduced existing length of court procedure and appeared costs, since court file in that situation needs to travel from one to another part of country. Such practice is not only time consuming but it's also costly and surely will influence length of the appeal procedure which introduced reform measures are trying to reduce. Instead of that the promoted judicial reform should be focused on identification of reasons which cause significant backlog of cases in front of 4 biggest courts in Croatia i.e. Courts in Zagreb, Split, Rijeka and Osijek. Once authorities establish whether backlog is result of ineffective administration of those courts, lack of appropriate professionals and resources for their work or because of other reasons, it will be possible to choose measures which may help to remove that obstacle. Partly that phenomenon is result of badly amended laws which are forcing judges to waste part of their time seeking for appropriate interpretation of disputable legal provisions which should be clearly structured and easily implemented.

Although newly introduced IT information system serves for better connection of the courts around Croatia it should not serve as pure statistic tool for impression of publicity. It has to reduce length of court procedure and improve communication between the courts, their relationship with other authorities and individuals who are using their service. Also the IT system has to reduce judiciary costs, improve payment of the court fees and create so called e-files available to all parties involved in the court procedure in order to make it transparent and help to establish full trust over effectiveness of Croatian judicial system. Otherwise if authorities in charge of reform ignore these problems they will erode the power of the judiciary and keep it controlled by the executive power as it mostly has been before entrance to EU.

ESTONIA

Background of Judicial Reforms in Estonia

Estonia has gone through similar path of establishment of statehood beginning from the first decades of the 20th century as the other Baltic States (Lithuania, Latvia). These states experienced more than 50 years of Soviet occupation. In this respect the Baltic countries had similar justice system, which mostly reflected the Soviet legal tradition. After the restoration of independence on 20 August 1991, Estonia started the creation of legal systems, which would meet the standards of democratic states and the principles ensuring the rule of law. The experience of old democratic traditions and legal systems was followed in the process of drafting new laws and creating modern justice systems.

On 16 May 1990 the Supreme Council of the Republic of Estonia adopted the Principles of Temporary Procedure of Estonian Government Act, putting an end to the subjection of the Supreme Court of Estonia to the Supreme Court of the USSR. The administration of justice on Estonian territory was separated from the judicial power of the USSR and given into the sole competence of Estonian courts.

On 20 August 1991 the Supreme Council of the Republic of Estonia passed a resolution "on the independence of the Estonian State and on the formation of the Constitutional Assembly", by which the independent Republic of Estonia was restored.

A few months later, in October, the Supreme Council of the Republic of Estonia passed the Republic of Estonia Courts Act and the Status of Judges Act. The referred Acts were passed to resolve the issues related to the judicial office and functioning of the court system. These Acts were the foundation for the creation of a three-level court system. The next important step was taken in the spring of 1992, when the Supreme Council passed a resolution on the judicial reform. According to the resolution the Supreme Court was to be re-established.

On 28 June 1992 the Constitution was adopted by a referendum. Pursuant to the Constitution Estonia has a three-level court system, comprising the county courts and administrative courts, the circuit courts and the Supreme Court.

Estonia became member of European Union on 1 May 2004.

It is worth stressing that administration of justice systems in Estonia Ministry of Justice plays significant role. Accordingly, the process of reforms' implementation should be also analyzed in the light of the role of executive and judiciary as well as the reforms' planning and implementation peculiarities.

1. Description of the Estonian Justice Model

Estonia's court system consists of three instances: county and administrative courts are the first instance courts; circuit courts are the courts of the second instance, and the Supreme Court is the third instance. The formation of emergency courts is prohibited by the Constitution.

The structure of Estonia's court system is one of the simplest in Europe. The peculiarity of the system lies in the fact that the Supreme Court performs simultaneously the functions of the highest court of general jurisdiction, of the supreme administrative court as well as of the constitutional court.

There are 242 judges employed in Estonia's court system. According to the Constitution of the Republic of Estonia the Chief Justice of the Supreme Court is appointed to office by the parliament Riigikogu, on the proposal of the President of the Republic. Justices of the Supreme Court are appointed to office by the Riigikogu, on the proposal of the Chief Justice of the Supreme Court. Other judges are appointed to office by the President of the Republic, on the proposal of the Supreme Court.

Circuit courts are the courts of second instance and shall review judgments of county and administrative courts on the basis of appeals against judgments and rulings. The circuit courts are in Tallinn and in Tartu. There are 43 judges in circuit courts all together.
County courts are the courts of first instance and hear all civil, criminal and misdemeanour matters. There are 4 county courts (Harju, Viru, Pärnu, Tartu) with 153 justices. County courts divide into courthouses.

Administrative courts as courts of first instance shall hear administrative matters. There are 2 administrative courts (Tallin and Tartu) with 27 justices. Administrative courts are divided into courthouses.

2. Parties Involved in Measuring the Progress of Judicial Reforms in Estonia

Administration of courts, self-governance of the judiciary
Compared to Lithuanian system of administration of justice as an autonomous one, Estonian model has more features of decentralized system, where executive power, i.e. Ministry of Justice, plays significant role.

On 19 June 2002 a new Courts Act was passed, which entered into force on 29 July 2002. A very important change introduced by the Act was the establishment of the Council for Administration of Courts. The aim of establishing the Council was to involve the judges of all court instances in making the decisions concerning the whole judicial system, as up to then it was only the Ministry of Justice who had governed the first and second court instances. The creation of the Council for Administration of Courts was an important step in the formation of an integral and independent court system, as referred to in the Constitution.

The Constitution of the Republic of Estonia establishes that justice shall be administered solely by the courts. The courts shall be independent in their activities and shall administer justice in accordance with the Constitution and the laws. According to the spirit of the Constitution the court system of Estonia forms a uniform whole, having the exclusive competence to perform the function of administration of justice and being separated from both the executive and the legislative powers in the performance of this duty.

Yet, the administration of the courts in Estonia is not independent and separate from the executive power. The first and second instance courts are financed from the state budget through the budget of the Ministry of Justice. Courts of the first instance and courts of appeal are administered in co-operation of the Ministry of Justice and the Council for Administration of Courts.

The most important decisions concerning the court system and relating to administration of courts are first discussed and approved by the Council for Administration of Courts. So far, Estonia does not have special state institution or administrative authority which would be responsible for the courts' administration as a whole.

The Supreme Court, being an independent constitutional institution, administers itself and is financed directly from the state budget. Issues of court administration belong to the competence of the Parliament, the Supreme Court and the Ministry of Justice.

Administration of courts of first instance (county courts) and courts of appeal (circuit courts) on daily basis falls within the competences of the Ministry of Justice.

The Minister of Justice:

- determines the territorial jurisdiction and location of courts of first instance and courts of appeal, as well as the total number of judges to be appointed to office at each of the above-mentioned courts,
- appoints the chairmen of county and circuit courts with the approval of the Council for Administration of Courts.

The Ministry of Justice may audit the organisational and financial activities of courts of first instance and courts of appeal.

The Supreme Court has the role of guaranteeing proper functioning of administration of justice in the court system, especially through organizing the work of judges' self-government bodies. The self-government bodies of judges' play an important role in the development of the court system through the decisions they take concerning the development of the judiciary. There are 5 such bodies in Estonia: Court en banc (comprised of all Estonian judges); Council for administration of courts; Disciplinary chamber; Judge's examination committee; Judicial training council. The majority of the self-government bodies function using the administrative support of the Supreme Court's officials, two of those bodies – the Court en banc and the Council for Administration of Courts are directed by the Chief Justice of the Supreme Court. The Supreme Court performs the following functions in the administration of courts of lower instances:

- reviews the applications of candidates for judicial office and makes recommendations for running as a candidate for judge,
- resolves appeals filed against the decisions of the judge's examination committee and the decisions of the Disciplinary Chamber,
- decides the commencement of disciplinary proceedings against the Chief Justice of the Supreme Court.

The Council for Administration of Courts

Courts of the first instance and courts of appeal are administered in co-operation between the Council for Administration of Courts and the Ministry of Justice. The Council for Administration of Courts is comprised of the Chief Justice of the Supreme Court, five judges elected by the Court en banc for three years, two members of the Riigikogu, a sworn advocate appointed by the Board of the Bar Association, the Chief Public Prosecutor or a public prosecutor appointed by him or her, the Legal Chancellor or a representative appointed by him or her, The Minister of Justice or a representative appointed by him or her shall participate in the Council with the right to speak.

Council sessions shall be convened by the Chief Justice of the Supreme Court or by the Minister of Justice.

The Council grants approval for:

- the determination of the territorial jurisdiction of courts, the structure of courts, the exact location of courts, the number of judges and the lay judges in courts,
- the appointment to office and premature release of chairmen of courts,
- the determination of the internal rules of courts,
- the determination of the number of candidates for judicial office,
- the appointment to office of candidates for judicial office,
- the payment of special additional remuneration to judges.

The Council shall:

- provide a preliminary opinion on the principles of the formation and amendment of annual budgets of courts,
- provide an opinion on the candidates for a vacant position of a justice of the Supreme Court,
- provide an opinion on the release of a judge,
- deliberate, in advance, the review to be presented to the Riigikogu by the Chief Justice of the Supreme Court concerning courts' administration, administration of justice and the uniform application of law.

3. Current Situation in Estonia – Trends and Developments

Estonia is considered as of the most progressive new MS in respect of development and use of ICT tools in public sector, particularly in justice. One of the most important features is the systematic approach in the area of *"electronization"* of public services. It means that new initiatives and solutions are evaluated and introduced not in one institution. Sector wide approach is applied.

E-File
The E-File is a central information system that provides an overview of the different phases of criminal, civil, administrative and misdemeanor proceedings, procedural acts and court adjudications to all the parties involved, including the citizen and their representatives. It is an integrated system for proceedings enabling the simultaneous exchange of information between different parties.
The e-File saves time and money as data are only entered once and the communication

between parties is electronic. It is also safe and secure because the files are in a server that requires an ID-card and password for access. Last but not least, it enables a completely digital workflow for all the parties to the proceeding process and provides precise statistics in the legal protection field.

The e-File project received a special mention at the 2014 European Crystal Scales of Justice Awards. The e-File is a European Union funded project.

The part of the e-File is Public e-File, which is visible to everyone. Public e-File enables citizens to initiate civil, administrative, judicial and misdemeanor proceedings and monitor these proceedings as well as submit documents to be processed. E-File is a web-based information system, which collects documents related to civil, administrative, criminal and misdemeanor proceedings as well as the related actions, data and processes. E-File enables parties to proceedings and their representatives to submit proceedings' documents to the court electronically and monitor the progress of the related court proceedings. Citizens can also dispute claims and decisions as well as make inquiries in the Punishment Register regarding themselves and other people. In the system, individuals can only see the proceedings in which they themselves are involved.

Modernization of the Court Information System (KIS)
KIS is a modern information management system for Estonian courts offering one information system for all types of court cases. KIS enables the registration of court cases, hearings and judgments, automatic allocation of cases to judges, creation of summons, publication of judgments on the official website and collection of metadata.
The latest generation KIS includes new classifiers based on courts' needs, for example types of cases (e.g. litigious and non-litigious), categories of cases (e.g. bankruptcy) and subcategories (e.g. initiation of bankruptcy proceedings against legal persons). As a tool for judges, the second generation KIS represents a valuable evolution, with searches based on phases of proceedings (e.g. acceptance of a civil action, assignment of a case, pending response of the defendant), issuing of reminders, and monitoring of the length of time spent on each phase.

4. Challenges for the Process of Measuring Judicial Reform in Estonia

Merger of district courts
Since 2006 the issues of integrity and independence of the court system have been discussed with increasing intensity. On 1 December 2006 the first meeting for the discussion of development principles of the judicial system was held, and on 9 February 2007 the Estonian Court en banc adopted the principles of development of the judicial system, which envisage the merger of all three court instances into a single independent and self-administering whole.

- Until the reform there were 16 first instance courts of general competence:

2 city courts and 14 county courts. 16 county courts in 19 locations- 3 to 50 judges per court (50% of courts with 5 judges or less

- Administrative courts in 4 locations – 3 to 15 judges (3 courts with 6 judges or less)
- Uneven workload of judges – incoming cases per judge: 200-500 cases per judge (up to 250%)
- Due to uneven workload remarkable differences in average proceedings times (up to 800%)
- Difficulties with specialisation of judges (mostly due to small number of judges per court) – negative impact on the quality of judgments

Seeking to balance the workload of these courts, to optimize length of the proceedings and to ensure quality of courts activities without creating any restraints of the right to justice, the initiative of merging those courts was introduced.

The WG under the Ministry of Justice was created in May 2004. At the same time discussions with stakeholders started. WG prepared the concept paper with statistical analysis and went on a tour around the country with the presentations and explanations about the main idea, the scope and goals to all judges and also the heads of regional administration. Discussions with the prosecutors and Bar Association were also organized. After the tour the draft law + the explanatory letter were prepared. Then thorough discussions at the Court Administration Council started. This institution is a collegial body, responsible for the main decisions regarding court administration in Estonia (comprising of 6 judges, 2 MPs, representative of the Bar Association, the Legal Chancellor and the State Prosecutor); the Minister of Justice only has the right to speak at the meetings, but no right to vote. After a 2-day meeting the Council approved the reform package in September 2014.

On 22 February 2005 Amendments to the Law on Courts of the Republic of Estonia and some amendments to procedural laws were adopted by the Parliament and came into force from 1 January 2006. 10 months were left to prepare for the implementation. At this stage discussions with court presidents and court managers had taken place as well.
It is important to pay attention to the fact that economic/financial effect was not the main intention of this initiative. Thus such kind of calculations of expected results were not exercised expressly.

After the reform in Estonia 4 merged courts began their activity:

- Parnu district court (5 courthouses, 22 judges);
- Tartu district court (6 courthouses, 35 judges);
- Viru district court (3 courthouses, 30 judges);
- Harju district court (3 courthouses, 66 judges).

Courthouses belonging to the jurisdiction of one district court comprise one legal entity (courthouses do not possess status of legal person).
The jurisdiction of every district court is prescribed by the Minister of Justice.
The jurisdiction of courthouses has not changed after the reform. The main change is that

the district court's jurisdiction covers all the territory of respected court with all courthouses which comprise this court.

Though there are some special jurisdiction rules which help to balance workload of these courts. For example, issuing of judicial order (usually payment orders, when there is no dispute on the fact and amount of dept) is prescribed solely to the competence of Parnu district court. These orders are issued only electronically, the process is standardized, so this process is organized in such an effective way, that 36 employees of Parnu district court issue 40 000 orders per year which comprise 60 percent of all civil cases.

Judges are appointed to the district court without strict attribution to concrete courthouse, but the candidate is notified in which courthouse the position is vacant so he/she would predict where would be the office.

The number of judges in district courts and distribution of posts is established by the Minister of Justice.

The court is leaded by the President of the Court and the Director of the Court. The President is responsible for the management of justice administration and is accountable to the Minister of Justice.

Director is appointed by the Minister of Justice. He/she is responsible for management of courts recourses, for financial accountability, for preparation of draft budget of court, also ensures effective use of budget allocations, recruits and dismisses employees, etc. Director is not accountable to the President of the court, only to the Minister of Justice.

According to the Law very important judicial self-governance institution in every district court was established - Chamber (Board), consisted of all judges of the respective court. This institution approves annual work plans, decides which judges will have to go to other courthouses for court hearings if necessary next year, advises the President on all the issues related to the administration of courts' activities, especially balancing the workload, distribution of judges in courthouses, etc.

5. What Has Been Measured in Relation to Judicial Reform in France and How Has Judicial Reform in France Been Measured

In Estonia the reform has being evaluated positively. After two years of operation of new system the measurement of the results and effectiveness of the reform was performed by the Ministry of Justice in cooperation with courts and Council. The methodology for monitoring the results of the reform was analysis of court statistics – as the main aim was to get rid of the differences in workload of judges and proceeding times these indicators were basically monitored. As it was already mentioned cost savings were not the aim, but after the reform

the possibility to re-allocate judicial resources more flexibly was created and this enabled the system rather to avoid some costs which otherwise would have been appeared.

It was established that in general expected results were achieved completely:

- Hundreds of cases solved by judges from other courthouses of the same court;
- Flexible reallocation of judicial posts within the same court;
- Workload has been balanced: before the reform the workload in civil cases differed 2,5 times, after two years – 1,3 times; respectively in criminal cases the numbers are 3 and 1,5;
- Differences in average proceeding times between courts ~ 10% in civil cases, ~30% in administrative cases and ~40% in criminal cases;
- Economical effect was also achieved – after the centralization of material technical supply services, when major amount of goods and services are purchased, the cost is much lower. Further administrative expenditures for the salaries of Presidents and Directors, also some functions which were merged to one entity (for example, financial departments) of merged courts were saved. Every court entity saved up to 20 percent of budget and these savings were used for other needs and improvements in courts activities;
- Ministry of Justice is less involved in equalising the workload of courts/courthouses; most problems are dealt with at the court level;
- The administrative capacity of courts has improved (larger courts, more discretion in administrative matters, more capable managers).

6. Key Conclusions and Findings

Overall, the findings from this analysis include that:

- The reform was planned, performed and evaluated in a comparatively short time period. This experience should be considered as an example of a very effective performance of significant changes;
- Proper communication and involvement of stakeholders (judges and other players of justice system) allows diminishing the risk of resistance, to identify needs of the system more precisely and to ensure the effectiveness of changes;
- Estonian system of administration of justice, where Ministry of Justice is an important player, allows planning and implementing justice sector reforms efficiently, because initiative comes together with political support. It facilitates the process;
- It has to be admitted that the smaller is the system, the easier is the implementation of any systematic changes.

FRANCE

Background of Judicial Reforms in France

Judicial reforms take place regularly in France. Already in 1881, the author Georges Picot published a five-hundred-page volume on the topic (La Réforme Judiciaire en France); updating it would be the work of a lifetime. Perhaps because France is one's of Europe's oldest democracies, and its judicial institutions have often developed organically (see, in particular, the description of the system of administrative courts below at point 2), it is hard to point to a single moment of major reform and an evaluation of it. In particular, there does not seem to have been any major reform motivated by European integration or the need to satisfy European standards of justice. Those who have studied recent reforms[33] point to the "managerialisation" of justice in France and other, nearby jurisdictions since the 1970s, with various changes designed to ensure efficiency and reimagining justice from a customer-service perspective. A major reform in this respect was the transfer of responsibility for the organisation of the judiciary from local to central government in 1983, but otherwise most of this recent reform movement is defined by a series of small adjustments.

The last decade has nonetheless seen two significant, clearly demarcated judicial reforms in France which have been the subject of sustained attention and on which this paper focuses, because of the availability of information about them:

33 See, e.g., Cécile Vigour, « Politiques et magistrats face aux réformes de la justice en Belgique, France et Italie », in Revue française d'administration publique, 2008:1 (available at http://www.cairn.info/zen.php?ID_ARTICLE=RFAP_125_0021#re23no23.)

- Reform of the judicial map[34]. The reform's clear overall purpose was to reduce the inefficiencies in the justice system resulting from a mismatch between the number of courts and personnel on the one hand and practical demands on the justice system on the other; the focus was on eliminating courts that were not needed. This politically sensitive reform began in 2007; it ended in 2011.

- Amendment of the constitutional provisions governing the judiciary. In 2008, the Constitution was amended to change the status and composition of the High Council of the Judiciary, whose mission (which has remained intact) is to assist the President of the Republic in ensuring the independence of the judiciary. Previously, the President of the Republic was the president of the Council and the Minister of Justice was its Vice-President. Now the President of the Republic is not mentioned as playing a role within the Council itself, and the Minster of Justice is only mentioned as being permitted to attend Council meetings (except when the Council is conducting disciplinary hearing for judges). The reform also expanded the competences of the Council. The amendment was clearly designed to reinforce the independence of the judiciary.

There is still appetite for further reform in France, described in further detail below (section 3).

1. Description of the French Justice Model

There are two distinct court systems in France: the "judicial justice" system, staffed by judges referred to as "judicial judges"; and the administrative justice system, staffed by administrative judges. The French State[35] recognises that this system is unusual (although it has been adopted by some other countries, such as Greece) and results largely from the historical development of the French judiciary and a historical understanding of administrative justice as being part of the administration (i.e. the executive branch).

The French Constitution (the Constitution of the Fifth Republic) does not describe the justice model in much detail. Apart from vague provisions on the independence of the judiciary and the President of the Republic's role in maintaining it, the main provision of the Constitution governing the judiciary is Article 65, which provides for a High Judicial Council. Article 65 calls for the High Judicial Council to have two sections: one governing judges (i.e. judicial judges) and the other governing public prosecutors. Article 65 is understood as referring only to the system of judicial justice, not the system of administrative justice.
The Constitution also provides for the existence of several institutions which play a key role in the French justice system:

34 This means the way territory in France is assigned to different courts; another way to put it in English would be to refer to "reform of judicial catchment areas".
35 See http://www.vie-publique.fr/decouverte-institutions/institutions/approfondissements/juridictions-administratives-specificite-francaise.html.

- the Constitutional Council (a kind of constitutional court to which there is no right of individual petition, and whose main role is to examine the constitutionality of proposed parliamentary legislation);
- the Council of State (which, among certain executive functions, also serves as the court of last instance in administrative disputes – although this function is not described in the Constitution); and
- the Court of Cassation (the Supreme Court for the system of judicial justice).

The Constitution leaves it to Parliament to organise the judicial system around these institutions. The existence of the two systems of justice is made clear in primary legislation. Legislation also provides for the existence of a High Council of Administrative Courts and Administrative Courts of Appeal, which is modelled on the constitutionally-mandated High Judicial Council.

There is no "Supreme Court" governing both judicial orders. A Court of Conflicts set up by national legislation decides which system of justice (judicial or administrative) shall deal with a given matter when there is a conflict, and decides what to do when there are conflicting judgments from the two orders concerning the same matter.

The 2008 amendments to the Constitution allow courts from both systems (judicial justice and administrative justice) to refer "preliminary questions of constitutionality" to the Constitutional Council in the context of live disputes.

2. Current Situation in France – Trends and Developments

The authorities are actively pursuing moves towards greater efficiency. There are two major judicial reforms currently underway, both being driven by the Ministry of the Justice.

- J21 – Twenty-First Century Justice. This reform has various slogans associated with it, notably: "The citizen at the heart of the Justice Service"; and "Justice in the 21st century is felt day-to-day". The reform promises fifteen actions grouped around three slogans: "more accessible justice",[36] "more efficient justice", and "more protective justice". The reform programme names various actors it seeks to engage, notably citizens, judges, civil society, and prosecutors. The reform package is easily described as prioritising a "managerial" approach and uses language that has a customer-service ring to it. The Minister of Justice presented a bill designed to carry out these reforms on 31 July 2015.
- Criminal Reform. This has arguably now been subsumed into the J21 reforms, but is still branded independently by the Ministry of Justice. The reform aims at increasing the protection of citizens through increased efficiency. The criminal system will be more individualised and ensure, inter alia, that victims as well as those leaving prison receive more bespoke support.

36 This can also be translated as "closer justice".

These reforms are subject to criticism, notably from judges: the two major judicial trade unions expressed disappointment,[37] for example, with the bill presented on 31 July 2015.

3. Parties Involved in Measuring the Progress of Judicial Reforms in France

Ministry of Justice. The body responsible for evaluating the judicial system in France is the Inspectorate General of Judicial Services. This body exists within the Ministry of Justice and appears to have no independence at all; it certainly has no independent budget.[38] The Inspectorate's main role appears to be to respond to sporadic requests for thematic reports from the Minister. The Ministry of Justice website[39] provides an easily understandable explanation of the Inspectorate as well as a six-minute video, mainly featuring the Inspector General describing his body's role. There is no specific list of publicly available reports from the Inspectorate, however, and some of the Inspectorate's reports can be difficult to find. The easiest place to look for them is on a general government website for access to public documents[40] where it is possible to enter the Inspectorate's full name as keywords. The result is a heterogeneous collection of some 57 publications, most of them co-authored by the Inspectorate and other government bodies and/or government-appointed experts. A small number of the reports deal with the evaluation of some judicial reforms, but many of the reports are about individual cases which received wide media attention or other reactive issues. The Ministry of Justice also collects and publishes statistical data about the functioning of the judicial system.

High Judicial Council. In addition to the appointment and discipline of judges, the Council has a broad constitutional role in assisting the President of the Republic to ensure the independence of the judiciary. The Council does this in two main ways: responding to requests for opinions from the President; and offering the President unsolicited opinions. These opinions are easily accessible on the Council's website[41] and grouped thematically. These are, however, nothing more than opinions, and tend to be quite brief (usually a few hundred words). Some of the opinions are on general topics, including proposed reforms, whilst others concern very specific issues, such as particular incidents.

Council of State. The Council of State (which serves, inter alia, as the court of last instance in administrative matters) can deliver opinions at the request of the Government and does so on a range of matters, including judicial reform. For example, the Council of State delivered an opinion on the "J21" judicial reform proposals.[42] However, it appears that this mechanism is designed to provide legal advice for the Government, and the Government has the choice as to whether to make these documents public.

37 From the Syndicat de la Magistrature: http://www.syndicat-magistrature.org/Justice-du-21eme-siecle-vivement.html. From the Union Syndicale des Magistrats: http://www.union-syndicale-magistrats.org/web/n760_la-justice-du-21eme-siecle-.html.
38 A somewhat outdated brochure in English can be found at http://www.justice.gouv.fr/art_pix/1_rapport_simplifie_igsj_gb.pdf.
39 http://www.justice.gouv.fr/le-ministere-de-la-justice-10017/inspection-generale-des-services-judiciaires-10027/
40 http://www.ladocumentationfrancaise.fr/
41 http://www.conseil-superieur-magistrature.fr/
42 The opinion, published on 1 August 2015, can be found at http://www.legifrance.gouv.fr/Droit-francais/Les-avis-du-Conseil-d-Etat-rendus-sur-les-projets-de-loi/Projet-de-loi-portant-application-des-mesures-relatives-a-la-justice-du-XXIeme-siecle-JUSX1515639L-31-07-2015.

Parliament. The French Senate is particularly proactive in examining the justice system and delivering reports. These are usually but not always in response to proposed legislation. Some call for future legal reforms.

Judges' unions. There are two main judges' unions in France and these also produce reports evaluating the system of justice, naturally from the perspective of the interests of judges (particularly that of the independence of the judiciary). The reports are brief and cannot be said to amount to an evaluation.

Bar associations. Lawyers in France are admitted to local bar associations, which are grouped together under the National Council of Bar Associations. The National Council also produces reports that can bear on the evaluation of judicial reforms, but these reports are usually prospective (reacting to proposed changes).

Other actors. Civil society is not particularly active in France in relation to evaluating the work of the judiciary. It is notable that France is the only country in Western Europe (and one of the only countries in the European Union) where the International Commission of Jurists[43] does not have a local branch or any other activities: the ICJ is an NGO "composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems". (They also do not cover Macedonia.) The Council of Europe's Commission for the Efficiency of Justice has looked at France along with other Council of Europe Member States, and issued a particularly detailed comparative study[44] of France, Italy, the Netherlands, Croatia, Serbia, and Slovenia, which unfortunately dates from before the two reforms on which this paper focuses.

4. Challenges for the Process of Measuring Judicial Reform in France

As will be seen below, the work of measuring judicial reform or judicial performance generally, in France is now largely quantitative and centred on the efficiency of justice system. There is little focus on justice as a democratic or constitutional value; it is a public service.
This translates into a lack of agreed criteria for measuring reforms. Interestingly, the 2006 Council of Europe report identified above[45] sets out a non-exhaustive list of principles on the basis of which the Ministry of Justice evaluates the performance of the judiciary: (free) access to justice; independent and impartial judges; two levels of jurisdiction (i.e. the possibility to lodge an appeal); supervised implementation of the law; the publication of reasons for decisions; and the right to a defence. The report refers to a Ministry of Justice web page, which no longer exists, setting out these "principles". There is another web page[46] which explains the principles of justice to citizens, and notes three "traditional principles"

43 See www.icj.org.
44 CEPEJ, "Monitoring and Evaluation of Court Systems: A Comparative Study", December 2007, available at http://www.coe.int/t/dghl/cooperation/cepej/series/Etudes6Suivi_en.pdf.
45 See note 44.
46 http://www.vie-publique.fr/decouverte-institutions/justice/definition/principes/

of justice: that it is equal, free of charge, and neutral. The page cites other principles, such as publicity and judicial independence. However, there appears to be no stable, recognised set of criteria for evaluating the justice system as a value in and of itself, meaning that any reform can only be evaluated based on the specific goals sought for it, or by reference to whatever principles the evaluator chooses to apply (lately, efficiency and customer service).

5. What Has Been Measured in Relation to Judicial Reform in France?

The most widely evaluated reform in France in recent times has been the reform of the judicial map. The following are the main evaluations that were done:

- A report by the French Senate in 2012.[47] The implicit methodology of the report was to examine the reform qualitatively from the perspective of those affected (mainly judges, but also lawyers and court users). The report's conclusions are critical of the reform. There is some quantitative analysis demonstrating that the reform was not cost-effective. The report struck a chord: it was widely reported on in the media and taken up by various stakeholders interested in the reform, and the Ministry of Justice felt compelled to respond to it by commissioning its own follow-up evaluation.
- An evaluation commissioned by the Ministry of Justice by three experts and completed in 2013.[48] This evaluation was commissioned in response to the Senate report. The evaluators concentrated on geographic areas where courts had been eliminated and where the Senate claimed this had had a negative effect; their brief was to propose intermediate solutions for those areas and evaluate the reform more generally. The report more clearly identified the initial goals of the reform and analysed the success of the reform in these areas against those goals; cost-savings was the only of the reform's five stated goals[49] where the reform was likely to fall short, they found. The report noted (but could not confirm, because of an absence of "reliable indicators"), that some court-users were affected by the long distance they had to travel to court, and recommended "mobile units" of first-instance courts.
- A report by France's Court of Auditors from 2015.[50] Naturally, the report by the Court of Auditors focused on the efficiency of the reform, primarily in monetary terms, although the report also considers whether there were any effects on the justice system more broadly. The report is positive, in sharp contrast to the French Senate's report. Unlike the other two reports, this report did not focus on interviews and the views of people affected, but instead on quantitative data, mainly about costs. The quality of justice is measured essentially by its speed and output. The Court of Auditors notes and applauds the fact that the concentration of courts now more evenly matches the way the population is spread across the country.
- A 2012 comparative study (covering France and other countries) commissioned by

47 Available at http://www.senat.fr/rap/r11-662/r11-662_mono.html.
48 Available at http://www.justice.gouv.fr/art_pix/1_1_Rapport_Dael_missioncartejudiciaire_2013.pdf.
49 The other goals were to: reduce isolation so as to reinforce collegial working; develop the professionalisation and specialisation of the judiciary; harmonise burdens and reinforce the consistency of the service; combine the use of buildings and property so as to improve reception and security conditions.
50 The report can be downloaded from the Court of Auditors' website: www.ccomptes.fr.

the Council of Europe and conducted by a private company.[51] This study examined the phenomenon of reforming judicial maps in Croatia, Denmark, France, the Netherlands, and Portugal. The study acknowledged that reforms of judicial maps were primarily about efficiency and described the process as "part of the process of 'New Public Management' that puts budget rationalization at the center of public decisions". The main indicators used were quantitative, looking at coverage areas of courts, the speed of justice, and the rates at which citizens show up to court.

Strangely, there appears to be no evaluation of the other major reform of the past decade: the amendment of Article 65 of the Constitution. The data would appear to exist to enable such an evaluation. For example, to the extent that the principal purpose of the constitutional amendment was to increase citizens' confidence in the judiciary, in January 2014 the Ministry of Justice commissioned a survey of citizens' attitudes to justice.[52] However, that data was in no way linked to past reforms; instead, the focus was on the need for future reform (which 87% of citizens surveyed thought was necessary).

To the extent that the Inspectorate General of Judicial Services conducts any regular monitoring of judicial activity, it seems to be essentially quantitative, based on or giving rise to the statistics available on the Ministry of Justice website. The Inspectorate's other main work, of producing thematic reports at the request of the Ministry, is highly bespoke. Two recent examples of reports that are publicly available are telling:

- Report on Alternative Dispute Resolution (2015).[53] The purpose of the study was to set out the state of practice of ADR in France and make recommendations for improving the use of ADR, as part of the "J21" reforms, which promised increase use of ADR. The report was commissioned in late November 2014 with a deadline of March 2015.

- Report on Legal Aid (2013).[54] The purpose of this study was to examine the functioning of the legal aid system, including its financing, but not the scope of legal aid (i.e. what is funded and what is not) or the remuneration of lawyers.
  The Inspectorate was given a period from April to August 2013 to complete its work. The purpose was to inform the 2014 budget law.

These reports deal with complex subjects and are compiled in a very short period. The perspective is forward-looking, to inform future legislation in particular, instead of to examine the effectiveness of particular reforms.

51 Available at https://www.coe.int/t/DGHL/COOPERATION/CEPEJ/quality/rapport_SPSC_en_final.pdf.
52 The results were made public on 2 March 2014 at http://www.justice.gouv.fr/la-reforme-judiciaire-j21-12563/sondage-les-francais-confiants-dans-leur-justice-26727.html.
53 Available at http://www.justice.gouv.fr/publication/2015_THEM_Rapport_definitif_reglement_conflits.pdf.
54 Available at http://www.justice.gouv.fr/publication/rapport_igsj_map_2013/rap_map_aj2013-rapport.pdf.

6. How Has Judicial Reform in France Been Measured

As can be seen above, the major tools for measuring judicial reform in France fall into two categories:

- **Quantitative tools measuring efficiency** - Those measuring judicial reform have looked at the costs of the system, as well as its speed and questions about how rational it is. Some attention has been paid as well to the relationship between the distribution of courts and the distribution of the population as a whole.

- Qualitative tools measuring satisfaction with the system - These tools are essentially interviews measuring satisfaction. While there is no explicit model for measuring satisfaction, this kind of measurement seems to have two implicit models. The first is customer satisfaction (i.e. the satisfaction of citizens with the judicial system). This kind of measurement is not very well developed and has relied primarily on statistics about court attendance and use, on the one hand, and surveys of the public. The second model seems to be based on labour relations, measuring the satisfaction with people working in the justice system (mainly judges), implicitly seen here as workers, with the reforms put in place by the government, implicitly seen as management.

7. Key Conclusions and Findings

Judicial reform is common in France but there is no systematic way of measuring and evaluating judicial reform. While justice is considered an important constitutional value, it is a poorly-defined one and there exist no commonly accepted criteria for evaluating judicial reform. In recent years, notions of efficiency and customer service have come to fill in the gap. As part of a trend that is common across Europe, justice is considered like any other public service and the tools for evaluating it are like those that might be used to measure any such service (which, in turn, are not always easily distinguishable from those that are used to measure private service providers): mainly the speed and cost-effectiveness of outputs and "customer" (i.e. court-user or citizen) satisfaction. The main counter-weight to such indicators is the view of those working in the system, mainly judges. While there are bodies within the system designed to ensure the independence of the judiciary (mainly the High Council of the Judiciary), these bodies do not undertake regular or systematic evaluation of judicial reform.

The task is institutionally assigned to a body within the Ministry of the Interior that has no independence or clearly-defined mandate or tools; it seems to carry out its commissions with little time. Other evaluations do take place, but these are ad hoc.

HUNGARY

Background of Judicial Reforms in Hungary

While Hungary's judicial system has a long history, this paper focuses on the system as it has existed since the introduction of a new constitutional order after 1989. There have been four major judicial reforms since then.

- **The introduction of a provisional constitution.** In 1989, Hungary significantly amended its Constitution in order to introduce democratic reforms. The 1989 Constitution was (as indicated in the text itself) meant to be provisional. The major reform to the judiciary was to stress its independence and its responsibility for upholding the rule of law and constitutional rights. Various laws were adopted between 1989 and 1993 in order to make the new judicial system under the constitution operational.
- **Judicial reform: 1997-2003.** Parliamentary legislation approved in 1997 ushered in a second wave of reform. The National Council of Justice, overseeing the judiciary, became operational with full independence from the executive, ending the Ministry of Justice's control of the court system. A fourth level of jurisdiction (high courts of appeal, beneath the Supreme Court and designed to decrease the latter's case load) was added. The law also fixed stricter conditions for qualifying as a judge and reformed the status of judges, aiming to make them more independent. The 1997 reforms were designed to ensure conformity with European standards, with a

view to Hungary's admission to the European Union, and were monitored by the EU institutions. In 2004 Hungary joined the EU.

- **The 2011 reforms.** Hungary's ruling party, having obtained the needed supermajority in Parliament, introduced a new Constitution in 2011. The Constitution was and remains controversial. As originally drafted, the constitution created the Curia *(Kúria)* as the supreme judicial body to replace the Supreme Court. In terms of the organisation of the judiciary, the new constitution referred to "the organs of judicial self-government", which would "participate" in the administration of the courts; the organs themselves were not named. The new Constitution also reformed the Constitutional Court. In 2011 Parliament also introduced legislation reducing the mandatory retirement age for judges from 70 to 62, a move that was criticised by the Supreme Court President at the time (see below on the Kaba judgment). Legislation introduced in 2011 also introduce the controversial President of the National Office for the Judiciary (PNOJ), one of the "organs of judicial self-government" designed to participate in the administration of the courts. The PNOJ was also given the power to transfer cases from one court to another in order to ensure proceedings were not unduly long; the lack of statutory criteria for exercising this power was criticised (see below).
- **The 2013 amendments to the Constitution and related reforms.** The 2011 Constitution was amended (for the fourth time) in 2013, with various changes to the provisions governing the judicial system. The 2013 amendments named the "organs of judicial self-government": the PNOJ (whose role was now elevated by virtue of being enshrined in the constitution and made responsible for the administration of the justice system); and the National Council of the Judiciary, responsible for overseeing the office of the PNOJ.

1. Description of the Hungarian Justice Model

The Constitution provides for a supreme judicial body, the Curia, and a multi-level judicial system, without specifying the number of levels (although this is currently fixed at four, as mentioned above). The Constitution gives the courts responsibility for deciding: *"a) criminal matters, civil disputes and on other matters specified in an Act; b) the lawfulness of administrative decisions; c) the conflict of local government decrees with any other legal regulation, and on their annulment; d) the establishment of non-compliance of a local government with its obligation based on an Act to legislate"*. In addition to civil, criminal, and administrative justice, the Hungarian courts are therefore also invested (at points c and d) with explicit responsibilities that might be described as federal adjudication (even though Hungary is not explicitly a federal state): ensuring that lower levels of authority respect the supremacy of superior legal norms (point c) and do not fail by omission to carry out their statutory duties (point d). This "federal" jurisdiction can be seen at work, for example, in the area of fundamental rights: when the municipality of Miskolc (Hungary's fourth largest city) implemented an ordinance about social housing widely viewed as designed to rid the city

of its Roma residents last year, a central government body took legal proceedings and the ordinance was declared incompatible with the Constitution by the courts.[55]

The four levels of jurisdiction in Hungary are divided as follows:

- **First-instance courts:** district courts (which are the general courts of first instance for matters when jurisdiction is not assigned elsewhere); administrative courts and labour courts (which sit within the regional courts).
- **Regional courts:** these can serve as first-instance courts as well for certain matters as prescribed by law but otherwise hear appeals from the courts listed above.
- **Regional courts of appeal:** these were introduced in 1997 to reduce the workload of the (then) Supreme Court and hear appeals at second and third instance, as well as dealing with certain other cases assigned to their jurisdiction.
- **Curia:** Hungary's highest court has civil, criminal, and administrative law departments split into various chambers. The Curia ensures the uniformity of the application of the law across the country.

Hungary also has a Constitutional Court, whose powers are set out in the Constitution. The Constitutional Court has wide powers to review the constitutionality of legislation prior to its adoption, to issue rulings on referrals from other courts, and to hear individual complaints about legislation or judicial decisions after exhaustion of the normal appeals process.

2. Current Situation in Hungary – Trends and Developments

The 2011 constitution and its 2013 amendments were heavily criticised, notably by the European Union and the Venice Commission (see below, section 4). Concerns about the independence of Hungary's judiciary form part of wider concerns about respect for the rule of law in Hungary. There are no current plans to reform the judiciary further, following the 2013 constitutional reforms. Alongside criticism from other European institutions, judicial reform in Hungary is linked to two recent, unfavourable judgments in the European Court of Human Rights:

- *Baka v Hungary* (Chamber judgment of 27 May 2014). András Baka was the first judge elected in respect of Hungary to the European Court of Human Rights and, when he finished his term there in 2009, was made the President of the Hungarian Supreme Court, with his term set to expire in 2015. In 2011 he publicly criticised the legislation lowering the retirement age of judges from 70 to 62. The new Constitution abolished the Supreme Court, creating the Curia and requiring the Curia's President to have at least five years' judicial experience in Hungary. Judge Baka's experience in Strasbourg was not taken into account and he lost his post and several related benefits. Because the requirements to be President of the Curia were written into the Constitution, he had no remedy against his dismissal. A Chamber of the European Court of Human Rights found a violation of Article 6 § 1 of the European Convention on Human Rights as a result. The case is pending now before the Grand Chamber.

55 More information is available in English at file:///C:/Users/adam.weiss/Downloads/EUR2716722015ENGLISH.pdf.

The Chamber judgment can be read as a (necessarily limited) condemnation of the judicial reforms introduced by the Constitution.

- *Gazsó v Hungary* (Chamber judgment of 16 July 2015). This was a rather straightforward undue-length-of-proceedings case (six years to resolve an employment dispute), resulting in a finding of violations of Article 6 § 1 and Article 13 of the European Convention on Human Rights. However, the European Court took the unusual step of applying its pilot judgment procedure. This allowed the Court to identify the existence of a structural problem incompatible with the Convention. Hungary will have one year after the judgment becomes final (which has not yet happened) to introduce a remedy for undue length of proceedings. The judgment was, again in a limited sense, a condemnation of the 2011 judicial reforms: the Government had defended itself by referring to those reforms, but the Court was unimpressed: "the Court cannot but observe that the problem has persisted in the four years that have elapsed since the enactment of the reforms referred to by the Government". The time limit has not yet passed for the Hungarian Government to ask for the case to be referred to the Grand Chamber. If the Chamber judgment becomes final, Hungary will have one year to introduce a remedy for undue length of proceedings. Ideally that would involve judicial reform to prevent further similar problems.

3. Parties Involved in Measuring the Progress of Judicial Reforms in Hungary and What Has Been Measured

PNOJ. Since the creation of the office in 2012, the PNOJ has published half-year and full-year reports[56] on the judiciary which are extremely detailed: the 2012 and 2013 full-year reports came to about 200 dense pages each (and the 2014 report is still pending). These reports are highly data-focused and filled with charts with comparative information on numbers and types of cases started and ended, the length of proceedings, as well as detailed information about various programmes (e.g. trainings, witness protection, international partnerships). They are best described as activity reports of the judiciary, as opposed to evaluations of judicial reform, although they do include comparative year-on-year data.

European Union institutions

Accession process. During the accession process, the European Commission naturally played a strong role in assessing the pace of judicial reforms.[57] The main issues considered were respect for the rule of law (and the Commission was particularly sanguine about the Constitutional Court's role in this respect), as well as the length of judicial proceedings. The Commission's recommendation to ensure that the Constitutional Court had a full complement of judges was taken up, and during progress reports the Commission focused almost exclusively on the speed and output of court proceedings and on the number of judges. The Commission was consistently concerned about the Supreme Court's case load.

56 The reports can be found at http://birosag.hu/obh/elnoki-beszamolok/feleves-eves-beszamolok

57 The Commission's recommendation and progress reports are available at http://ec.europa.eu/enlargement/archives/enlargement_process/past_enlargements/eu10/hungary/index_en.htm#Overview of key documents related to enlargement.

The Commission was also critical about the time judges spent (70%) on administrative issues and the judiciary's declining budget.

Following the new Constitution. Following the 2011 reforms, the European Commission took successful infringement proceedings against Hungary in the Court of Justice of the European Union[58] over the lowering of the retirement age of judges from 70 to 62. The Commission also expressed concerns about the office of the PNOJ.[59] The European Parliament has been at the forefront of evaluating and criticising judicial reform in Hungary. In a detailed resolution,[60] the Parliament criticised the 2013 judicial reforms and called for an assessment of the situation. This was followed by a 2015 resolution[61] which focused on the rule of law (but not the judiciary as such) in Hungary.

Council of Europe institutions. The European Court of Human Rights' necessarily limited evaluation of judicial reforms is set out above in the descriptions of the Baka and Gazsó judgments. The main Council of Europe institution involved in evaluating judicial reform in Hungary has been the European Commission for Democracy through Law ("the Venice Commission"). The Venice Commission has evaluated judicial reform in Hungary on two occasions:

- In two 2012 Opinions[62] on the creation and role of the PNOJ (as part of the 2011 reforms). The Venice Commission's intervention resulted in a number of changes that allayed some concerns about the PNOJ's role, but the Venice Commission still saw the need for further reform, especially concerning the unregulated power to transfer cases from one court to another.
- In a 2013 Opinion[63] on the 2013 constitutional reforms. The Venice Commission expressed disappointment that the constitutional amendments went against the grain of its 2012 recommendations and changes, by elevating the problematic position of PNOJ to a constitutional status. The Opinion also goes on at length about changes to the role of the Constitutional Court and the rule-of-law problems raised by constitutional amendments specifically designed to override earlier Constitutional Court judgments.

NGOs. NGOs have generally confined themselves, like the Council of Europe institutions, to analysis of the theoretical problems with judicial reform in Hungary, as opposed to evaluation of the reforms. To the extent that they have engaged in more practical critique, it has often been focused on what they view as the dangerous approach of the ruling political party.

These actors and institutions have measured the following indicators of judicial reform:

- **Number of judges.** The European Commission took a particular interest during the accession process in the number of judges. A particular indicator of progress during the process was the appointment of a full complement of judges to the Constitutional Court.

58 The Court of Justice of the EU delivered its judgment in Case C-286/12 on 6 November 2012.
59 See a press release at http://europa.eu/rapid/press-release_IP-12-24_en.htm.
60 Available at http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0229&language=EN.
61 Available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0227+0+DOC+XML+V0//EN.
62 Available at http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)001-e and http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)020-e.
63 http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)012-e.

- **How judges spend their time.** The European Commission took a uniquely managerial approach to measuring progress during the accession process by securing data about the amount of time judges spent on different tasks, and demanding that judges be relieved of administrative tasks (which took up 70% of their time) through the appointment of assistants.
- **Case processing times and number of cases completed.** The European Commission during the accession process, the PNOJ now, and the European Court of Human Rights in its case law have considered case processing times (albeit reaching somewhat different conclusions about what they indicated).
- **Compatibility with abstract rule-of-law principles.** This has primarily been the indicator used (naturally) by the Venice Commission in evaluating reforms introduced in the past four years, mainly at constitutional level. The main rule-of-law principle is the independence of the judiciary. The Venice Commission largely relied on abstract (yet well-documented and agreed) principles, but also to some extent on comparing the situation in Hungary to elsewhere: the fact that the PNOJ's powerful, individual position does not seem to exist in the same form anywhere else in Europe was particularly telling.

4. Challenges for the Process of Measuring Judicial Reform in Hungary

Judicial reform in the post-socialist period has never been pursued as a self-standing programme: before Hungary joined the EU, it was part of major reforms designed to ensure the transition to democracy and secure EU membership; since 2011, it has been part of a process of constitutional reform and consolidation of power by a powerful political party. As a result, measuring judicial reform in Hungary since 1989 has been challenging because it has always been a part of something larger, and those engaged in the evaluation have always had a bigger picture in mind. However, at least in the run-up to EU accession, there were clear goals and criteria being used by the European Commission and agreed to by the Hungarian authorities. Since 2011 a very different challenge has emerged: suspicion that a very popular political party with a large majority is manipulating the process of judicial reform (and other reforms) in order to erode the power of the judiciary.

This is deeply destabilising for any attempt to measure judicial reform, because it undermines any notion of shared criteria for measuring them. For example, in relation to the post of PNOJ, the concern, particularly at the level of the Council of Europe and the European Union, is that the goal of the reform was to create a powerful individual figure in charge of the judiciary yet controlled by the executive. To the extent that this is true, the executive authorities (and the parliamentary majority behind them) will never apply the same measures as other actors (at European level or civil society) in evaluating success.

5. How Has Judicial Reform in Hungary Been Measured

Two main measures have been used to evaluate judicial reform in Hungary

- **Data and statistics.** There seems to have been a clear quantitative focus on activity and output. In the period leading up to EU accession, the European Commission was at the forefront of this approach, summarising the progress of Hungary's reforms in a few figures (number of judges, Supreme Court backlog, length of proceedings). Since 2012, the PNOJ has taken forward the main quantitative analysis. The PNOJ's extremely detailed and lengthy reports focus intensely on data and statistics: how many cases have been decided and by whom, and what other work has been done by the judiciary (covering everything from witness protection to trainings and participation in international conferences).
- **Theoretical analysis of the system.** The main mode of measuring judicial reform since the introduction of the current Constitution by those outside the system (essentially at European level) has been measuring the reform against basic principles of democracy, and the rule of law.

6. Key Conclusions and Findings

In the pre-accession period, there was an intense focus in Hungary on numbers with clear recommendations for change that were easily implemented.

At present, Hungary lacks not only a clear framework for evaluating judicial reform, but even common ground among key actors to carry out the measurement. It seems unlikely that actors at national level (within the party-dominated executive and legislature, and the powerful PNOJ) would ever come to any similar conclusions as other actors (especially at European level and within civil society), and a high level of suspicion exists among the latter about the motives of the former. In this context, the PNOJ's excessively detailed reports seem more like an attempt to drown out the debate with data than to achieve an objective evaluation of the success of judicial reforms or the effectiveness of the courts generally. No one appears to be looking at the satisfaction of those working in the system (particularly judges), or of court users and citizens more generally.

LITHUANIA

Background of Judicial Reforms in Lithuania

Lithuania became a member of European Union on the same day (1 May 2004) with Estonia and Latvia. Lithuania has undergone the path of establishment of statehood beginning from the first decades of the 20th century. After more than 50 years of Soviet occupation and Soviet legal tradition it restored its independence on 11 March 1990 and started the creation of a new legal system, which would meet the standards of democratic states and the principles ensuring the rule of law. The experience of old democratic traditions and legal systems was followed in the process of drafting new laws and creating modern justice systems.

The system of courts, their competence, activity, administration as well as the system of autonomy of courts, also the status of judges, their appointment, career, liability and other issues, related to the judicial activities are regulated by the Constitution, the Law on Courts and other legal acts.

Even if the fundamental principles related to the judicial power that were acknowledged in the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, Recommendations of the Committee of

Ministers of the Council of Europe were reflected in the Constitution already in 1992, the autonomous judicial system was completely formed during the following ten years and was completed in 2002. However, during the later years reacting to the changing political and judicial context, new shaping elements were introduced to the Lithuanian judicial system (e.g. from 2006 the Judicial Council was formed only from the members of the judiciary).

It is worth stressing that administration of justice systems in Lithuania differs from the one in Estonia because in Lithuania this is completely in hands of judiciary, although in Estonia, as described before, the Ministry of Justice plays significant role.

1. Description of the Lithuanian Justice Model

Lithuania has experienced all justice administration models beginning from unitary system in 1990-2000 (in 1999 Constitutional Court established principle of institutional independence of courts and judges which led to the gradual reformation of the administration of judiciary), passing through decentralized model where powers of administration of judiciary had being transferred to the judicial self-governance and coming to current autonomous system where judiciary (self-governance institutions together with the National Courts Administration) is entirely in charge of the whole administrative functions.

After the restoration of the Sovereignty of the Republic of Lithuania on 11 March 1990, 16 January 1992 marks the beginning of the reorganisation of the country's Judicial system, when the Supreme Council – the Reconstituent Parliament passed the Law on amendments and supplements of certain articles of the Provisional Constitution. Then at the constitutional level a four unit court system was restored. Subsequently, the new Constitution of the country adopted on 25 October 1992, stated in its Article 109 that "In the Republic of Lithuania, justice shall be administered only by courts".

Continuing the reform, the resolution adopted in 1999 by the Constitutional Court on the conformity of contemporary provisions of the Law on Courts with the Constitution of the Republic of Lithuania as well as the subsequent resolutions which declared that only independent and autonomous from the other authorities judiciary may administer justice and emphasizing that the organizational independence and self-governance are the essential guarantees of the judicial independence, leaded to the significant transformation of the Lithuanian Judicial system. The new version of the Law on Courts changing the former post-independence Law on Courts of 1994 was adopted on 24 January 2002. Subsequently, the Department of Courts under the Ministry of Justice was reformed and a newly formed and independent from the executive authorities' institution – the *National Courts Administration* – established by the Law on the National Courts Administration, commenced its activities on 1 May 2002.

A decade's membership in the EU and almost 20 years existing comprehensive and profound

constitutional doctrine determined the fundamental legal grounds for the autonomous functioning of the Judicial system. It stipulated that while administering justice, courts are independent from other State institutions, officers, political parties, political and social organisations as well as other persons. Seeking to ensure the independence of courts, the Law on Courts, which came into effect in 2002, regulates their organizational autonomy realised through the judicial self-governance.

Self-governance of courts is established in accordance with the Constitution of the Republic of Lithuania and other statutes, the right and real power exercised by the judges and courts in deciding freely and independently on their own responsibility the issues pertaining to the activities of courts. It is based on representation, election, accountability, competence as well as on the responsibility of the institutions of self-governance of courts for a proper performance of the functions assigned to them.

The system of self-governance of courts encompasses the *General Meeting of Judges, the Judicial Council and the Judicial Court of Honour.*

Court structure
Currently there are 758 judges and about 2500 court staff in Lithuanian judiciary. Judges of district courts, regional courts and administrative courts are appointed by the President of Republic on the advice of Judicial Council; judges of the Court of Appeals are appointed be the President on the advice of Judicial Council and with the consent of the Parliament; judges of the Supreme Court are appointed by the Parliament on the President's suggestion agreed with the Judicial Council.

Court system of the Republic of Lithuania is made up of courts of general jurisdiction and courts of special jurisdiction.

The Supreme Court of Lithuania (1), the Court of Appeals of Lithuania (1), regional courts (5) and district courts (49) are courts of general jurisdiction dealing with civil and criminal cases. District courts (49) also hear cases of administrative offences coming within their jurisdiction by law. The regional courts (5), the Court of Appeals, the Supreme Court of Lithuania have the Civil Division and the Criminal Division.

District courts function as first instance courts and regional courts function as courts of first instance for the particular civil and criminal cases assigned to their jurisdiction by law, as well as courts of appellate instance for the judgments of district courts. The Court of Appeals of Lithuania is the court of appellate instance for the judgments of regional courts as first instance courts. The Supreme Court of Lithuania is the court of cassation, hearing cassation appeals against the appellate judgments of regional courts and the Court of Appeals. It is also responsible for developing a uniform practice of courts of general jurisdiction on the interpretation and application of law.

Creating the court system, it was also recognised, that the external specialisation of courts is of crucial importance within the judicial system as it allows solving the disputes on

public and internal administration competently and within a reasonable time. Therefore, in 1999 specialised administrative courts were established. The system of special jurisdiction courts of Lithuania consists of 5 regional administrative courts situated in the main cities of the country and the Supreme Administrative Court of Lithuania.

It is worthy to mention, that recently assessed by the European Union (hereinafter – the EU) Justice Scoreboard, which is a newly implemented information tool aiming to assist the EU and Member States to achieve more effective Justice, the Lithuanian court system was recognised as an efficient system, especially in resolving civil, commercial and administrative cases. The indicators of disposition time and clearance rate collected from the EU Member States positioned Lithuania among the most efficient court systems.

2. Current Situation in Lithuania – Trends and Developments

Communication with public

In Lithuania this area is becoming more and more important in recent years. In 2009 the first communication strategy of judicial system was adopted by the Judicial Council. In 2011 Working Group, consisting of representatives of Judicial Council, NCA and courts (press-officers) was created for supervision of strategy's implementation, promotion of communication and publicity of courts' activities and setting-up priorities in this area.

Recently the measurement of public trust is performed by different methods and with different target groups[64].

On the basis of profound analyzes of these results, tasks, priorities and directions of communication are approved (recently, to enhance the trust in courts, to strengthen court communication system, to expand court activities on the Internet).

The state budgetary donation is only 14 439 EUR per year, therefore other relevant sources for this function are used, including donor assistance. The financial mechanism of Norway (Norway grants) is one of those relevant sources of funds for these activities. NCA implements 3 projects in the framework of Norway Program and one of those projects is dedicated to strengthening capacities of judiciary and court staff, including communication. In this Project there are several measures implemented: interactive practical trainings on public communication in mass media; preparation of communication manual for judges and press-officers, etc.

One of the goals of nearest future – to legitimate the institute of "the judge for the press", alongside with it more effective control of communication crisis, improvement of public

64 For ex., the Ministry of Internal Affairs and NCA conducted a survey carried out by private company, questionnaires were prepared by sociologists with the consultation with NCA, police and prosecution service, interviews were executed in structured manner, where specific areas of interests of public, sources of information, corruption perception as well as internal systematic issues, such as the most important measures of motivation of judges are identified. General surveys of public trust in all public institutions were also conducted and are carried operatively, no structured interviews, only including questions about trust.

relations service of courts, promotion of proactive communication, cooperation with the Transparency International in implementation of the Project "Open Court LT" are considered as also very important tasks in this area.

Development of ICT tools in justice administration

Lithuanian experience in using IT in justice sector is rather extensive and allowing to come to some conclusions. Lithuanian court system uses centralized IS LITEKO, which is owned and administered by the NCA. This system was created more than 10 years ago and the intention was to design the system for recording all the processes, procedural decisions and allowing to anonymize decisions (special semi-automatic tool was created for this purpose) in order to make them public. The system was developed by creating and introducing new tools and functionalities:

- audio recording (audio records replace written minutes of the procedure and are available for the parties to get acquainted online);
- portal of e-services in civil and administrative procedure (parties can deliver and get documents, monitor process, listen audio records of proceedings, check protocols of the case assignment for the judge online);
- centralized document management system for all courts (all the documents not only procedural documents);
- automatic allocation of cases.

Now the development of the system is concentrated on creating integrations with other systems: criminal procedure IS, owned by the Ministry of Interior, Register of Administrative Offences, Bailiffs IS, etc. In this respect it is obvious that creating interoperable system at once (when having not institutional approach, but sector wide approach) would be a great value.

3. Main Reforms in the Lithuanian' judicial system (case studies)

The process of separation of power afte Lithuania's independence has been very intensive and all major reforms were introduced without long preparation of initiatives (impact analyzes, feasibility studies, calculations, etc.), i.e. sometimes without precise application of modern principles of planning, implementation, measuring and monitoring processes. At the same time negotiations on Lithuania's accession to EU and transposition of acquis communitaire started. This process influenced significant changes, including one of the major reforms in judicial system at that period – establishment of separate system of administrative courts on the examples of other Member States. In the justice sector this reform could be considered as one of the first reforms, implementation of which was based on some strategic documents, with understanding of vision and scope. This reform is

further presented in more detail as initiative, influenced by the accession process, ilustrated through 4 case studies.

Case Study 1 - Establishment of administrative courts system

The initiative of separate administrative jurisdiction began its path just after the restoration of independent state with the ambition of establishment of modern European court system. Absolute majority of EU MS (with some exceptions, including countries of common law tradition) have separate administrative jurisdiction. In the opinion on Lithuania's application for the accession to the EU, the European Commission paid particular attention to the need of strengthening of public administration competencies and accountability of public institutions before citizens. In this regard separate administrative jurisdiction dedicated for solution of administrative disputes between private persons and public institutions was considered as the step towards fulfilling accession condition.

In pursuance of the legal system reform and with a view to improving the activities of administrative courts, on 19 September, 2000, the Law on the Amendment and Supplementation of the Law on the Establishment of Administrative Courts (Articles 2, 3, 4, 5, 6) as well as the new version of the Law on Administrative Proceedings, were adopted, which became effective as of 1 January, 2001. The key consequences of the said reforms were the fact that following the reorganization (within the scope of the first said law) of the Administrative Division of the Court of Appeals of Lithuania and the Higher Administrative Court, the Supreme Administrative Court of Lithuania was set up, which led to the decreased number of judicial institutions, and namely, a three-tier system of courts was replaced by a two-tier system – Regional Administrative courts and the Supreme Administrative Court of Lithuania.

The competence of administrative courts is defined by the Law on Administrative Proceedings. In order to ensure comprehensive protection of individual rights and legal interests in public administration relations, this Law grants the right to all individuals, who consider that their rights in the area of public administration have been violated, to appeal to an administrative court against each and every decision taken by a public administration entity, which brings about legal consequences.

The Supreme Administrative Court of Lithuania is also the sole and final instance for cases concerning the legality of regulatory administrative enactments adopted by the central public administration entities as well as the final instance for cases following the lodging of complaints about the decisions of the Central Electoral Committee and omissions, except for those that are attributed to the competence of the Constitutional Court. The Law obligates the Supreme Administrative Court of Lithuania to shape uniform practice of administrative courts in the application of laws (Part 1 Article 13 of the Law on Administrative Proceedings of the Republic of Lithuania).

Instead cassation procedure provided for in administrative proceedings the legislators have granted the Supreme Administrative Court the function of revision, i.e., the right to examine

applications and submissions regarding the renewal of the proceedings in administrative cases that have already been heard and terminated by an effective judgment, ruling or decision, in cases where there are grounds provided for by law.

Evaluation/monitoring of a new system

At that time there were no very sophisticated modern tools for measuring the results of the reform in qualitative and/or quantitative manner. Though it should stressed that as in all democracies there were rather active discussions on the effectiveness and relevance of such system. Thus it was crucial to weigh arguments against and for. And of course one of the main arguments was related to the "popularity" of these courts, i.e. tendencies of number of coming cases. A measurement of relevancy, i.e. results of new system, was performed by assessment and comparison of case statistics.

During the first decade of activity of administrative courts from 2000 till 2010 number of cases was constantly increasing. The tendency of increasing number of cases and subsequently of workload, though, remains similar.

In 2003, Lithuania undertook a further evaluation of the independence of courts and tried to measure whether, after two years, the administrative justice system had performed to expectations. A number of options were considered: whether to unify the court system once again by merging the new administrative courts into the system of general courts; whether to expand the work of the dispute commissions, vesting the power of judicial review in the general courts; or whether to wind up the dispute commissions and just rely on the system of administrative courts to supervise administrative behaviour. The specific issue concerned whether claimants in administrative cases should be afforded the right of a final cassation instance to the Supreme Court. The argument advanced during the debate was that cassation would provide a third level of review in administrative cases and that this would provide greater justice to the citizen.

A working group was formed to review the evolution of the system of general courts in Lithuania, as well as the rationale underlying the establishment of a separate system of administrative courts and undertook broad consultation with government agencies, parliamentarians, the President, Ministry of Justice officials, judges, academics and citizen groups. This group also determined that while cassation might be beneficial (in that it provides a final, full review of the merits of a case and the legality of lower court decisions), it is only available by leave and is not therefore available in every case. Moreover, the process can add significant expense and delay to the resolution of a matter. This was a significant problem, as administrative cases require quick and effective resolution to protect the citizen's rights against violations by administrative bodies. The issue of delay became an issue in Lithuania's accession process, as the EU requirements call for expeditious administrative justice in order to address the issues of corruption, organization of the administration and the civil service.

Following extensive consultation and study, the WG rejected the proposal to re-establish a

single unified court practice and concluded that the overall benefits of the separate system of administrative recourse established in 1999 outweighed any need for major changes to its structure. It found that Lithuanians were basically well-served by the administrative justice system, which had improved accessibility to justice for the citizen, alleviated much of the imbalance in the distribution of caseloads among courts, unified the practice in the special courts by placing the administrative justice system under the Supreme Administrative Court, and enhanced the quality of judicial decisions through specialization. WG concluded that there was a need to strengthen the system of administrative justice in order to meet the anticipated demands of Lithuania's membership in the EU.

At the same time in 2013 as part of its programme of democratic governance support to Lithuania, United Nations Development Program (UNDP) commissioned an evaluation of Lithuania's system of administrative justice. The guiding principle in conducting this Review was that the recommendations should be compatible with other changes taking place in Lithuania's constitutional and legal environment. In this context, extensive interviews were conducted with judges at all levels, government officials, administrative officials, members of administrative dispute commissions, representatives of non-governmental organizations, academics, lawyers, donor agency representatives, and parliamentary oversight agencies Analysis of Lithuania's administrative legislation was conducted and compared to best practices in EU Member States.

It was concluded that by all accounts, the administrative courts appear to be very popular. Respondents to the Review indicated that Lithuanian citizens seemed increasingly confident in challenging the acts of important state institutions, ministries and other government agencies. An indication of the public's trust in the administrative courts during their short span of existence is evidenced by a significant rise in the number of cases heard.

The practice of hearing administrative cases had shown that administrative courts had put the principal of expediency into practice. It should be mentioned that the increasing number of cases ("popularity" of administrative jurisdiction) caused considerable increase of length of the proceedings.

Findings

This reform is one of the first initiatives based on some strategic documents and profound analysis of the best practices of European countries. This factor should be considered as key to successful functioning of newly established separate system of specialized courts in rather short terms and with limited recourses.

A) Accession process facilitated the implementation of the initiative: political support and consent of different interests was ensured, because the initiative contributed to Lithuania's goal in becoming MS, and it was supported not only by national experts, but also by independent competent authorities (e. g. European Commission's opinion).
B) It was one of the first attempts to monitor the effectiveness of new system by national experts (Parliament WG) and international experts (UNDP).

C) Lack of precise monitoring of aggravated the process of discussions on the expedience of these courts. Disproportionate efforts and time were spent to defend the system. Instead calculation of balance of workload of general courts with regard to administrative cases after the establishment of separate special jurisdiction courts and measurement of the satisfaction of citizens on administrative proceedings (length and quality) by surveys or other methods would enable to discuss more constructively and efficiently. Here it has to be noticed that requirements of legislative process, which were at that time established in the Law on Drafting Legislation, including the obligation for the legislative initiative to perform the analysis/ assessment of possible impact of draft legislation (some kind feasibility study), were more and more strictly applied in legislative process after Lithuania's accession to the EU.

Case Study 2 - Introduction of quality management system

In 2009 NCA started implementing EU funded project "Introduction of quality management models in courts and NCA". One of the initiatives of the project was to perform the analysis of Lithuanian court system's activities and processes with the scope of identification of main areas to be improved. The analysis was exercised by the private company. But the process was monitored and assisted by the Working Group consisting of representatives of stakeholders: NCA and all the courts, which expressed their readiness to improve their inner processes by introducing quality management system.

It should be mentioned here that the WG was very active and perceived its mission not only as supervisory body, but more like a real actor in the analysis and implementation processes. Representatives of the WG were deeply dedicated to the project and this allowed the supplier to get all necessary information and understanding not only about formal structure of the system and regulated procedures, but as well about inner procedures, principles of justice administration, organizational culture, mentality of the judiciary.

The study was reviewed by representatives from academic society and was exercised using variety of methods, such as: documentary analysis, observation, interview, as well as statistical analysis and client surveys. In the study experience and best practices of other MS were analyzed, in particular – Austrian experience in using ICT tools in justice system (registers, IT systems integrations, e-services, etc.) and Dutch best practices of case management and quality management system.

In the study key problems/challenges were identified and recommendations submitted, most of which have been transferred into concrete initiatives that have been, and are still being, implemented.

Implementation. Pilot. Measurement (qualitative/quantitative indicators)

At first stage the quality management model ISO 9001 was introduced in 5 pilot courts and NCA. The system is focused on process management: drawing the map of processes (excluding administration of justice) and making clear and accurate responsibilities for processes. This project aimed to identify the most sensitive processes, which are directly related to main courts' services and clients, i.e. the process of registration of applications, submitting information to the parties and other process actors and other persons, who address the court. In this area a lot of different practices throughout the system and a lot of functions and actions, which were not regulated and precisely described, were found. It caused the dissatisfaction of clients from one side and stress and lack responsibility for the quality of services from the side of court staff. This led to the conclusion that some instruments have to found for the improvement of client service, which is very important factor of public confidence in courts.

After the ISO 9001 standard was introduced the process of assessment of effectiveness of this model was performed. Among other system's monitoring instruments (round table discussions, surveys) internal audits of the quality management system had proven to be the most efficient one. It had happened because of the method of carrying these audits: audit groups were formed from the representatives of NCA and courts, in which ISO standard was introduced. Thus auditors and court staff could discuss problems, share experiences and their own approach to the standard. During this process some key advantages and disadvantages of the system were identified as some kind of qualitative indicators of level of success.

These conclusions together with the abovementioned common understanding that some management tools have to be introduced in client service led to the decision of implementation of Client Service Standard in courts.

All 5 pilot courts while having the experience of quality management system and understanding of usefulness of modern management tools expressed their will to be part of a new project.

In 2013-2014 Client Service Standard (CSS) was introduced in 5 abovementioned courts plus Supreme Court and Supreme Administrative Court. The effect (results) of this project was measured by some specific means, e.g. secret client inquiry. The inquiry was carried before the start of activities of the project and then it was repeated after the standard was implemented and courts' staff got instructions and passed through trainings.
Results (max points is 5), as quantitative indicator for system success:

- service by phone (increased from 3,95 to 4,10);
- direct service (increased from 4,40 to 4,50).

Despite the impression of a very slight improvement it was taken into account that the increase of quality was proven and that the period between inquiries was too short for significant changes to be expected.

Besides these objective indicators there were some other indicators, including satisfaction

of employees. They were interviewed about the use of CSS. It was observed that this standard helped to get some knowledge about service principles, management of conflicts, and communication with clients with special needs. This standard, which was published as a manual, and the trainings enabled employees to feel more self-confident and competent to fulfil their duties successfully.

Having in mind that implementation of such projects is rather expensive, it was decided that only in case of success of pilots system could be spread in other courts.

After the assessment of results and discussions with representatives of courts about their experiences and impressions it was decided to introduce CSS in largest city courts (10 courts). This Project is subsidized by donors (Norway grants) and is now being implemented.

Findings

This initiative could be taken as an example of rather well planned and implemented Project. Majority of the most important key factors for proper implementation were taken into account:

A) Study (analysis) was performed, background for changes was established, areas for improvement were identified, impact analysis was carried, measurement indicators were determined;
B) The reform was planned with the participation of stakeholders and with involvement of other counterparties (e.g. academics, researchers, external experts). Also profound analysis of best practices of other MS was carried. This facilitated more intensive discussions and well-grounded concept;
C) Pilot model was chosen instead of extensive Project at once. This helped to save recourses for further initiatives with specified directions (pilot proved that the most suitable and efficient quality management system is CSS instead of expensive ISO);
D) Monitoring and measurement (according to in advance established indicators) was performed, both qualitative and quantitative indicators were used.

Case Study 3 - Introduction of the institute of 'administrative order' in case of minor administrative offences

The procedure of implying administrative liability for administrative offences is the same for all kind of offences, regardless the seriousness of the offence and the sanction to be imposed (from 20 Litas (approx. 6 EUR) to 60000 Litas (approx. 17 400 EUR)). The procedure is complex and requires huge recourses of the justice system. In the case of minor administrative offences these recourses are disproportionate, including the time expenditure of parties in the process.

Thus, draft Law on Amendments of the Code of Administrative Offence Procedure was prepared which provided new procedures of prosecution for minor administrative offences – for minor offences general procedure is not applied, if certain specific obligatory criteria are met. In such cases the offender would be obliged by the competent officer to pay half of minimum fine. If the offender does not comply with the obligation, then the common procedure starts.

The legislation in question was adopted in 2010. Therefore already some concrete indicators of measurement of the results of changes are identified and cost/savings balance is calculated in the explanatory note of the legislation.

It was observed by the legislator that regardless the fact that in such cases the fine (and the income to state budget) would be less than in common procedure, but the financial sanctions as incomes would be received more operatively without huge and disproportionate expenditures for proceedings in courts and administrative input (forced recovery of imposed fines, etc.).

Evaluation of impact of new regulation

In 2012 new Law on legislation principles was adopted, which provides not only the assessment of possible impact but the monitoring after the legislation is in force. Particularly Art. 23 of relevant Law provides for monitoring with the aim of evaluating:

- regulation's effectiveness;
- positive and negative impact on particular area and other areas (economics, state financial system, social environment, legal system, public administration, etc.);
- direct and indirect benefit;
- if the consequences of the regulation meet the planned goals and results;
- need for improvement or abolishment of regulation.

According to this Law after the implementation of the particular legislation the monitoring of results has to be performed. Thus the initiative of administrative order could be taken as the one example of this regulation in practice.

After one year of regulation being in force the monitoring was performed by the Ministry of Justice (monitoring note on the results of year 2011).

It was observed that 2/3 (over 240,000 cases) of administrative procedures for administrative offence was finalized by administrative order. It means that the workload of competent institutions, which handle cases of administrative offences (including courts), decreased considerably (for example, number of such cases decreased by 13% in district courts). The conclusion of this audit was that the institute of administrative order justified itself and the aim of simplifying the procedure of minor offences and decreasing the workload of

competent authorities and courts were achieved. Herewith it was concluded that some improvements are needed: the extension of scope of administrative order and creation of unified register of administrative offences.

Findings

A) Alongside with the abovementioned findings with regard to the introduction of quality management system, this initiative can serve as one of the examples of the functioning of more formal monitoring model (it is provided by Law and is obligatory with regard to major legislative initiatives).
B) Legally established obligation of monitoring of legislative initiatives enables to prepare those initiatives more accurately with the indication of scope, goals, expected results, possible impact on the system, recourses needed.
C) Formal procedure of monitoring on the basis purely objective quantitative criteria and indicators enables to defend the initiative on well-established grounds from interest groups, political debates and any kind speculations.

Case Study 4 - Court's reform (merging district courts)

The idea of such reform was introduced already in 2009-2010. As it was mentioned above, in the study of Lithuanian court system's activities and processes with the scope of identification of main areas to be improved, as one of the main issues to be solved was pointed huge differences of workload between courts, especially district courts. And on basis of the analysis of the best practices of other member states, particularly Denmark, a concept of court's merger reform has been suggested.

This idea was further actively discussed and at the first stage it was agreed to merge 4 Vilnius city district courts, 2 district courts in Kaunas city and Siauliai city. This way was chosen because of the reason that these merged courts were situated in one city so it was no huge changes neither for judges and court staff in respect of organization of work and case management, nor for litigants in respect of jurisdiction and logistics.

At the same time this minor reform served as a pilot for future discussions and preparation for "grand" reform.

- "Minor" reform:

The legislative initiative of merging district courts in 3 cities (in total 3 courts out of 8) was presented in the beginning of 2012. The reform was aiming to:

- optimize district courts' activity by reducing number of courts as autonomous legal entities;
- balance the workload of district courts and ensure more effective proceedings;

- ensure more effective planning and managing material, financial and human recourses.

It was indicated that the most important measurable result would be the balance of workload between judges of respective courts. Secondly, financially measurable result was indicated: savings of budget allocations up to 1 million Litas (approx. 290 000 EUR) per year.
The Law on reorganization of respected district courts was adopted on 11 September 2012 and from 1 January 2013 new legal entities (merged district courts in major cities) started their activity.

Measurement of effectiveness (quantitative and quantitative)
Measuring the results of this reform was stressed on balance of workload – this aim was completely accomplished by achieving the same rate of workload of all merged court's judges (see below).

Specialization of judges was introduced in merged courts[65]. In Vilnius district court, where the number of judges is higher, there are more categories for specialization.

While talking about effectiveness of recourse management there was internal audit exercised by the NCA Internal Audit Division in 2013 (the competence of internal audit of courts is assigned to the NCA by the Law of NCA). In Vilnius district court internal auditors found that despite some organizational difficulties in the beginning of functioning of new huge court of over 450 employees, in general the management of recourses in the merged entity proved to be more efficient than before. It was found that functions of administration are shared in a precise manner between the President of the court and the chancellor of the court (the head of the administration): the management of financial, material and human recourses is assigned to the chancellor while case management and other issues related to the administration of justice are within the competence of the President.

It is much more effective, because the management is assigned to the competent officer, who has some specific competencies needed. In small courts there is no possibility to establish the office of Chancellor so the President of the court has to deal with all organizational issues, including financial accountability.

The President of the Court was induced to look for modern, more effective tools of management in order to control the situation in a huge entity. Some examples of good practices were underlined:

- Advisory Board was established by the President of Court entitled to submit suggestions on organization of justice administration, case allocation, specializations and other issues in order to ensure smooth organization of activities in a merged court, where different traditions of management of courts and particular organizational culture are integrated.

65 For example, in Kaunas district court (54 judges) there are 5 judges, specializing in family cases, 3 for labor disputes, 2 – juvenile cases, 1 – probation issues, 5 – sanctions in pretrial investigation, 5 – administrative offences.

- The inventory of all legal regulations, adopted in different courts was performed and the best practices were followed while adopting new integrated documentation. Bearing in mind huge number of employees, thus rather intensive turnover of them, the system of the introduction of new personnel by electronic tools to all the relevant documentation and procedures in court was established. The description of all relevant legal acts is done for different groups of employees (courts secretaries, registrars, legal assistants).

- The order of reservation of courtrooms was adopted in order in ensure smooth proceedings.

Thus not only main goals of *efficiency and effectiveness* of administration were achieved, but also new good practices and innovations were introduced.

In Annual Report of Kaunas district court of 2014, Mindaugas Simonis, the President of court, stated that after 2 years of activities after reorganization it can be surely accepted that the reform was successful and the results were achieved: despite the fact that the number of cases in Kaunas has increased, the length of the proceedings is shorter and stability of decisions (the proportion between appealed decisions and decisions which were not quashed by higher court) is higher. This shows that more stable and balanced workload, specializations of judges ensure higher quality of justice administration.

- "Grand" reform:

Working group, formed by Judicial Council on 7 September 2012, consisting of representatives of the NCA, courts and administration of the President of the Republic went forward profoundly analyzing process and some positive results (for example, balanced workload) of "minor" reform in Lithuania and gathering experience of other member states (Denmark, Netherlands), including study visit to Estonia, which implemented similar reform in 2006 (will be observed further in this document). Concept papers for "grand" reform were prepared and approved by the Judicial Council in 2013.

According to concept papers, the reform is aimed to ensure more effective justice administration in the courts of I instance by implementing these goals:

- balancing of workload in all district courts and facilitating timeliness of process;
- ensuring more effective access to justice for people by giving them opportunity to make procedural actions in the nearest courthouse;
- using human and material recourses more effectively and concentrating recourses for courts' administration;
- encouraging judges' self-governance by establishing new institute of court self-governance (meeting of judges of all merged district court for resolving issues, related to

courthouse administration and case management on the respective court);
- facilitating judges specialization.

At the time being there are 49 district courts in Lithuania: the largest one is recently merged Vilnius district court (108 judges) and smallest of them consist of 3 judges. Coming case number and workload differs dramatically in different district courts.

In 2013 some of figures were even more illustrative: for example, workload (this is not the same as number of cases received by 1 judge, workload is calculated by special formula, counting category and complexity of the case) of Skuodas district court was 39,54 and Vilnius county district court – 103,95, in 2014 these numbers were respectively 41,87 and 108,93. It proves that such numbers and workload is not a random situation, but rather a tendency.

The concept is to merge district courts to 12 district courts. Though the main idea is to merge courts as legal entities, but actually there would be still 49 courthouses, just some of them would be subunits of central district court.

Thus cases would be allocated within the whole district courts (among all judges of all courthouses of the court). Therefore the workload would be balanced.

At the same time the accessibility to the court would not be denied or impeded, because people would still have the alternative to present documents and participate in the procedures in the nearest courthouse, but cases of written procedures would be reallocated in case of over workload of respective courthouse.

Authors of the concept emphasize that the main results of this reform would be related to improvement of quality of justice administration through the possibility of specialization of judges, more effective case allocation, accordingly balance of workload and optimization of length of proceedings, which are not directly subordinate to quantitative indicators. Thus entirely numeric expression of these changes would not be relevant.

Nevertheless some calculations were done. First of all, on the example of "pilot merger" it was accepted that one of the most important effective measures concerning HR would be the possibility to concentrate some functions (management of finances, ICT administration, communication, etc.) and instead of several "cheaper" employees to hire less, but more qualified specialists and to still to save some money, which would be used for new positions of legal assistants who are directly facilitating justice process.

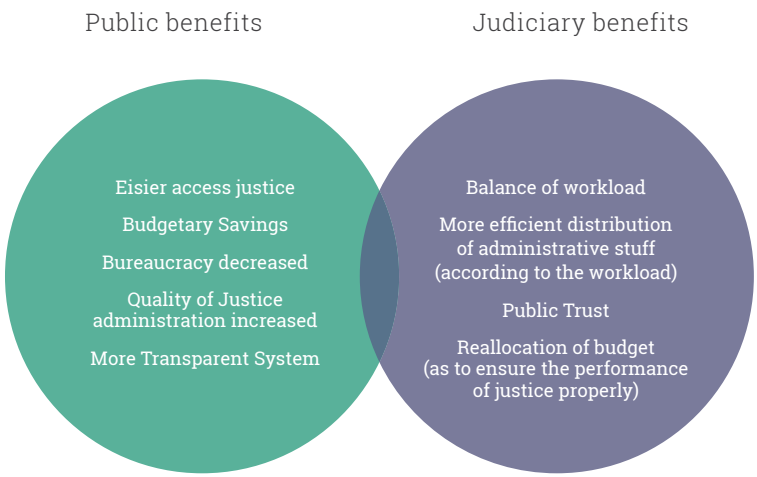
Still some very concrete savings were calculated. According to the amendments of the Law on Courts from 2017 the position of chancellor is to be established in every court. Thus in case of merging of courts, instead of 49 positions it would be 12, saving 811 000 EUR/ per year. 174 000 EUR of salaries of district courts' presidents would be saved every year (instead of 49 there would be 12 presidents).

As it was mentioned concept papers for "grand" reform were prepared and approved by the Judicial Council in 2013. Draft legislation was approved by the Government in the beginning of 2015 and now this initiative is at the last stage of legislation – the Parliament has put this issue into the agenda of the nearest parliamentary session. So the evolution from the first initiative of merger in 2009 through the pilot of 3 merged courts in 2012 till the final stage of legislation of "grand" reform in 2015 is rather long and complicated.

Why did it take so long? What was the key obstacle for smooth process?

The answer would be – lack of prompt communication, which caused considerable inside and outside resistance. The idea was promoted by the Judicial Council as the representative institution of the judiciary. Though in the beginning there was no very close cooperation between JC and executive (Ministry of Justice) and there was no intensive discussion with public. On the other side the idea was presented to judges in rather abstract, laconic manner. Accordingly, lot of speculations arose, the idea was presented by different interest groups incorrectly, and the aim and the scope of the reform were distorted. Therefore it was acknowledged that the communication plan should be created and the process of discussions, consultations, lobbying, and dealing with the resistance should be managed.

Firstly, public benefits and benefits of judiciary as results of the reform were indicated and communicated (see below):



After it the round of consultations with the representatives of judiciary, legislative, executive, academics (professors of faculty of Law of Vilnius University), other justice sector players (police, prosecution) was carried. After the exchange of opinions, drafts were amended and presented for evaluation to all courts. Than round table discussions and meetings in district courts were organized, where authors of the concept and members of JC presented main

ideas and discussed all the suggestions submitted by judiciary and other counterparts.

After one year of these communication activities, in general both public and judiciary understood and accepted benefits of the initiative and consent with political power was reached.

Findings

A) Concept papers were prepared by WG, which was composed of representatives of the stakeholders. This allowed to identify accurately problems to be solved, scope and aims to be achieved, methods and indicators of measurement to be used.

B) Good practice and model of MS (Estonia) was learned and followed, as well as pilot was implemented before "grand" reform. Thus the concept papers were well-grounded.

C) It has to be admitted that the participation of all stakeholders and counterparties from the very beginning is crucial. Strong partnership between judiciary and policy-making institutions (particularly the Ministry of Justice) has to be established, especially in autonomous system as it is in Lithuania, where initiatives for reforming in court system come from judiciary itself and the judiciary has to convince and get the political support of executive and legislative power.

D) Prompt communication with well-defined target groups is playing key role to success of any significant initiative.

SLOVENIA

Background of Judicial Reforms in Slovenia

After gaining its independence in June 1991 Slovenia started introducing systemic reforms, also those affecting the Slovenian judiciary. With adoption of the Constitution of the Republic of Slovenia, the principle of the separation of powers was introduced and the tasks of the judiciary were defined. In addition, basic principles on the organisation and jurisdiction of the courts were laid, the election of judges, the Judicial Council and some other relevant principles concerning the Supreme Court of the Republic of Slovenia and the participation of citizens in the performance of judicial functions. However, the first significant and comprehensive judicial reform took place only in 1994, when the most important laws regulating the functioning of the judiciary were enacted (but came into force in 1995): the Constitutional Court Act, the Judicial Service Act and the Courts Act. Even today, these are the laws that regulate the organisation and functioning of the Slovenian judicial system.

- Organisational reform

The first relevant organisational change already introduced by the Constitution was the creation of the Judicial Council[66] as a sui generis state body with a role of safeguarding a judge's independence. However, as mentioned above, only adoption of the Courts Act in 1994 defined the role and the tasks of the Judicial Council.

66 Article 131 of the Constitution of the Republic of Slovenia defines: »There shall be a Judicial Council composed of eleven members. Five members shall be elected by the vote of the National assembly on the nomination of the President of the Republic from among practicing lawyers, professors of law or lawyers. Six members shall be elected from amongst judges holding permanent judicial office.«

The first greater judicial reform took place in 1994 (adoption of Courts Act) and affected organisation of first instance courts – jurisdiction of the former Basic Courts was divided between new Local and District Court. Part of this division was also dividing court judges and court cases: more experienced court judges were delegated to District Courts while Local Courts were left with less experienced judges and more caseload. In addition, Courts Act from 1994 also lacked minimal criteria and grounds for setting up first instance courts which led to too many Local Courts being set up covering too small territorial units, not having enough judges and lacking the possibility for any professional specialisation.[67] Due to fall of motivation of judges of Local Courts which was followed by a decrease in their overall performance led to a steady increase of unresolved cases.[68] A result, a considerable court backlogs in the end culminated in the Lukenda v. Slovenia decision[69] of the European Court of Human Rights in Strasbourg in 2005.

An analysis conducted by the Government of the Republic of Slovenia and the Supreme Court of the Republic of Slovenia reacted to court backlogs and conducted an analysis of the situation[70]. It took into consideration all cases in the period between 1990 and 2000. Already in 1992 the Slovenian judiciary faced huge court backlogs[71] and the number increased after the 1995 judicial reform. It showed that in all years after 1990 the number of new cases each year was lower from that of the year 1990. The lowest number of new cases was in 1995, in the year of the reform. On the other hand, in the same period the number of unresolved cases (backlogs) increased, the highest be in 1998. The analysis concluded that the main reason for the increase of court backlogs was the decrease in performance of the judges.

Another analysis conducted among the judges and members of the Judicial Council[72] explored reasons for the decrease in performance of judges. It showed that the 1995 reform was unnecessary and a mistake and did not base on any indepth analysis or cooperation of judges. The interviewed expressed the need for modern and efficient procedural laws, which would enable them optimum adjudication. They also expressed the concern due to lack of court staff, complained they performed too much work not related to adjudication itself which resulted in less time for adjudication.

Similar was established by the Court of Audit 10 years later in its Auditing report: Elimination of court backlogs (2011)[73]. Judges stated the following reasons for their low performance: defective procedural laws, lack of discipline and of actions taken by parties in dispute and their representatives, frequent and not enough sound amendments of legislation, fluctuation and absence of the employees etc. The Court of Audit also proposed measures that would eliminate backlogs and increase court performance: appropriate material and procedural

67 See »Court backlogs in the Republic of Slovenia (An analysis of the causes and suggestions for their reduction and elimination)«, prepared by the Government of the Republic of Slovenia and the Supreme Court of the Republic of Slovenia, 2001, available at www.mp.gov.si.
68 See Zoran Skubic, »Evolving Justice: The Constitutional Relationship Between The Ministry Of Justice And The Judiciary And A Short Overview Of Recent Developments In The Area Of Court Management In The Republic Of Slovenia", International Journal for Court Administration, Vol 4, No 1 (2011): December, available at
http://www.iacajournal.org/index.php/ijca/article/view/67.
69 Available at http://hudoc.echr.coe.int/fre?i=001-70449#{%22itemid%22:[%22001-70449%22]}.
70 See »Court backlogs in the Republic of Slovenia (An analysis of the causes and suggestions for their reduction and elimination)«, prepared by the Government of the Republic of Slovenia and the Supreme Court of the Republic of Slovenia, 2001, available at www.mp.gov.si.
71 In year 1992 the court backlogs represented a number of cases that were usually adjudicated by all courts in one year.
72 See Urban Vehovar, »Sodstvo na Slovenskem: političnosociološki esej o položaju in vlogi sodstva na Slovenskem v času trojnega prehoda, (Fakulteta za družbene vede), 2001.
73 http://www.rs-rs.si/rsrs/rsrs.nsf/I/KAB4F740883C907E4C125785300398140

legislation that is not subject to frequent changes, employment of additional court staff, employment of additional judges, supervision of resolving court cases and mobility of judges and court files.

- Court management reform

The adoption of the Courts Act in 1994 caused a stir in the formerly streamlined structure of court management – the role of the President of the Court who used to be the sole bearer of court management for his or her court was substantially diminished in favour of the newly established Personnel Councils[74] as a form of judicial self-government. The President lost some important management levers intended for caseload optimization – the most important being the right to form and issue the annual schedule of judges which remained in the hands of the Personnel Councils up until it the end of 2006, when the competence was transferred back to the President of the Court with the Act Amending the Courts Act of 2006. Furthermore, many managerial tasks and responsibilities within court management were usually never used to its full extent because of the diffusion of competences between the President and the Personnel Council. This was later rectified with amendments to the Courts Act but in the meantime, the number of old cases mounted, especially in the period from 1994 to 1998. Since the experience showed that the most effective form of court management was found in medium-sized courts as they were capable of adapting to changes in the environment easily (unlike larger courts) and were not as affected by unforeseen absences of judges or by an unprecedented influx of cases like within small courts, a 2009 reform[75] transferred most of the relevant levers of court management in Local Courts into the hands of the Presidents of relevant District Courts (and its Directors). The only exception was the largest court in Slovenia, the Local Court in Ljubljana which in terms of its court management remains independent and separate of the District Court of Ljubljana and its President (and Director). Under the new regulation the President of the District Court has the competence to, after acquiring the opinion of the Presidents of the relevant Local Courts to set the annual schedule of all the local judges in his or her district covering specific areas of relevant law. The purpose of this regulation is to ensure even distribution of the caseload in all of the Local Courts in the District and to afford greater specialization of individual judges. The amended Courts Act also provides for the possibility of redeployment of judges of Local Courts within the area of the District. The same applies to district court judges.

Another change brought by the Act Amending the Courts Act 2009 was introduction of the position of a Director of the Courts (only of District Courts, Higher Courts and Local Court in Ljubljana) for performing matters pertaining to the business side of court management (related to material, technical and financial operations of the court, conducting public procurement procedures, decision-making in court staffing matters, matters concerning court security etc.). The post of a Director of a Court is explicitly defined as a position of a civil servant and is appointed and dismissed by the Minister of Justice on the proposal of the President of the Court. The introduction of the post of the Director of the Court means a transfer of those aspects of court management that do not constitute the exercise of judicial service from the President to the Director.

74 The Personnel Councils are appointed by the judges of relevant courts within the structure of the judiciary.
75 The Act Amending the Courts Act, http://www.uradni-list.si/1/objava.jsp?sop=2009-01-4178.

An analysis of court management reform[76] proposed several measures for improvement of court management:

- Reassignment of cases, transfer of judges between Local Courts within the area of the District and specialization of judges;
- Conduct of an analysis of Local Courts and their work performance, especially of those with only two or three judges who work in different fields of law which results in lower performance in order to assess whether to abolish such courts or specialize them;
- Shift some work from judges to court assistants since legislation provides for such possibilities and relieving judges of court administration;
- Better planning of court work hours – less court hearings per day, but longer.

Some measures were taken into account while others not (still enough room for better planning of court hearings).

- The Lukenda project[77]

Due to the above mentioned ECtHR decision the Ministry of Justice of Slovenia prepared a so-called Lukenda project with an overall objective to safeguard one's right to a trial within a reasonable time as set in Article 23[78] of the Constitution of the Republic of Slovenia. The project goal was to eliminate court backlogs by 31 December 2010. In order to achieve that numerous proposals were made for amending existing laws on functioning of the judiciary as well as procedural and other laws. Consequently, between 2005 and end of year 2009 number of judges increased by 12 % and of court staff by 28,1 %. In 2010 it was established that, although a number of court backlogs decreased, the Lukenda project goal was not achieved yet. Therefore, the project was prolonged until 31 December 2012.
A criticism regarding project planning was that it focused mainly on increase of court staff and judges which solely could not bring increase in court performance. Many factors that contribute to court performance were not taken into account in this project, i. e. reassignment of cases and cooperation of judges on basis of contracts for elimination of court backlogs.

On the other hand, many measures were planned to be carried out (i.e. simplification of legislation, standardisation of court proceedings, total computerisation, reorganisation and better management of courts, set up of a system that would expedite and simplify solving of minor cases) but failed to be in the end.

- Remuneration reform in the judiciary

In 2006, a remuneration reform of the Slovenian public sector affected salaries of the judges insofar as for the officials of other two branches of power (the executive and the legislative) higher salaries than of the judges. Such disproportion was, according to the Constitutional Court's decision, drawing from the principle of the independence of the judiciary, contrary to the separation of powers principle. Therefore, the court established unconstitutionality of the law and ordered it to be rectified within a year.

76 See dr. Katarina Zajc, »Reformiranje sodstva«, 31. maj 2012, available at www.visio-institut.si.
77 See dr. Katarina Zajc, »Reformiranje sodstva«, 31. maj 2012, available at www.visio-institut.si.
78 Article reads as follows: »Everyone has the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law. ...«

1. Description of the Slovenian Justice Model

The three levels of jurisdiction in Slovenia are divided as follows:

- The courts of first instance are the 44 Local Courts and the 11 District Courts – with general competence over civil and criminal cases.
- The general courts of second instance are the four High Courts.
- The Supreme Court generally decides on extraordinary legal remedies and is the court of third instance in some cases.

Next to these general courts, there are five other courts of first instance – four Labour Courts and one Social Court – that are competent to deal with individual and collective labour and social cases. Appeals against their decisions are heard by the High Labour and Social Court, while the Supreme Court is also the last instance court for these cases. Finally, there is one Administrative Court in Ljubljana, which has the position of a high court and deals with litigation concerning administrative decisions taken by the executive power.

In addition, Slovenia has a Constitutional Court[79], which is competent to examine the compatibility of legislation with the Constitution and with international law, as well as alleged breaches of fundamental rights and freedoms, jurisdictional disputes between different bodies, unconstitutionality of the acts and activities of political parties and other matters vested in the Constitutional Court by the Constitution or laws.

Apart from the competences of the Supreme Court[80] the Constitution also provides for the Judicial Council[81] as an entity responsible for the appointment and promotion of judges. But not until 1994 the position and competence of the Judicial Council were defined when the Courts Act was adopted. As of 1st January 2010 it is solely responsible for appointing and dismissing the Presidents of all the courts except the President of the Supreme Court of the Republic of Slovenia. It is composed of 11 members, five of which are elected by the National Assembly on the proposal of the President of the Republic from among university professors of law, attorneys and other lawyers, whereas judges holding permanent judicial office elect six members from among their ranks. The elected members of the Council elect a president among them. The Judicial Council is, from the point of view of the organisation of state power and the Constitution a state body sui generis which cannot be classified into any of the three established branches of power, even though it performs a specific role in constituting judicial power and other important tasks concerning the legal position of judges.[82]

Other constitutional provisions governing the judiciary are Article 125 (independence of judges), Article 129 (permanence of judicial office), Article 130 (election of judges), Article 132 (termination of and dismissal from judicial office), Article 133 (incompatibility of judicial office) and Article 134 (immunity of judges).

79 Article 160 of the Constitution of the Republic of Slovenia.
80 Article 127 of the Constitution of the Republic of Slovenia.
81 Article 131 of the Constitution of the Republic of Slovenia.
82 See Zoran Skubic, »Evolving Justice: The Constitutional Relationship Between The Ministry Of Justice And The Judiciary And A Short Overview Of Recent Developments In The Area Of Court Management In The Republic Of Slovenia", International Journal for Court Administration, Vol 4, No 1 (2011): December, available at http://www.iacajournal.org/index.php/ijca/article/view/67.

2. Current Situation in Slovenia – Trends and Developments

Major judicial reforms currently underway are driven by the Ministry of Justice and mostly relate to recommendations addressed to the Republic of Slovenia[83] by the Group of States Against Corruption (GRECO) of the Council of Europe within its Fourth Evaluation Round focusing among other also on strengthening integrity of the judiciary in order to prevent corruption. Its recommendations called upon strengthening the integrity of the Slovenian judiciary through different measures, i.e. adoption of a code of conduct for the judges, improvement of criteria for selection and evaluation of judges with the aim of enhancing their uniformity, predictability and transparency, development of guidelines on conflict of interest with rules of enforcement and sanction, adoption of policy for managing corruption risks and vulnerabilities in the judiciary and entrusting the Judicial Council with the role and resources to manage this policy.

Another important project concerning strengthening the transparency of the judiciary is continuation of its computerization – giving citizens a possibility to monitor how court proceedings are conducted.

In light of the above, in 2015 the Ministry of Justice sent two draft laws to the Parliament for consideration and adoption:

- Act Amending Courts Act – a new competence of the Judicial Council, that is to adopt Code of judicial ethics applicable to all judges; a new competence of the President of the Supreme Court to adopt a policy for detecting and managing corruption risks of the courts; setting up of a Commission for ethics and integrity at the Judicial Council;
- Act Amending Judicial Service Act – improved criteria for selection and evaluation of judges and procedure, especially the criteria of having suitable personal quality.

3. Parties Involved in Measuring the Progress of Judicial Reforms in Slovenia

Ministry of Justice. The body responsible for providing general conditions for the successful exercising of judicial authority, which also entails the drafting of laws and secondary regulation in the field of organisation and operation of the courts, care for the education and professional training of judges and judicial personnel, statistical and other research into the operations of courts and other administrative tasks, determined by law.[84] Within the Ministry the Directorate for Legislation on the Justice System is responsible for drafting the legislation and subordinate legislation (by-laws) in the field of justice system. This includes, inter alia, drafting of legislation and subordinate legislation in the field of organisation, status and jurisdiction of justice bodies (courts, judges, state prosecution, state prosecutors,

83 See GRECO report available at http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4%282012%291_Slovenia_EN.pdf.
84 Article 74 of the Courts Act.

state attorneys, attorneys, notaries, etc.), etc.[85] The Directorate for Justice Administration works on general and human resource affairs for judicial bodies and is responsible for court statistics. It prepares regular statistical reports on the work of judicial bodies, deals with supervisory complaints against the work of judicial bodies and supervises the application of court rules.
Some documents concerning judicial reforms (i.e. the Lukenda project[86], the Commitment for improving the situation in the judiciary between the Government of the Republic of Slovenia and the Supreme Court of the Republic of Slovenia, 4 June 2013[87]) are available on the Ministry's website.

Judicial Council. Although its main attributions are related to the recruitment, career and dismissal of judges, it also gives opinion on budget proposal for the judiciary and gives opinion on laws regulating position, rights and duties of judges to the Parliament. It gives opinion on the policy for detecting and managing risks and vulnerabilities of corruption in the judiciary and monitors its implementation and adopts code of judicial ethics.[88] When it discusses matters concerning justice administration and court management, adopts opinions regarding draft laws regulating position, rights and duties of judges, adopts principled opinions on situation within the judiciary and discusses budget proposal for the judiciary it may invite the Minister of Justice and the President of the Supreme Court of the Republic of Slovenia to its sessions.[89]
After consulting the Judicial Council's website yearly reports[90] on performance of the judiciary can be found. The Judicial Council is active in legislative process and regularly states its opinion on draft laws concerning the judiciary.
Relating to the last judicial reform concerning the judicial integrity and transparency of judge's work the Judicial Council published a statement on its website criticizing the Ministry of Justice for too short deadlines for preparing its position on the draft law before being sent to the Parliament.[91]

Parliament. Especially its Legislative and Legal Service plays an important role in the legislative procedure, providing its opinion on draft laws proposed by the Government.

The Slovenian Association of Judges. It was created already in 1971 and soon became recognised and treated by the government as a negotiating partner. It also participated in consultations in 1979, 1983 and 1984 when some judicial reforms were decided.[92] Today it plays an important role when issues concerning the judiciary are debated either in the public or in the Parliament.

The Slovene Bar association. Lawyers are admitted to the bar association. They sometimes produce reports on issues regarding the judiciary (mostly procedural laws that affect lawyers as well).

85 See information available at the Ministry of Justice's website http://www.mp.gov.si/en/areas_of_work/legislation_on_the_justice_system/.
86 http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/zakonodaja/angleski_prevodi_zakonov/The_Lukenda_Project_angl.pdf
87 http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/PDF/131002_Commitment_to_the_Citizens.pdf
88 See Article 28 of the Judicial Courts Act.
89 See Article 28a of the Judicial Courts Act.
90 Available at http://www.sodni-svet.si/akti-sodnega-sveta/
91 See statement available at http://www.sodni-svet.si/2014/mnenj-sprememb-zakonov/
92 See »Smoother Judicial Reforms in Slovenia and Croatia: Does the Legacy of the Past Matter?«

Other actors (academics, NGOs). Academics usually prepare analysis upon requests, either for the purpose of drafting legislation or involvement in a particular project relating the judiciary. Also, academics are often involved in public debates, giving their views on matters concerning the judiciary. NGOs commenting judicial reforms are few. However, the last reform concerning strengthening integrity and transparency of the judiciary was often debated by the Transparency International Slovenia who conducted an analysis of performance of the judiciary as part of the NIS (National Integrity System[93]).

4. Challenges for the Process of Measuring Judicial Reform in Slovenia

Judicial reforms in Slovenia should be implemented more rigorously, with ex ante empirical analysis, with more political will, with a sequence of reforms that support each other and bring results as well as with ex post evaluation of reforms carried out.[94] Furthermore, reforms should be equipped with appropriate monitoring tools – otherwise, as the 1994 judicial reform showed, in combination with other factors (increasing annual influx of cases, constant changes in legislation, working conditions) lead to undesirable result.

5. What Has Been Measured in Relation to Judicial Reform in Slovenia?

The Lukenda project:

The most widely evaluated reform in Slovenia due to a notorious case Lukenda v. Slovenia has been the reform for the elimination of court backlogs, the so-called Lukenda project. The Court of Audit revised the project in order to assess whether the Republic of Slovenia was successful and efficient at eliminating court backlogs. In its conclusions[95] the Court of Audit pointed out the following important points:

- A frequent change of legislation, often without any prior analysis of effects or without involvement of stakeholders who could contribute with their experience;
- The Judicial Council evaluates efficiency of judges and courts. However, although prescribed criteria, evaluation of quality of work is usually based only on quantity and not quality of a judge's work;
- A risk that courts register data differently which affects assessment of efficiency of work and comparison between different courts.

Yearly reports on efficiency and successfulness of the courts[96]:

Reports prepared by the judiciary, namely the Supreme Court of the Republic of Slovenia

93 http://nis.integriteta.si/publikacija/national-integrity-system-slovenia
94 See dr. Katarina Zajc, »Reformiranje sodstva«, 31. maj 2012, available at www.visio-institut.si.
95 http://www.rs-rs.si/rsrs/rsrs.nsf/I/400C61B7A3AA03CFC12578530039BA61
96 Yearly reports available at http://www.sodisce.si/sodna_uprava/statistika_in_letna_porocila/.

present quantitative information on the work performed by the courts. A special emphasis is given to number of cases, length of procedures, number of cases pending, number of judges working at a particular court, court budget etc. These reports are prepared on a yearly basis and do not contain much qualitative information, except for some recommendations.

Similar reports were prepared also by the Judicial Council.[97]

In 2013 the Supreme Court of the Republic of Slovenia commissioned an analysis[98] on satisfaction of the public with the court performance. Different methods were used (phone survey, field survey, online survey) and different stakeholders participated in the surveys (the public at large, parties in court disputes, lawyers, prosecutors and state attorneys, court staff). The questionnaires were prepared also on the basis of recommendations of the CEPEJ. The results showed that the public trust in the judiciary was too low. However, the court staff was satisfied with the work and the parties were extremely satisfied with attitude and expertise of the court staff.

6. How Has Judicial Reform in Slovenia Been Measured

As can be seen above, the major tools for measuring judicial reform in Slovenia fall into two categories:

- Quantitative tools measuring efficiency - Mostly data on incoming cases, pending cases, resolved cases, length of procedures, number of staff, budget etc.
- Qualitative tools measuring satisfaction with the system - Satisfaction was measured among different stakeholders. Different data was measures depending on group that was interviewed – perception of the judiciary, public trust in the judiciary, access to information, access to court buildings, functioning of courts, judges and procedures, integrity of judges, experience with court work etc.

7. Key Conclusions and Findings

The successfulness and efficiency of the judiciary in Slovenia are measured mostly through qualitative data focusing on number of cases per court and per judge and speed and cost-effectiveness of procedures. Such reports are regularly prepared by the judiciary itself. On the other hand attempts to measure satisfaction of different stakeholders are only recent. However, it seems that these reports are a reaction to two important attributes of the Slovenian judiciary: having a lot of court backlogs and enjoying low public trust.

97 Yearly reports for 2011, 2012 and 2013 are available at http://www.sodni-svet.si/akti-sodnega-sveta/
98 Available at http://www.sodisce.si/sodna_uprava/statistika_in_letna_porocila/zadovoljstvo_javnosti/

UNITED KINGDOM

Background of Judicial Reforms in the United Kingdom

Focusing on recent time (since the Second World War), there have been three major judicial reforms in the UK, all introduced through primary legislation:

- The Courts Act 1971 implemented reforms to modernise the judicial system and eliminate certain archaic courts.
- The Courts Act 2003 created Her Majesty's Courts Service, a single administrative body for the judicial system.
- The Constitutional Reform Act 2005 (hereinafter "the CRA") made changes to the judiciary and changed the relationship between it and the other two branches of government, so as to reinforce the independence of the courts.

While the first two acts aimed at efficiency, the third was designed to change the role of the judiciary in line with principles of human rights (notably the right to a fair trial) and democracy (separation of powers), and it is the focus of this paper. The CRA brought in three major reforms:

- **New head of the judiciary.** Prior to the CRA, the head of the judiciary was the Lord Chancellor, a government minister who sat in the cabinet yet was also the head of the judiciary in England and Wales,[99] giving him a dual role in those two branches

99 There is more information on the different jurisdictions – England and Wales, Northern Ireland, and Scotland – in section 2 below.

of government. The CRA firmly put an end to the the Lord Chancellor's role as a member of the judicial branch. It established the Lord Chief Justice (a Court of Appel judge, previously the second-highest judge after the Lord Chancellor) as the head of the judiciary. Among other powers, the Lord Chief Justice has the power to make written representations to Parliament about matters of importance to the judiciary, opening up a new channel of communication directly between the judicial and legislative branches.

- **Creation of the Supreme Court.** Prior to the CRA, the highest "court" in the United Kingdom[100] was the judicial committee of the House of Lords (the upper chamber of Parliament). The UK now has a Supreme Court, an independent body with 12 judges. The Supreme Court came into being in October 2009 and now sits in a separate building, across Parliament Square from Parliament itself in London.
- **Independent bodies for the appointment and discipline of judges.** Prior to the CRA, the Lord Chancellor made judicial appointments and was responsible for the discipline of judges. The CRA created the Judicial Appointments Commission, an independent, 15-member body responsible for the selection of new judges through an open process. The CRA also created the Judicial Appointments and Conduct Ombudsman, and put in place procedures regulating the Lord Chancellor's power to discipline judges, as well as conferring some powers on the Lord Chief Justice in relation to discipline.

The CRA's judicial reforms led to further reforms. A Judicial Executive Board was introduced by the Lord Chief Justice. The UK has a significant number of tribunals which deal with specific kinds of matters (e.g. tax, immigration, freedom of information). These tribunals were essentially part of the government (i.e. executive) departments to which they were related (e.g. the immigration tribunals were wholly dependent on the Home Office, which, as the UK's interior ministry, makes the decisions individuals were challenging in those tribunals). The Tribunals Courts and Enforcement Act 2007 brought the tribunals into the judiciary, into what is now known as HM Courts and Tribunals Service. This vastly expanded the judiciary and changed the status of the tribunals, placing them firmly in the judicial branch. The Ministry of Justice was created as a separate executive department in 2007, headed by the Secretary of State for Justice (a function currently tied to the role of Lord Chancellor, so that the same person holds both titles). Legislation in 2013 also created a single Family Court to deal with most family law issues.

1. Description of the British Justice Model

The United Kingdom is made up of four nations (England, Northern Ireland, Scotland, and Wales) which are grouped into three distinct jurisdictions, with separate (but linked) judicial and legal systems: England and Wales, Northern Ireland, and Scotland. The legal relationship between these nations and jurisdictions is complicated and evolving in ways that fall outside

100 Except for certain matters in Scotland, as explained below.

the scope of this paper. The focus here is on the UK's largest jurisdiction, England and Wales, which encompasses some 56 million people, although some of the jurisdictions described in this section (such as the tribunals) cover the entire United Kingdom.

There is no written constitution in the UK but there is a well-developed (albeit imprecisely defined) body of constitutional law consisting of primary legislation, case-law, practice/ tradition, and academic. The very name of the CRA implies an intention to modify and strengthen the constitution by altering the nature of the judiciary and its relationship with the legislative and executive branches.

The backbone of the judiciary is a three-level court system (for England and Wales). The first instance is the High Court of Justice; the second is the Court of Appeal; and the third is the Supreme Court. The High Court is broken up into three divisions to deal with different kinds of matters: the Queen's Bench division (which includes an Administrative Court – whose work would look similar to that of an administrative court in Macedonia), the Chancery Division (dealing with various civil matters, such as land law), and the Family Division. The Court of Appeal (England and Wales) has civil and criminal divisions (administrative matters fall within the civil division). The Supreme Court, with only 12 judges, does not have divisions (although individual judges – known as Justices – have areas of expertise and are often assigned to cases accordingly). The Supreme Court hears cases in panels, usually of five judges. The Supreme Court is the supreme judicial instance not only for England and Wales but for the entire United Kingdom, except for criminal matters in Scotland, which are decided at the highest level within the Scottish court system.

In the first instance, criminal matters go before either a Magistrate or a Crown Court (which are separate criminal courts); appeals make their way into the courts described above in different ways depending on the nature of the offence. County courts (separate civil courts) exist for low-level civil matters.

For matters (such as immigration) that go to tribunals, the tribunals offer two levels of jurisdiction: a "First-tier Tribunal" and an "Upper Tribunal", which are broken up into various chambers. The Upper Tribunal is meant to be equivalent to the High Court; appeals from the Upper Tribunal go directly to the Court of Appeal. The tribunal system is UK-wide system (and covers legal provisions that apply through the entire UK).

A unique feature of justice in the UK is that there is often (particularly in civil administrative matters) no appeal as a matter of right to the next level of jurisdiction. Usually, an unsuccessful party wishing to appeal must apply for permission to appeal to the court before which it was unsuccessful; if that court refuses to grant permission to appeal, the unsuccessful party can apply for permission to the court to which it wishes to appeal. If that request is refused, that is the end of the case. As a result, in the same kind of matter, a litigant might be limited to only one level of appeal, or be able to plead her case before as many as four instanceds. For example, having been unsuccessful in challenging a refusal to provide information under the Freedom of Information Act 2000, a person might, after losing her appeal to the First-tier Tribunal, be unable to appeal further (if both that Tribunal and the Upper Tribunal refuse

permission to appeal). On the other hand, if permission is granted throughout, that same litigant might have access to the First-tier Tribunal, the Upper Tribunal, the Court of Appeal, and finally the Supreme Court. Such a scenario is nonetheless very unusual.

One consequence of this system is that the Supreme Court hears only a limited number of cases each year (between 56 to 98 per year[101] in the five full years since it was created).

The United Kingdom has no Constitutional Court or similar body. Respect for fundamental rights in the UK is guaranteed through the Human Rights Act 1998, which allows for the direct application of the European Convention on Human Rights in any judicial proceedings.

2. Current Situation in the United Kingdom – Trends and Developments

There are two major judicial-reform trends underway in the UK in relation to the judiciary.

A. **Austerity-related changes.** The coalition government in power between 2010 and 2015 undertook a major cost-cutting programme to reduce the UK's budget deficit by reducing expenditures. One of the targets was the costly legal aid system. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (hereinafter "LASPO") introduced reforms that allowed the Lord Chancellor to take matters "outside the scope" of the civil legal aid system; those taken out include non-asylum immigration matters, family law, and certain matters related to personal debt. LASPO provides for exceptional funding to avoid breaches of ECHR or EU law rights. LASPO also introduced changes in the system of providing legal aid. LASPO attracted enormous criticism from NGOs and lawyers.[102] More recently, judges have been openly critical of the system in judicial writing.[103] The fact that the Lord Chancellor (also Secretary of State for Justice) leading these reforms was the first Lord Chancellor since the seventeenth century not to be lawyer made him a target for criticism (although of course the new role of Lord Chancellor under the CRA – merely a cabinet minister and no longer part of the judiciary – can explain this historic anomaly). The legal aid budget has been reduced by roughly £300 million per year as a result of this reform.[104] There is ongoing talk of further legal aid changes. Austerity has also resulted in the freezing of judges' salaries which has left judges feeling undervalued.[105]

B. **Changes to criminal justice and judicial review.** The Criminal Justice and Courts Act 2015 (hereinafter "the CJCA") came into force in February 2015. The CJCA introduced reforms to criminal justice to make criminal justice more efficient (for example, allowing some offences to be dealt with by a single magistrate, in some cases outside the courtroom) and to be harsher on offenders (including a £600 charge for offenders

101 This data is taken from the Supreme Court's own website: https://www.supremecourt.uk/decided-cases/index.html.
102 The "Legal Aid Team" is an entertaining and effective six-minute animated video, available at http://www.legalaidteam.com/, and pitting "superhero" legal aid lawyers after the villainous Lord Chancellor, sums up this criticism.
103 For example, on 1 May 2015 *The Guardian* published an open letter from over 100 lawyers, judges, doctors, and NGOs calling on the next government to halt legal aid reforms and investigate the consequences for access to justice. Likewise, on 15 July 2015, a High Court judge ruled that the exceptional-funding scheme operated by the Legal Aid Agency does not fulfil LASPO's requirement to ensure that legal aid is made available to prevent breaches of human rights.
104 See the National Audit Office report, cited below at note 16.
105 See http://www.theguardian.com/law/2015/feb/11/uk-judges-disillusioned-drop-pay-conditions-survey.

at the time of conviction and a new offence for offenders who go missing whilst serving the non-custodial part of their sentence). The CJCA also introduced reforms to "judicial review", which is the system by which claims are brought to the High Court to challenge unlawful action by public bodies (i.e. administrative law claims). The changes restrict the situations in which courts can make rulings against public bodies and provide for costs orders against unsuccessful claimants as well as some third-party interveners (which are often NGOs); the costs orders seem designed to discourage claims and third-party interventions by making them potentially very expensive.

It is also worth noting that since the CRA's changes took effect, the judiciary has a much greater public presence. The Supreme Court and the Judicial Office, for example, have active Twitter accounts,[106] and the Judicial Office has a press team provides "advice and support to judicial office-holders on interview bids, misreporting of cases, the handling of potentially controversial issues, and any other media issues", with a 24-hour service.[107]

3. Parties Involved in Measuring the Progress of Judicial Reforms in the United Kingdom

The following parties are involved in measuring the progress of judicial reforms. They are listed in order of the comprehensiveness of their evaluations:

A. **Academics.** The UK has a particularly active academic environment engaged in evaluating the judicial system and judicial reform. The most comprehensive academic engagement with the CRA-related reforms was conducted by a group of academics who undertook a three-year study funded by the Arts and Humanities Research Council, which, like other research councils, is an independent public body that funds academic scholarship. Their work was published as a book this year: The Politics of Judicial Independence in the UK's Changing Constitution (Cambridge University Press).[108] In addition to a literature review, they conducted interviews with over 150 judges, ministers, parliamentarians, and senior officials, and ten private seminars with judges, policy makers, and practitioners. They applied both legal and political science methodologies. Their major conclusion is that, despite the judiciary's lack of enthusiasm about the reforms, and their continued lack of enthusiasm for the new constitutional arrangements put in placer, the CRA and related reforms have made the judiciary more independent, more transparent, and stronger.

B. **The House of Lords Constitution Committee.** The House of Lords is the upper, less powerful chamber of Parliament, whose members are now almost all appointed, either by the government in power to the "party benches", or by an appointments

106 These are @UKSupremeCourt @judiciaryUK, respectively.
107 See https://www.judiciary.gov.uk/about-the-judiciary/training-support/jo-index/media-support/.
108 A summary of their findings is publicly available at https://www.ucl.ac.uk/constitution-unit/research/judicial-independence/Conference_Paper_Judicial_Independence_and_Accountability_in_the_UK_jun14.

commission to the independent, "cross-party" benches. The House of Lords (or at least certain members) has a reputation among British civil society as being an ally in criticising government action that threatens fundamental rights. The House of Lords also has its select committees; judicial reform falls within the remit of the Constitution Committee. Several aspects of the judicial reforms described above have been evaluated by the Constitution Committee, including a 2014 report on the office of Lord Chancellor;[109] a 2012 report on judicial appointments;[110] and a 2008 report on relations between the three branches of government.[111] The Lords' main role, though, is to vet pending legislation.

C. **The House of Commons Justice Committee.** The House of Commons is the lower, more powerful, and democratically-elected chamber of Parliament. It has a series of "select committees" whose purpose is to monitor and evaluate the work of executive bodies. The Justice Committee reviews the work of the Ministry of Justice. It is important to note that the majority in the House of Commons forms the government (whose ministers are themselves "frontbench" MPs), making for a close relationship between those two branches of government, but that does not prevent "backbench" MPs and those from the opposition from using the select committees to formulate sharp criticism. The Justice Committee has not produced a comprehensive review of the judicial reforms described above, but has collected and considered evidence about some aspects of those reforms, notably judicial appointments and the role of the Lord Chief Justice. On 4 March 2015, the Justice Committee also published a report[112] on the impacts of LASPO's changes to civil legal aid.

D. **The Judiciary.** The Judicial Office regularly publishes reports on a wide range of issues, including (sometimes irregular) annual reports from the Lord Chief Justice and Senior President of Tribunals. There is no single evaluation of the judicial reforms, although many of these reports amount to evaluations of judicial reforms, explicitly or implicitly evaluating how they have affected the work of the courts. As mentioned above, some judges have explicitly condemned the effects of the legal aid reforms LASPO introduced in judicial writing. The expository, often personal style English judges often use when writing judgments can increase the impact of these ad hoc evaluations.

E. **The Ministry of Justice.** The Ministry undertakes its own research and analysis, notably about public attitudes towards the justice system. In particular, the (confusingly-named) Crime Survey for England and Wales in 2012-13 covered matters such as attitudes towards the family justice system.[113] In relation to legal aid, a recent report details the early effects of LASPO on immigration appeals.[114] It is worth noting that HM Courts and Tribunals Service is an independent agency sponsored by the Ministry of Justice, which produces its own reports, including annual reports. These give detailed accounts of expenditures and some measures of court efficiency, but can hardly be said to amount to an evaluation of judicial reforms.

109 Available at http://www.publications.parliament.uk/pa/ld201415/ldselect/ldconst/75/7502.htm.
110 Available at http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/272.pdf.
111 Available at http://www.publications.parliament.uk/pa/ld200708/ldselect/ldconst/177/17703.htm
112 Available at http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/31102.htm.
113 Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319365/public-experience-family-justice-system.pdf.
114 Available at https://www.gov.uk/government/publications/monitoring-the-early-impacts-of-the-laspo-act-2012-on-onward-immigration-appeals.

F. **The National Audit Office** (hereinafter "the NAO"). Naturally, the NAO's concern is with the expenditure of government resources. The main judicial reform which has captured the NAO's interest is the changes to civil legal aid LASPO introduced. In 2014, the NAO published a report[115] which was largely critical of the legal aid reforms, and in particular the failure to estimate or monitor impacts on the legal services market, the courts, and the general public.

G. **NGOs.** NGOs are active in monitoring the justice system (especially the recent legal aid cuts). Notably, the NGO Justice (the UK's branch of the International Commission of Jurists) regularly publishes reports about specific aspects of the justice system (particularly criminal justice), although has not published any reports about the judicial reforms discussed above. That NGO (Justice) and others respond regularly to consultations about judicial reform matters, although usually in response to proposed prospective changes. In response to the civil legal aid changes, NGOs have offered anecdotal and quantitative evidence to counter the government's arguments; the Justice Alliance[116] is a good example of this. These amount not so much to evaluation of the changes, however, as much as a campaign designed to halt and reverse the changes.

4. Challenges for the Process of Measuring Judicial Reform in the United Kingdom

Because the reforms of the past decade (the CRA-related reforms) have been mostly aimed at making the judiciary more independent, evaluating reform is not particularly challenging, except to the extent that the value of judicial independence itself is rather abstract and so difficult to measure quantitatively. For example, public opinion about the judiciary is unlikely to yield much of an evaluation of the success of judicial independence, especially when it comes to matters such as the role of the Lord Chancellor. Paradoxically, the biggest challenge for measuring judicial reform may be the attitude of judges, alluded to above and described in details in The Politics of Judicial Independence in the UK's Changing Constitution: despite the evidence that the CRA and related reforms have strengthened judicial independence, judges are still "mourning" the loss of the Lord Chancellor as their dedicated voice in the cabinet, and seem to have preferred the informal relations between judges and the executive that reigned in the past, over the more formal, distant relations with other branches of government that exist now.

When it comes to legal aid changes, the challenge in measuring the reforms is the fact that those who are in favour of the changes and those who are against them have such vastly different frames of reference that it will be hard to find common ground for evaluating success. Those opposed to the changes (lawyers, NGOs engaged in access to justice, and, to a more muted extent, some judges) refer to abstract constitutional and fundamental-rights principles. Those in the executive and legislative branches in favour of the changes

115 Available at http://www.nao.org.uk/wp-content/uploads/2014/11/Implementing-reforms-to-civil-legal-aid1.pdf.
116 https://justicealliance uk.wordpress.com/

have pointed to the need to save money. The NAO's report seems to point to something not entirely forthright behind the introduction of legal-aid cuts: these cuts were pushed through so quickly, with such little analysis of cost impacts elsewhere (e.g. on the courts), that there is a suggestion that they were motivated less by simple cost-cutting, and more by a political vision of a smaller state. Civil society's portrayal of the Lord Chancellor responsible for the cuts as "evil" [117] presents this view more starkly. To the extent that the legal aid cuts may have been motivated by a particular vision of the role of the State (as a minimal provider of support to litigants) and of the judiciary (as playing a smaller role in enabling citizens and civil society to challenge political decisions), it may prove impossible to find a set of standards which would be widely accepted for evaluating the reform's success.

5. What Has Been Measured in Relation to Judicial Reform in the United Kingdom, and How Has it Been Measured?

The evaluations of judicial reforms in the UK, especially of the CRA and related reforms, and of the legal aid chances LASPO introduced, have been almost exclusively qualitative (as opposed to quantitative). Although quantitative data exist (for example, judicial statistics and opinion polls), these are more likely to be part of routine monitoring, as opposed to an evaluation of specific reforms. What follows are the major topics that have been measured, listed in order of the importance they have taken in overall landscape created by the various evaluations that exist.

a. **The views of judges.** In line with the new prominence given to the Lord Chief Justice, as well as the prominent role of judges in the post-CRA judiciary, the views of judges seem to be the most important or frequent measure. The select committees in the House of Commons and the House of Lords give particular weight to the views of the judges from whom they receive evidence, and the main academic study cited above also dedicated tremendous time to interviewing judges (even if its conclusions were deeply sceptical of judges' views).

b. **Indicators of judicial independence and fairness.** There is a paradox here: although the UK has no written constitution and the European Convention on Human Rights has only been justiciable in UK courts since the Human Rights Act 1998 came into force, there is a relatively stable and coherent set of abstract principles to which all parties seem to agree when assessing whether the judiciary is fulfilling its role appropriate. These mainly focus around judicial independence (almost exclusively independence from the executive) and access to justice for litigants. It is often measured by reference to anecdotal evidence of individual cases, but is not dependent on some measure of public opinion or approval of the system. Likewise, the main academic researchers to consider the question were able to conclude that judicial independence had improved, even if they could not elicit that answer from the judges themselves. Likewise, the Constitution Committee's report into the role of Lord Chancellor framed its conclusions in terms of abstract, but unassailable, principles about the rule of law, recommending the Lord Chancellor be assigned

117 See above, note 4.

greater responsibility for defending it.

c. **The views of lawyers and NGOs engaged in ensuring access to justice.** These views have mainly been taken into account in relation to the legal aid cuts LASPO introduced. The Justice Committee was particularly diligent in its LASPO report in taking into account the views of lawyers and NGOs. Such views play less of a role though in evaluation of the core judicial reforms (related to the CRA).

d. **Quantitative data about numbers of cases and costs.** Judicial efficiency (in terms of case-handling and value for money) have played very little role in the evaluation of recent reforms, except for value-for-money considerations in the NAO's analysis of the legal aid reforms; even then, that analysis mainly focused on the holes in the planning process which seem to suggest that the point of the reforms was about something other than cost savings.

e. **The views of the general public.** The views of the general public are gathered (mainly by the Ministry of Justice) but seem to play very little role in the evaluation of the reforms, except to the extent that members of the public feel strongly enough about the issue to contribute to parliamentary consultations leading to reports.

6. Key Conclusions and Findings

Recent judicial reform in the United Kingdom has been mainly focused on making the judiciary more independent (the CRA-related reforms), particularly from the executive branch. The focus seems to be on abstract constitutional principles of independence which would be discernible mostly to a specialised audience only. Interestingly, those who seem least convinced of the success of this reform are the judges themselves, who have nonetheless emerged as part of what appears to be a much stronger, more independent branch of government. The evaluations of these reforms have managed to be credible and coherent despite relying mainly on abstract notions of judicial independence and access to justice. The most comprehensive evaluation of the reform was conducted by academics, who received support from an independent government agency to carry out a comprehensive study. The House of Lords has been the second-most active in evaluating this reform.

The other significant judicial reform in recent years has been the reform to the legal aid system, which is arguably still underway; while this reform does not target the judiciary as much as individual litigants and lawyers, given the scale of reform its impact on the judiciary is and will continue to be tremendous. Unlike the CRA-related reforms, the ostensible goal of these reforms has been to cut costs in line with the government's general austerity programme, although there is a suspicion running through the evaluations of this reform that it is motivated less by simple cost-cutting, and more by an ideological, political commitment to a certain vision of the State and the judiciary. There is little by way of a comprehensive evaluation of this reform, although Parliament has been particularly active in trying to evaluating it, and civil society has been very active in criticising the reforms.

MEASURING JUDICIAL REFORMS IN MACEDONIA IV

Background of Judicial Reforms in Macedonia

After the breakdown of the Federal Yugoslav Republic, Macedonia proclaimed its independence and established a new state system in September 1991. Only few months later, the Macedonian Assembly adopted the new Constitution of the Republic of Macedonia which guaranteed clear division of three branches of power: legislative, executive and judicial. Similar to other emerging democracies in Europe, Macedonia faced the new reality burdened with very conservative legal and judicial system. The new Constitution has set up completely new system of fundamental values, putting the individual i.e. civil rights in the focus. Taking into consideration the newly introduced democratic values, Macedonia took the necessary steps to provide compliance of the existing judicial system to the system of new constitutional values. According to Article 50 of the Constitution of the Republic of Macedonia: *"Every citizen may invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well as before the Constitutional Court of Macedonia, through a procedure based upon the principles of priority and urgency."* Judicial protection of the legality of individual acts of state administration, as well as of other institutions carrying out public mandates, is guaranteed. The citizen has the right to be informed on human rights

and basic freedoms, as well as actively to contribute, individually or jointly with others, to their promotion and protection.

Therefore, providing conditions for establishing new position of the Macedonian judiciary was urgent. Also, the Constitution guaranteed unity of organization for the judiciary as well as regulated the status of judges, their appointment and dismissal, for which in charge was the Republic Judicial Council. The judges were still appointed and dismissed by the Assembly, yet on proposal of the Republic Judicial Council, which consisted of 7 members – lawyers with outstanding professional reputation[118].

Institutional Reform

The first serious institutional reform step after 1991 was drafting and adoption of the new Law on Courts in 1995. This Law made revolutionary changes of the judicial system that had been established in the 1950-ties. One major change was abolishing the specialized courts, such as commercial, misdemeanour, labour relation court and introducing general jurisdiction of the newly established judiciary, as well as introducing new principles of judiciary (legality, equality in arms, fairness, publicity, contradiction, two-instance principle, etc.)[119]. This Law introduced many other novelties, such as procedure for appointment of judges and lay judges[120], court police, court management system, financing of courts, etc.

The Law provided general reappointment of judges of basic and district courts, but not for the Supreme Court judges. More than 600 judges had been reappointed, and gained permanent term of office. According to the new Law on Courts, there were 27 basic (first instance) courts (former municipal), 3 courts of appeal (former district) and the Supreme Court of the Republic of Macedonia.

Procedural and Substantial Law Reform

After establishing the new court structure (court map), the following step of the Ministry of Justice was to amend the court procedures legislation and to make it compatible with the latest novelties in the court system.

The first legislation which was introduced was the Criminal Code in 1996[121] along with the Law on Criminal Procedure in 1997[122] and the Law on Misdemeanours in 1997[123]. This was the first step of reform of procedural law since the independence of Macedonia in 1991. The

118 Article 104, Constitution of the Republic of Macedonia: "The Republican Judicial Council is composed of seven members. The Assembly elects the members of the Council. The members of the Council are elected from the ranks of outstanding members of the legal profession for a term of six wears with the right to one reelection. Members of the Republican Judicial Council are granted immunity. The Assembly decides on their immunity. The office of a member of the Republican Judicial Council is incompatible with the performance of other public offices, professions or membership in political parties."
119 Article 10, Law on Courts (OGRM no.36/95)
120 Article 38 – 39, Law on Courts (OGRM no.36/95)
121 Criminal Code of the Republic of Macedonia (OGRE no.37/96
122 Law on Criminal Procedure (OGRE no.15/97)
123 Law on Misdemeanours (OGRM no.15/97)

new Criminal Code abended the previous approach and relics from the socialistic period and followed the new legal system introduced by the Constitution from 1991. The Law on Criminal Procedure and the Law on Misdemeanours introduced new approach following the new constitutional fundamental values, and recognized individual rights and freedoms, as well as the European Convention for Human Rights, having in mind that the Republic of Macedonia became a member of the Council of Europe in 1996, and ratified the European Convention of Human Rights and Freedoms in 1997.

Simultaneously, the Ministry of Justice initiated novelties in the civil procedural law. As a result, in 1997[124] and 1998[125], the Assembly adopted the new Law on Trial Procedure, and new Law on Enforcement of Judgments, in accordance with the constitutional values and the new court system reform.

Further Development of the Court System – Macedonia signed Stabilization and Association Agreement with EU

In April 2001, the Government of the Republic of Macedonia signed the Stabilisation and Association Agreement (SAA) with the European Communities and their Member States, which stepped up the process and opened up space for shaping the substantial reform process of the judiciary in Macedonia. Namely, in Article 68 of the SAA, the reform of the judiciary was announced i.e. "The former Yugoslav Republic of Macedonia will also define, in coordination with the Commission of the European Communities, the modalities for the monitoring of the implementation of approximation of legislation and law enforcement actions to be taken, including reform of the judiciary."[126] Similar obligation has been undertaken by Macedonia as signatory party in the part of Justice and Home Affairs – Article 72 - Reinforcement of Institutions and Rule of Law – according to which, "In their cooperation in justice and home affairs the Parties will attach particular importance to the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the machinery of justice in particular. **This includes the consolidation of the rule of law. Cooperation in the field of justice will focus in particular on the independence of the judiciary, the improvement of its effectiveness and training of the legal professions."**[127]

Meanwhile, during the process of final negotiation and signing the SAA, in the period from February to August 2001, Macedonia faced an armed insurgency conducted by militant Albanian groups in the northern and northwest part of its territory. On 13 August 2001, with international support from the European Union and the United States, the leaders of the biggest Albanian and Macedonian political parties signed the Ohrid Framework Agreement which later reflected in all segments of the Macedonian society development, including the

124 Law on Enforcement (OGRM no. 53/97)
125 Law on Trial procedure (OGRM no. 33/98)
126 Article 68 of the Stabilization and Association Agreement http://ec.europa.eu/enlargement/pdf/the_former_yugoslav_republic_of_macedonia/saa03_01_en.pdf
127 Article 68 of the Stabilization and Association Agreement http://ec.europa.eu/enlargement/pdf/the_former_yugoslav_republic_of_macedonia/saa03_01_en.pdf

judiciary. As a result of this political accord, on 16 November 2001 the Macedonian Assembly amended the Constitution[128] as it was required by the Framework Agreement.

The Ohrid Framework Agreement introduced wider participation and use of the languages of the minorities in administrative and court procedures that represent more than 20% in the national and local institutions, including judiciary. Firstly, in the Republic Judicial Council, the XIV Amendment determined that 3 of 7 members are elected by the majority votes from Members of Parliament (MPs) - thereby they have to contain majority votes of MPs that are coming from communities which are not majority in the Republic of Macedonia[129]. The same principle is used in all procedural laws that determine use of official languages in the procedures, therefore, the Law on Criminal Procedure, Law on Misdemeanours, Law on Trial Procedure, as well as the Law on Administrative Disputes and the Law on General Administrative Procedure and many other laws, have been amended.[130]

2005 Justice System Reform

After signing and ratifying the SAA, Macedonia sped up the integration process to EU, which resulted in drafting, adoption and implementation of the first comprehensive reform of the judiciary of a wider range.

The reform of the judiciary was initiated by adoption of the Law on Court Budget in September 2003, which was the first step in strengthening of the independency of the judiciary by guaranteeing financial independency of the court system. This Law sets forth the procedure and methodology for drafting, adoption, and enforcement of the Court Budget and the setting up of the Court Budget Council.[131]

In May 2004, the Ministry of Justice submitted Information for need of justice system reform in the Republic of Macedonia, and the Government adopted conclusions for drafting the first Strategy for Justice System Reform. In May 2004 the Ministry of Justice submitted a Strategy which main goal was establishing a functional and efficient justice system based on European legal standards, following international justice principles, such as: **Rule of law; Separation of powers into executive, legislative and judicial; Guaranteeing independence of the judiciary and the Public Prosecution; Equitable and appropriate representation of the communities in the judicial institutions; Protection of citizen's rights; Ensuring equal access to justice; Prompt and efficient action; Prevention of abuse and unconscientious acts or corruption; Adhering to the rules of professional conduct; Adopting European standards in the field of justice.**[132]

The Strategy also pointed out the following weaknesses of the Macedonian judiciary: slow procedures and inaccessibility of justice; difficult and prolonged enforcement of final decisions in the civil cases; overburdened judicial institutions with minor cases; unorganised

128 Amendments IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII and XVIII of the Constitution of the Republic of Macedonia (OGRM no. 91/2001)
129 Amendment XIV of the Constitution of the Republic of Macedonia (OGRM no. 91/2001)
130 Amendments of the Law on Criminal Procedure, Law on Misdemeanors, Law on Trial Procedure, as well as the Law on Administrative Disputes and the Law on General Administrative Procedure (OGRM no. 44/2002)
131Law on Court Budget (OGRM no. 60/03)
132 The Reform of the Judicial System in the Republic of Macedonia – Chapter II – Need of Strategy, Goals and Instruments for Its Implementation - Page 4-5

case management; obsolete IT equipment and insufficient use of IT; insufficient coordination between the Supreme Court, State Judicial Council and the Ministry of Justice; insufficiently skilled human resources, in professional and ethical terms.[133]

The problems with the judicial independence seem to be connected with the following issues: the actual Constitutional and legal solutions for selection of judges and appointment of Public Prosecutors enable political influences; absence of detailed criteria for financing courts and the Public Prosecution; poor economic situation of the judges and court's employees.[134]

Therefore, the Strategy for Justice System Reform is primarily focused on ensuring functional and efficient justice system, supporting the exercise and protection of human rights and freedoms, based on European legal standards. In addition to the sections dedicated to the judiciary, the structural and the reforms of the procedural legislation make an integral part of this Strategy.

There are three parts of the Strategy: 1) Substantive law reform, which is directly related to the contents of the functions of the judicial system, aims at setting up a new legal framework in line with the European and the international standards, a new system of legally recognized and protected values based on human freedoms and rights and other principles of democratic society and legal State. 2) Procedural law reform, which contains the basic tools for performing the functions of the judicial institutions, aims at prompt access to justice, prompt and easy exercise of the rights and interests of citizens and legal persons, efficient protection from crime, and litigation guarantees for protecting human rights through the mechanisms of the justice system. One of the direct effects of the reform should be an increase in the efficiency of the judicial institutions and decrease of the number of pending cases; and 3) The Structural reform, which covers the institutions of the judicial system, aims at redefining the position and competencies of specific bodies for the purpose of setting up efficient, stable, non-partisan, independent and accountable institutions, including the relations within the institutions based on professional, competent, ethical output and protection from abuse and corruption.[135]

One of the priority objectives recognized in the Strategy for Justice System Reform is the need for enhancing the independence of the judiciary. In accordance with the Action Plan for Implementation of the Strategy for Justice System Reform, in December 2005 the Assembly of the Republic of Macedonia adopted Amendments XX to XXX[136], to the Constitution of the Republic of Macedonia, which concern the justice system. The primary goal of these amendments is enhancing the independence of the judiciary.

In particular, they put special emphasis on the system of election of judges, which has shown certain weaknesses in the hitherto practice. These amendments to the Constitution envisage that the election and dismissal of judges be conducted by the Judicial Council of the Republic of Macedonia, instead of the hitherto provision, which envisaged that they be elected and dismissed by the Assembly of the Republic of Macedonia. According to Amendment XXVIII,

133 The Reform of the Judicial System in the Republic of Macedonia – Chapter II – Need of Strategy, Goals and Instruments for Its Implementation - Page 3
134 Ibid
135 The Reform of the Judicial System in the Republic of Macedonia – Chapter II – Need of Strategy, Goals and Instruments for Its Implementation - Page 5
136 http://www.sobranie.mk/ustav-na-rm.nspx

the Judicial Council is an autonomous and independent institution of the judiciary, and it ensures and guarantees the autonomy and independence of the judiciary. The Council is composed of fifteen members. In addition, the Constitutional amendments guaranteed the constitutional right for appeal decision in front of second instance bodies and courts; providing misdemeanor jurisdiction for state administration and other bodies that conduct public authority; conditions for setting up courts; status of the judges, their protection and responsibility; status, structure and jurisdiction of the Public Prosecution Office, appointment of the public prosecutors as well as of the Chief Prosecutor, and setting up new Council of Public Prosecutors, its structure, composition, as well as its competences.

In the implementation period 2006-2009 of the Strategy of the Judiciary from 2004, more than 70 laws have been adopted and amended, more than 60 sub-laws, and 7 new judicial and quasi-judicial institutions have been established (Judicial Council of the Republic of Macedonia, Council of Public Prosecutors, Basic Public Prosecution Office for Fighting Organized Crime and Corruption, Administrative Court, Gostivar Appeal Court, Higher Public Prosecution Office in Gostivar, Agency for managing confiscating assets and proceed of crime in criminal and misdemeanor procedure).

The most significant legislation that has been adopted and amended considering structural reform was introduced by the new **Law on Courts in 2006** that reintroduced specialized courts and court departments (Criminal Basic Court in Skopje, Administrative Court, Departments for Fighting Organized Crime in 5 Basic Court, etc.), a model abandoned by the Law on Courts from 1995; new **Law on Judicial Council in 2006** that set up new structure, composition and competences in appointment and dismissal of judges and lay judges (these competences have been transferred from the Assembly to the new Council), fully separating the judicial branch from other two branches of power, etc; **Law on the Academy for Training of Judges and Public Prosecutors in 2006**, setting up a whole new system of initial and continuing legal education for judges and prosecutors, as well as training program for lawyers that apply to become judges and public prosecutors; **Law on Salaries of the Judges** for improving judges status and position following the international standards; **Law on Court Administration**, defining status and position as well as remuneration of the court clerks.

In respect to Public Prosecution, within the implementation process of the Strategy, the Assembly adopted new **Law on Public Prosecution from 2007** introducing new public prosecution office for fighting organized crime and corruption and its amendments in 2008, **Law on Council of Public Prosecutors**, defining its structure, composition and competences in appointment and dismissal of public prosecutors (these competences have been transferred from the Assembly to the Council) excluding the appointment and dismissal of the Chief Prosecutor.

In respect to the procedural law reform the following legislation was adopted and amended: new **Law on Misdemeanors**, new **Law on Mediation**, amendments of the **Law on Enforcement of Judgments**, as well as amendments of the **Law on Trial Procedure**.

In the context of the implementation of judgments of the European Human Rights Court versus the Republic of Macedonia regarding the right to a trial within reasonable period, in March 2008 there were relevant amendments and supplements adopted to the Law on Courts

for purposes of operationalization of the national level protection of the right to a trial within reasonable period.

This Strategy did not affect the criminal justice system since in 2007 the Government adopted *Strategy for Reform of the Criminal Law*. The main goal of this reform was to modernize criminal procedure in accordance to the European trends and to strengthen the efficiency of the criminal law system, particularly fighting forms of serious crime including organized crime, financial crime and human trafficking. Inefficiency of the criminal law could be removed by redefining of the role of participants in the criminal procedures, institutional strengthening of the public prosecution office, defining the priorities in conducting criminal law policy, simplifying of the regular court procedure and conducting summary proceedings and plea bargaining and sanction.[137] The new Law on Criminal Law[138] was adopted in November 2010, presenting new adversarial principle in criminal justice system, transferring the investigation from the investigative judges in basic courts to the public prosecutors.

The Strategy for Information and Communication Technology in Courts 2007-2010 and the Strategy for Reform of the Penal Law are also being realized.

2009 Continuation of the Justice System Reform

In 2009, the Ministry of Justice drafted a new 'so called' - *Strategy for Further Implementation of the Justice System Reform*. This document was continuation of the Strategy from 2004, and its main goal was analysis of the existing legislation in the field of judiciary and experiences of its implementation as well as improving of the legal framework which regulates this field.[139] This document was in one hand assessment of what has been done with the Strategy from 2004 and what has to be done for further improvement of the judiciary for achieving the main goal – **establishing a functional and effective judicial system based on European legal standards.**

The Strategy from 2009 prescribed further reforms in the segment of Judicial Council, Courts, Judge's Remuneration, Judicial Council Member's Remuneration, Academy for Training of Judges and Prosecutors, Enforcement of Judgments, Mediation, Misdemeanors, Trial Procedure, as well as Public Prosecution. This document was mainly focused in finding legislative solutions in providing and strengthening of transparency in the work of judges, scrutiny in the work of courts, strengthening and increasing of integrity of judges, public prosecutors and Judicial Council and Prosecution Council members, providing professional and well trained candidates for judges and prosecutors, as well as providing easy access to justice and efficient, effective and economic court procedures. This document also covered the areas of case management, witness expertise, and court administration.

The Strategy placed the Strategy for Reform of the Criminal Law as part of its segments, taking into consideration that the Strategy from 2009 has much wider approach by covering all segments of the judiciary, including criminal law.

137 http://arhiva.vlada.mk/registar/files/strategija_kazneno.pdf
138 Law on Criminal Procedure (OGRM no.150/2010)
139 Strategy for further implementation of the Reform of the Judicial System - page 3

2. Measuring Judicial Reform in Macedonia

National reports

The Justice System Reform Strategy of 2004 provides, for the first time, a system of monitoring and evaluation of the undertaken measures, activities and outcomes of the implementation of the Strategy. Therefore, a Council for Justice System Reform was established with specific competences to review the quarterly reports for undertaking measures and actions of the institutions regarding the implementation of the Strategy, as well as to provide recommendations, and twice a year to submit a report on the implementation of the Strategy to the Government, the Assembly and the judicial institutions. Also, in the competence of the Council was to publish this report in public.[140]

The reports on the reforming process prepared as a result of the monitoring performed by the Council for Justice System Reform were sent to Government on regular quarterly meetings, but the same have not been published. In addition, except the monitoring role of the Council, also the reforming process has been closely monitored by various international and domestic institutions and organizations (described further in this report).

Publication of court performance data is a key element of public accountability of courts which describes the monitoring process. The court performance data (statistics) include the number of cases decided, timeframes and length of proceedings, where delays must be identified and generate action. Institutions involved in measuring the reforms of the judiciary:

Ministry of Justice: The Ministry of Justice in Macedonia is the main initiator and coordinator the judicial reform processes. Yet, in the past years, no serious attempts have been made to measure the impact of the dynamic interventions in the judiciary undertaken in the area of the judiciary. Apart from this, MoJ is regularly participating in the Council of Europe's CEPEJ measurement tool that is mainly oriented on checking the efficiency of the judges' performance.

Judicial Council: The Judicial Council as a main body that guarantees the independence of judges and evaluates their work doesn't apply a specially designed method of evaluating the effects of the undertaken reforms. It conducts 'traditional statistics' on the judges' performance, based on several criteria that focus on the judges performances, with no special attention on the aspects of fairness and/or independence of the judiciary for example. The statistics of judges' performance are then subject of disciplinary measures that this body initiates against a certain judge who showed bad performance while practicing its work. Only recently, the JC has started organizing series of roundtables devoted on pressures in the judiciary, and the role of the highest judicial bodies in protecting the judges against interferences in the independence of their work. However, it is not clear whether there will

140 The Reform of the Judicial System in the Republic of Macedonia – Chapter II – Need of Strategy, Goals and Instruments for Its Implementation - Page 6

be specific follow up actions resulting from these discussions. The Council is also a member of ENCJ (European Networks of Councils for the Judiciary, see further in the study).

Academy for Judges and Prosecutors: The Academy organizes initial training for future judges and continuous training for serving judges and court administration. It produces regular reports on the number of trainings and other events organized for judges, measuring their attendance and participation. It produces annual report for its work, and engages judges for mentors and educators in the training programs it designs and implements. The Academy plays key role in training the judges on how to ensure the proper application of the ECHR provisions during their work. It also assesses the training needs of the judges based on the current developments and comparative experiences.

Association of Judges: The professional association of judges has been more active before the creation of the Academy for Judges and Prosecutors as it has provided training opportunities for seating judges as well. In the past several years no significant effort has been noticed in regards to the processes and current reforms affecting the judiciary.

External Reports

Most relevant, among the international reports are the ones issued by the European Commission (EC) which reports annually about progress of the reform of the judiciary in its Progress Reports on Macedonia. In its Progress Report for 2007, EC has noted that *the progress has been made in the area of the judiciary. . . However, improving the independence and the efficiency of the judiciary remains a major challenge and corruption is a deep-seated problem. In all three areas, further implementation of existing legislation is required. Persistent lack of budgetary resources limits administrative capacity.*[141] *In the Progress Report for 2008, EC has noted that some progress has been made in the area of judiciary and fundamental rights. As in regard to the judicial reform, the Judicial Council is functioning, the Council of Public Prosecutors has been established and the Law on the Public Prosecutors Office has been adopted. However, a track record of the functioning of these new institutions needs to be established. Further strengthening of the judiciary is required in the regard of its independence, budgetary framework, human resources and efficiency. Overall, the country is moderately advanced in this area.*[142]

In 2010, as an outcome of the EU Commission Framework Contract, an Assessment of Implementation of the Strategy for Reform of the Judicial System Report was published. This Report aimed to conduct a comprehensive assessment of the achieved results, but also to the anomalies and weaknesses that arose during the implementation of the Strategy with aim to assist the Ministry of Justice in preparation of strategic document for continuation of the judicial reform and to provide sustainability of the reform efforts. This Assessment Report was commissioned to include development of measurable indicators for assessment of the impact of measures and actions conducted during the implementation of each aim of the strategy.[143]

The Report gave a full picture of what happened during the implementation of the Strategy,

141 EC Progress Report 2007 – Chapter 23
142 EC Progress Report 2008 – Chapter 23
143 Assessment of Implementation of the Strategy for Reform of the Judicial System Report, page 2

which of the aims was completely and which of them was partially achieved, outcomes of the Strategy, participation of each stakeholder, and at the end, general conclusion and recommendations for further development. The general conclusion in this Assessment Report was that the Strategy was successfully implemented in conditions of limited financial means, lack of human resources and lack of technical experience for some of the specific parts of legislation.[144]

The Assessment Team gave particular recommendation in three segments of the judiciary. The first segment, which considers **judicial independency** the Assessment Team, pointed out the *impressive progress* that was achieved, but for further development it proposed recommendations regarding *establishing constant monitoring of the development of carrier system for judges and prosecutors regarding support of the transparent merit system; revision of results of assessment of judges for making the standards more clear; precise monitoring of sustainability and regularity of the psychological testing, especially integrity testing during the entrance exam in the Academy, and revision of the existing rule for civil liability of judges*. Second segment takes into consideration the **reform of the civil law** and here the Assessment Team recommended preparation of comprehensive study for possible radical reforms of trial procedure based on lessons of similar systems; Monitoring of the expenses level after the new enforcement system becomes operational; Conducting study for to further enlarge the use of mediation; monitoring of practice regarding new rules in appeal procedures; monitoring of influence of the level of access to justice for vulnerable groups that outcome from various reforms. In the third segment, which covers **public prosecution**, the Assessment Team recommended continuing monitoring of the public prosecutors practice for checking how the rules are implemented in daily work especially in respect to identification of priorities for indictments and use of resources; and maintaining of sharing experiences with foreign public prosecutions.[145]

Apart of the conclusions of the Assessment Team, critics from EU regarding the implemented reforms in the judiciary continued. In the 2010 Progress Report for Macedonia, the European Commission noted that *"there has been limited progress in reform of the judiciary and in safeguarding fundamental rights and some progress in addressing corruption.", which note was confirmed in the following 2011 "Some limited progress can be reported on independence and efficiency of the judiciary, in particular the amendment of the Minister of Justice's role on the Judicial Council and the establishment of the High Administrative Court." Also, in 2012 and 2013, the EC identified that only some progress had been made in the field of the judiciary "notably in reducing the backlogs of court cases*[146] *and the introduction of stricter professional requirements for judges."*[147] EC also noted the segment in which further assistance is needed, such as improvements regarding merit-based judicial appointments, precise and predictable dismissal grounds and correct use of statistical tools, and to ensure the independence of the judiciary in practice, notably as regards to the systems for evaluation and dismissal, as well as to ensure that all judicial appointments are based on merit and to address the problem of lengthy court proceedings.[148]

In 2014 Progress Report for Macedonia, the EC noted that the country has already completed

144 Assessment of Implementation of the Strategy for Reform of the Judicial System Report, page 38
145 Ibid
146 EC Progress Report 2012
147 EC Progress Report 2013
148 Ibid

the majority of reforms and has established the necessary legal and administrative structures in this area. However, there is a risk of back-sliding in some areas, including the judiciary and the fight against corruption; therefore further efforts are needed to safeguard the independence of judges, to improve quality of justice and to facilitate access to justice.[149]

In 2014, an Expert's Team consisted of EU and national experts as a part of the EU funded Project **"Preparation of the EU Justice Sector Support Programme"** conducted an assessment targeting gaps and needs of the justice sector, which was intended inter alia to propose the outline for the scope and extent of the future Justice Sector Reform Strategy/Action Plan for Republic of Macedonia. This Expert's Team defined, so called, key 7 institutional and thematic blocks: Judiciary; Criminal justice; Access, oversight and transparency of justice; Misdemeanours and public law; Policy and reform; Legal education and professional training systems; and Coordination of justice sector information systems.

After conducting comprehensive assessment of all stakeholders in the judiciary and determination of the state of play, the Assessment Team produced a Report, in which it was recommended to the EU to continue project-approach interventions based on the 5 Actions currently in the pipeline from the IPA 2014 envelope, focusing its support on the 5 main areas: *(a) judiciary, (b) access to justice, (c) criminal investigation and trial, (d) criminal enforcement (penitentiary and probation), and (e) strategic planning and reform coordination* (including assistance in the on-going major justice-related legislative development efforts in the misdemeanour and civil law).[150]

The Expert's Team also gave recommendation on medium to long-term perspective (3 to 5 years and beyond), recommending gradual move towards sector-based approach in programming, while mixing various modalities, including Sector Budget Support, and maintaining a *reasonable and balanced relationship of proportionality between them.*[151]

Taking into consideration the determined state of play as well as the recommendations given in the Project "Preparation of the EU Justice Sector Support Programme", the Ministry of Justice at the end of 2014 initiated wide inclusive process for drafting new Strategy for Reform of the Judicial System 2015-2019. The Strategy is planned to be launch out at the end of 2015.

'Urgent reform priorities for Macedonia'- June 2015

During the last several years in a row, Macedonia faced serious political crises that culminated with the revelation of the so called political "bombs" - taped conversations that were presented by the opposition and which contained allegations of systemic corruption and misuse of power by the governing parties. In order to remind the country of its path to EU as a candidate for member state, and to consolidate the crisis, the EU Commission on Neighborhood and Enlargement issued **a list of urgent reform priorities** to be fulfilled by Macedonia in the fields of rule of law and fundamental rights, de-politicisation of the public administration, freedom of expression and electoral reform.

149 EC Progress Report 2013
150 Project "Preparation of the EU Justice Sector Support Programme" Page ??
151 Ibid

The European Commission drafted these reform priorities to draw the attention to the "previously-issued recommendations and previously-agreed reform priorities in these areas[152], which have been both confirmed and complemented by the findings of the Senior Experts' Group". As pointed out in the document, they are designed *to address the systemic weaknesses inherent in the making and the content of the wiretap revelations, as well as more cross-cutting weaknesses which contributed to the situation which led to the current political crisis.*

Monitoring and implementation of these reform priorities will be pursued through contacts with all relevant stakeholders and the High Level Accession Dialogue. Among other areas, the section on Rule of Law and Judiciary, lists several reforms that need to be conducted urgently, including:

- De-politicize the appointment and promotion of judges and prosecutors, in practice not only in theory, on the basis of transparent, objective and strictly merit-based criteria, applied by transparent and open procedure.
- Put in place a harmonized performance management system based on qualitative as well as quantitative standards, as a basis for all career decisions.
- Remove elements of the discipline and dismissal system for judges, which currently interfere with judicial independence, both in legislation and practice.
- Ensure the professionalism of the Judicial Council, in practice not only in theory (i.e. clear and foreseeable test for the application of the statutory requirement of "distinguished lawyer").
- Ensure more pro-active role played by Judicial Council and highest courts, to protect judges from interference on their independence (both through improved communication strategies and through decisive action on complaints of interference or pressure).
- Improve training quality, budget and autonomy of the Academy for judges and Prosecutors (and encourage secondments of national judges to the ECtHR).
- Ensure publication of all court rulings within the clear deadlines imposed by law (and ensure full "searchability" and ease of access).
- Develop a track record on overall length of proceedings, with special focus on "old cases".
- Ensure speedy execution of all ECtHR judgments against the country (in particular by developing practical end effective measures for each category of cases).

These judicial reforms are expected to be the core focus of all parties and stakeholders involved in the current and next period, especially since the EU has put the tone of urgency and has identified them as immediate and ultimate indicators according to which the country will be evaluated in making substantive progress in this field.

152 Previous recommendations issued in the Progress Report and in the framework of the High Level Accession Dialogue (HLAD)

Other relevant institutions and organizations involved in measuring judicial reforms

Council of Europe:

European Commission for the Efficiency of Justice (CEPEJ)

Established on 18 September 2002 with Resolution (Res(2002)12) of the Committee of Ministers of the Council of Europe (and ensured by the Directorate General of Human Rights and Legal Affairs) -CEPEJ aims to improve the efficiency and functioning of justice in the member states as well as to develop implementation of the instruments adopted by the CoE for the same purpose[153]. CEPEJ closely monitors and analyses the results of the judicial systems, providing a firsthand assistance to the member States, at their request, to propose to the competent instances of the Council of Europe the areas where it would be desirable to elaborate a new legal instrument.

The CEPEJ is composed of experts from all the 47 member States of the Council of Europe and is assisted by a Secretariat. The European Union also participates in its work.

CEPEJ prepares benchmarks, collects and analyses data, defines instruments of measure and means of evaluation, adopts documents (reports, advices, guidelines, action plans, etc), develops contacts with qualified personalities, non-governmental organizations, research institutes and information centers, organizes hearings, promotes networks of legal professionals.

The Council of Europe has initiated a reflection on efficiency of justice and adopted Recommendations which contain ways to ensure both its fairness and efficiency.

In the meantime, the States, if they wish, have the possibility to update some key data. As for the previous cycle and from the information contained in the report, the CEPEJ wished to complete this stage of knowledge of the judicial systems by a stage of deepened analysis of some topics.

In December 2007, CEPEJ adopted a **Scheme for evaluating judicial systems - Key judicial indicators**[154]. The idea behind this document was for the member states (as of 2008) to update on an annual basis and between two evaluations some of the judicial data collected through Scheme for evaluating judicial systems. To facilitate the process of collecting and processing judicial data, an online electronic version of the Scheme has been created. Each national correspondent[155] can thus accede to a secured webpage to register and to submit the relevant replies to the Secretariat of the CEPEJ. National replies also contain descriptions of legal systems and explanations that contribute greatly to the understanding of the figures provided.

153 The creation of the CEPEJ demonstrates the will of the Council of Europe to promote the Rule of Law and Fundamental Rights in Europe, on the basis of the European Convention on Human Rights, and especially its Articles 5 (Right to liberty and security), 6 (Right to a fair trial), 13 (Right to an effective remedy), 14 (Prohibition of discrimination).

154 https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1259446&SecMode=1&DocId=1191266&Usage=2

155 National CEPEJ representative for Macedonia is Mr. Nikola Prokopenko, Head of Unit-Department of Judiciary, Ministry of Justice of the Republic of Macedonia

Evaluation of European Judicial Systems

The statute of the CEPEJ emphasizes the comparison of judicial systems and the exchange of knowledge on their functioning. The scope of this comparison covers both efficiency as well as the quality and the effectiveness of justice. In order to fulfil these tasks, the CEPEJ has undertaken a regular process for evaluating judicial systems of the Council of Europe's member states. Its Working Group on the evaluation of judicial systems (CEPEJ-GT-EVAL) is in charge of the management of this process.

According to its Statute, the CEPEJ must "*(a) examine the results achieved by the different judicial systems (...) by using, amongst other things, common statistical criteria and means of evaluation, (b) define problems and areas for possible improvements and exchange views on the functioning of the judicial systems, (c) identify concrete ways to improve the measuring and functioning of the judicial systems of the member states, having regard to their specific needs". The CEPEJ shall fulfil these tasks, for instance, by "(a) identifying and developing indicators, collecting and analysing quantitative and qualitative figures, and defining measures and means of evaluation, and (b) drawing up reports, statistics, best practice surveys, guidelines, action plans, opinions and general comments".*

Six evaluation reports have been released so far as a result of several evaluation cycles (2002/2004; 2004/2006; 2006/2008; 2008/2010; 2010/2012 and 2012-2014). The latest Report[156] from 2014 based on the 2012 data compares the judicial systems of 45 member states out of 47 which have participated in the evaluation process, including Macedonia. In terms of the judiciary, the report presents findings on key indicators on courts and judges work: Public expenditures allocated to courts, Correlation between the GDP per capita and the total budget of judicial systems, Access to justice, Users of the courts (rights and public confidence), Judicial organization, Level of computerization of courts, Means for measuring the quality of the courts' performance, Status and career of judges and prosecutors, Number of professional judges sitting in courts and non-judge staff, Distribution (in %) of professional judges between first instance courts, second instance courts and supreme courts, Court activity and fair trial (clearance rate and disposition time in criminal, commercial and administrative cases, divorce and employment dismissal), Gross and net annual salaries of judges and prosecutors at the Supreme Court or at the last instance in 2012, Distribution of male and female professional judges within the total number of professional judges in 2012, Execution of court decisions, etc.

The Consultative council of European Judges (CCEJ)

The Consultative Council of European Judges is an advisory body of the Council of Europe on issues related to the independence, impartiality and competence of judges. It is the first body within an international organization to be composed exclusively of judges, and in this respect, it is **unique in Europe**. By establishing the Consultative Council of European Judges, the **Council of Europe highlighted the key role of the judiciary in exploring the concept of democracy and the rules by which it operates**. The CCJE adopts Opinions for the attention of the Committee of Ministers on issues regarding the status of judges and

156 http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf

the exercise of their functions. The CCJE may be requested by member states[157] to look into specific problems concerning the status and/or the situation of judges. It addresses topical issues and, if necessary, visits the countries concerned to discuss the ways of improving the existing situation through developing legislation, institutional framework and/or judicial practice.

All member States may be represented. Members should be chosen in contact, where such authorities exist, with the national authorities responsible for ensuring the independence and impartiality of judges and with the national administration responsible for managing the judiciary, from among serving judges having a thorough knowledge of questions relating to the functioning of the judicial system combined with utmost personal integrity[158].

European Union:

EU Justice Scoreboard

The EU Justice Scoreboard, issued by the European Commission - Directorate-General for Justice, is an information tool aiming to assist the EU and member states to achieve more effective justice by providing objective, reliable and comparable data on the *quality, independence and efficiency* of justice systems in all Member States. The Scoreboard presents trends on the functioning of the national justice systems over time assessing the impact of justice reforms. It does not present an overall single country ranking but an overview of the functioning of all justice systems based on various indicators which are of common interest for all member states.

The Scoreboard treats the essential parameters of an effective justice system, such as anchored, timeliness, independence, affordability, and user-friendly access without promoting any particular model of justice system among the member states. Poor performance revealed by the Scoreboard indicators (56 Figures) always requires a deeper analysis of the reasons behind the result. This assessment takes into account the particularities of the legal system and the context of the concerned member states. It may eventually lead the Commission to propose Council country-specific-recommendations on the improvement of justice systems.

The Scoreboard uses different sources of information. Most of the quantitative data are currently provided by and in accordance with the methodology of the Council of Europe Commission for the Evaluation of the Efficiency of Justice (CEPEJ) with which the Commission has concluded a contract in order to carry out a specific annual study. Recognizing that the efficiency of a justice system on its own is not enough, the 2015 EU Justice Scoreboard pays particular attention to the quality and independence as key components of an effective justice system[159]. The last 2015 Scoreboard also looks at the legal safeguards in national justice systems that protect judicial independence (mainly through the Councils for the

157 Contact person and representative of CCJE for Macedonia is Ms. Aneta Arnaudovska, Judge, Director of the Academy of Judges and Prosecutors

158 For Macedonia, the Judicial Council of the Republic of Macedonia (http://www.ssrm.mk)

159 For example, the 2015 edition presents new information on the quality of small claims procedures on-line, on gender balance in the judiciary, on how courts communicate or on alternative dispute resolution in consumer disputes

Judiciary or other similar independent bodies)[160]._The Commission progressively broadened the scope of the Scoreboard. For the 2015 Scoreboard[161], the Commission has also drawn upon additional sources of information, namely Eurostat, the World Bank, the World Economic Forum, the European judicial networks (in particular the European Network of Councils for the Judiciary, which provided replies to a questionnaire on judicial independence) and the group of contact persons on national justice systems.

Further data have also been obtained through data collection exercises and field studies on the functioning of national courts when they apply EU law in the areas of competition, consumer protection, Community trademarks and public procurement.

Acknowledging the key role effective justice systems play in restoring confidence throughout the entire business cycle, the impact of national justice systems on the economy is underlined by the International Monetary Fund, the European Central Bank, the OECD, the World Economic Forum and the World Bank.

The EU Justice Scoreboard is of crucial importance for Macedonia's further alignment of its justice system with the EU standards and practices, especially in regards to all those aspects covered by the tool that measure the impact of the past and ongoing judicial reforms and according to a mutually accepted methodology by all EU member states and by the relevant EU institutions. It is not a binding mechanism, but is rather intended to help identify issues that deserve particular attention.

European Network of Councils for the Judiciary (ENCJ)

The ENCJ[162] unites the national institutions in the EU Member States which are responsible for the support of the Judiciaries in the independent delivery of justice. Its aim is to improve cooperation between, and good mutual understanding amongst, the Councils for the Judiciary and the members of the Judiciary of the European Union (or candidate) Member States. Macedonia is ECNJ observer represented through the Judicial Council of the Republic of Macedonia. ENCJ considers that the identification of minimum judicial standards (and relevant indicators) for the justice sector will further the approximation of the judicial systems in the Europe and thus contribute to the attainment of a European Judicial Culture.

In 2012, the ENCJ commissioned preparation of a concise document distilling the principles established by the ENCJ, and its standards, guidelines and recommendations. The final report[163] approved in 2013 provides an accessible summary that assist ENCJ members and Councils for the Judiciary and equivalent bodies in candidate and potential candidate member states to identify good practices in relation to the management of a modern European justice system. The principles and recommendations of the Summary are based on the main ECJN Reports and are divided into the following 15 themes: (1) Independence of the judiciary. (2)

160 Five indicators are used to show safeguards in such situations: the safeguards regarding the transfer of judges without their consent (Figure 51), the dismissal of judges (Figure 52), the allocation of incoming cases within a court (Figure 53), the withdrawal and recusal of judges (Figure 54) and threat to the independence of a judge (Figure 55). For such situations, the 2010 Council of Europe Recommendation on judges: independence, efficiency and responsibilities ('the Recommendation') presents standards to ensure that the independence of the judiciary is respected (source: *The 2015 EU Justice Scoreboard*)

161 http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2015_en.pdf

162 "Guide to the European Network of Councils for the Judiciary"

163 http://www.encj.eu/images/stories/pdf/workinggroups/encj_report_distillation_approved.pdf

Councils for the Judiciary. (3) Judicial ethics. (4) Selection, appointment and promotion. (5) Remuneration of judges. (6) Judicial training. (7) Prosecutors. (8) Quality management. (9) Case management and timeliness. (10) Judicial performance and management. (11) Access to justice. (12) Court funding. (13) Transparency, accountability and media relations. (14) Public confidence. (15) Mutual confidence.

UN - Human Rights Council

Established in 2006[164], the Human Rights Council (HRC)[165] is an inter-governmental body within the United Nations system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them. The Council is made up of 47 United Nations Member States which are elected by the UN General Assembly.

Among the main HRC's procedures and mechanisms were the Universal Periodic Review mechanism which serves to assess the human rights situations in all United Nations Member States, the Advisory Committee which serves as the Council's "think tank" providing it with expertise and advice on thematic human rights issues and the Complaint Procedure which allows individuals and organizations to bring human rights violations to the attention of the Council.

The Human Rights Council also works with the UN Special Procedures made up of special rapporteurs, special representatives, independent experts and working groups that monitor, examine, advice and publicly report on thematic issues or human rights situations in specific countries.

The Constitution of the Republic of Macedonia accepts the principle of incorporation of international agreements, and those referring to fulfillment of human right are closely followed by the UN HRC[166]. The Republic of Macedonia has given its approval for the publication of Reports adopted in respect of the Republic of Macedonia. The National Report submitted for the Universal Periodic Reviews take into consideration the information and recommendations of international human rights mechanisms during the preparation of the documents, also including inter-ministerial consultations, as well as preliminary consultations with civil sector organizations working on human rights protection and promotion. Among other human rights aspects, the HRC in these periodic reviews provides an insight on the state of play with the judiciary, its independence and autonomy, and the justice system reforms in Macedonia[167].

164 http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/502/66/PDF/N0550266.pdf?OpenElement
165 The Human Rights Council replaced the former United Nations Commission on Human Right
166 http://www.ohchr.org/EN/HRBodies/UPR/Pages/MKSession5.aspx
167 United Nations Human Rights Council Working Group on the Universal Periodic Review fifth session Geneva, 4-15 May 2009 National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council Resolution 5/1 * the Former Yugoslav Republic of Macedonia, adopted on the UN General Assembly in February 2010; http://www.refworld.org/pdfid/49d20f82d.pdf http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/MK/A_HRC_WG6_5_MKD_3_E.pdf

USAID - Judicial Strengthening Project

In the framework of the Governance and Rule of Law area, one of the USAID Projects is Judicial Strengthening, which started being implemented by a company Tetra Tech DPK as of November 2011 and the same is expected to be finished in November 2015. The main components **of the Judicial Strengthening Project**[168] are focused on developing the capacity of justice sector professional associations to play a leadership role in justice system reform efforts, developing effective court governance systems and practices and promoting more effective and accountable operations of judicial sector institutions and courts, improving the efficiency and quality of justice through specialized trainings to judges and court personnel.

The main focus of USAID funded projects in the judiciary was on increasing the efficiency of the judiciary, though improving the case management systems, infrastructure of the courts, as well as the ICT and court staff capacities. In regards to the measuring of the court efficiency as well as other aspects of the judicial reform processes, USAID supported ABA/CEELI's preparation of the Judicial Reform Index for Macedonia (JRI)[169] in 2002 and in 2003 (Volume II)[170],, inaugural measuring tool that preceded the crucial judicial reforms introduced in 2005 and later, and before Macedonia was granted candidate country status for EU membership in 2005. ABA/CEELI embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in judicial reform. The instrument has been developed using a specifically designed methodology that included both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the United Nations Basic Principles on the Independence of the Judiciary; Council of Europe Recommendation R(94)12 "On the Independence, Efficiency, and Role of Judges"; and Council of Europe, the European Charter on the Statute for Judges. Drawing on these norms, ABA/CEELI compiled a series of 30 statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary. The categories incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary. The JRI tool evaluated each factor, or statement, in regards to Macedonia's reforms, with one of three values: p*ositive, neutral, or negative*. These values only reflect the relationship of that statement to that country's judicial system.

OSCE – Mission to Skopje - Rule of Law

The key priorities of the OSCE Mission to Skopje Rule of Law Department are to strengthen the independence of the judiciary and to assist the legal reform process. The Mission offers technical comments to the judiciary, provides expertise to law makers to support the legislative drafting process and also makes legal resource material available. It monitors trials of high profile cases that might have an impact on the security situation or inter-ethnic relations in the country, and helps establish an objective and merit-based system to evaluate the work of public prosecutors.

168 http://www.judicialsupport.org/Default.aspx?id=b5f97e1e-e3fa-4b2b-b6ed-5c0d2c7d5032
169 http://www.americanbar.org/content/dam/aba/directories/roli/macedonia/macedonia_jri_2002.authcheckdam.pdf
170 http://www.americanbar.org/content/dam/aba/directories/roli/macedonia/macedonia_jri_2003.authcheckdam.pdf

Presently, the analysis on unification of the criminal policy is being prepared. The frequent change of laws creates problems; therefore a special Commission on unification of the penitentiary policy is planned to be established. In the past years the Mission has been working in issues such as organized crime, human trafficking, and migration. OSCE organizes trainings on the latest Criminal Procedure Law and it is also involved in the preparation of the law commentary. The mission supports the public relations activities of the Public Prosecution, as well as of the Basic Court Skopje 1[171].

In regards to the more formal and specific measuring of the state of play in the judiciary OSCE's contribution to this process took place back in December 2009. The Mission published a comprehensive Report: Legal analysis: independence of the judiciary[172], presenting the findings of a countrywide survey on **the independence of the judiciary** as perceived and experienced by the judges themselves[173].

The goal of the analysis was *to contribute to an open discussion on the independence of the judiciary in the host country and the challenges that it is facing. The analysis aims to achieve this "by providing and discussing objective, reliable data on the judges' perception of factors which could impact judicial independence. The absence of such data appeared to be one of the main obstacles to a candid discussion about how to address barriers to judicial independence in the country".*

For the purposes of the report, an anonymous survey was conducted among judges to gauge the perceptions of their independence. A professional consulting company that specializes in conducting surveys was hired to develop the methodology of the survey. With primary participation of OSCE experts catalogue of questions was designed targeting areas which are internationally and by the national legal framework for the independence of the judiciary viewed as vital to the independence of the judiciary: pressures on judges and improper influences on their work, election and dismissal processes, remuneration, the role of the Judicial Council, the work of their professional association, financial independence of the judiciary, etc.

This questionnaire was distributed to all the judges in the country and the participants had the possibility of sending their questionnaire back by post, anonymously and sealed. Out of 650 questionnaires which were sent out, 421 answers were received back to OSCE for statistical analysis and evaluation of the data obtained.

The main clients for whom the OSCE analysis was prepared have been all relevant national stakeholders, including judges, lawyers, prosecutors, members of the judicial council, professional associations and government representatives. Furthermore, the document

171 Link for more information on OSCE Mission to Skopje, Rule of Law Department: http://www.osce.org/skopje/106940

172 See more: http://www.osce.org/skopje/67584

173 The first section of the Analysis examines the existence of improper influence, bothgenerally perceived and personally experienced. In section two, the role of the Judicial Council - the body which is responsible for magistrates' professional advancement and discipline - is discussed. In section three, the Analysis examines the judges' working conditions. The Analysis also addresses the role of the Macedonian Judges Association (MJA) and the level of transparency of the judiciary.

findings the designer thought could be useful to the international community and others involved in supporting the process of judicial reform in the host country. The publishing of this report has provoked controversial opinions and some negative reactions, latter mainly coming from the government institutions.

World Bank in Justice Reform

Since the early 1990s, the World Bank has funded more than 30 major loan projects, valued at over $850 million, dedicated specifically to assisting developing countries in establishing efficient and effective justice systems. World Bank justice reform projects are usually concerned with producing improvements in the performance of justice institutions, focused primarily on improving the performance of courts as well as training for diverse justice sector actors.

World Bank - Legal and Judicial Implementation and Institutional Support Project

The World Bank's Legal and Judicial Implementation and Institutional Support Project (LJIIS), was run in Macedonia in the period of 2006 – 2012 and was launched to strengthen the capacity of key institutions to implement selected reforms under the Macedonian Judicial Reform Strategy (2004). The objective of the LJIIS Project was to contribute to improving judicial efficiency and effectiveness and the business climate in the country by: (i) enhancing ministerial and judicial capacity to systemically implement the Government's Judicial Reform Strategy and key laws; and (ii) improving judicial infrastructure. The Project was supporting the implementation of the proposed Law on the Judicial Council, the new Bankruptcy Law and the new legal framework for administrative disputes. LJIIS supported the Judicial Council in implementing efficient processes for monitoring and evaluating judicial performance against high ethical standards and implementation of transparent procedures for judicial selection and disciplining judicial misconduct.
The Project also helped strengthen the gathering of statistical and other information for the management and functioning of the justice system, including analysis of the same. The project results in the abovementioned areas were planned to be measured by performance indicators, including Government and judicial statistics supplemented by broad-based surveys (for example, Business Environment Enterprise Performance Survey- BEEPS), expert assessments (USAID's Commercial Law and Institutional Reform assessments and Judicial Reform Index), annual European Commission (EC) reviews and other indicators. However, as noted in the 2013 Report that evaluates the Project implementation completion and results[174] the monitoring and evaluation process faced some challenges due to its great dependence on externally produced indicators, which were subject to change and were out of control to the Project. There was indicator that measured the use of the enhanced case management and court information system implemented with Project financing. In addition to several other measuring tools and surveys on the project impact, a functional analysis of court cases was carried out. One of the key objectives of the functional analysis was to design a methodology to be used in the calculation of costs per case. Due to many delays on the Government side, the functional analysis was only completed in early 2012. The Court Budget Council (CBC)

174 Implementation completion and results report (ibrd-48230) on a loan in the amount of Euro 10.0 million (US$ 13.725 million equivalent) to the Former Yugoslav Republic of Macedonia for a Legal and Judicial Implementation and Institutional Support Project, March 28, 2013

requested that the courts prepare an annual plan for court performance in June 2012. This annual plan was to contain a projection of ongoing cases for the subsequent year. Based on these projections, the CBC was to analyze the data presented and for use in their future budget requests.

The LJIIS Project worked on expanding the analytical capacity of the Judiciary highlighting the fact that the lack of accurate, periodic statistics on court and judicial performance has had a negative effect on Macedonia's ability to develop and implement sound judicial reform policies. The Project found that the Court Administrative Office (AO) lacks the capacity to compile and analyze detailed statistical data on judicial and court performance needed to support empirically-based policy making by judicial oversight bodies. As USAID supported general strengthening of the MoJ's statistical department, the AO has requested that the LJIIS Project provide assistance for building its capacity to gather information from the future Court Information System and its new budget and financial management software under development with USAID assistance. Under this subcomponent, LJIIS funding provided technical assistance to improve the AO's capacity to analyze and integrate empirical data on court performance, caseloads and backlogs from the standardized statistical reports produced by CIS into its judicial policy recommendations. This assistance was sequenced to coincide with the introduction of the functional CIS software.

State Department - Macedonia 2014 Human Rights Report

Every year the U.S. Department of State submits reports on all countries receiving assistance and all United Nations member states to the U.S. Congress. The annual Country Reports on Human Rights Practices – the Human Rights Reports – cover internationally recognized individual, civil, political, and worker rights, as set forth in the Universal Declaration of Human Rights and other international agreements. The Report evaluates the level fulfillment of the human rights by the government authorities, and, among other, scans the developments of the judiciary as a key factor to protection of the civil rights and freedoms.
In its last report for Macedonia of 2014, the State Department noted that: *The most significant human rights problems stemmed from significant levels of corruption and from the government's failure to respect fully the rule of law, including by continuing efforts to restrict media freedom, interference in the judiciary, and selective prosecution. Political interference, inefficiency, favoritism toward well-placed persons, prolonged processes, violations of the right to public trial, and corruption characterized the judicial system. Inadequate funding of the judiciary continued to hamper court operations and effectiveness. A number of judicial officials accused the government of using its budgetary authority to exert control over the judiciary.* Further down, the report also found grounds in other domestic reports (for eg. the Ombudsman's), to criticize the situation with the administration of the justice and refers to its selectiveness illustrating it through several cases: *According to the ombudsman's report, the greatest number of citizen complaints received by the ombudsman concerned the judicial system. The report stated that access to justice remained difficult. In addition, a significant portion of court budgets went to paying damages for violating a citizen's right to trial within a reasonable time. The report indicated court decisions were sometimes considerably delayed due to administrative deficiencies.*

The report doesn't use a specifically designed quantitative methodology for evaluation of the reforms and the state of play, but it rather relies on other qualitative data from official reports from institutions, civic groups, think-tanks and close observations of the developments in the considered areas.

The World Justice Project (WJP)

The World Justice Project[175] (WJP) Rule of Law Index provides data on how the rule of law is experienced by the general public in 102 countries around the globe, including Macedonia.

The WJP Rule of Law Index 2015 surveys to measure how the rule of law is experienced in practical, everyday situations by ordinary people around the world. The specially designed methodology[176] for the RoL Index is based on broad consultation with the academics, practitioners, and community leaders from around the world. Performance is assessed using 44 indicators across 8 categories (factors) and 47 sub-factors, each of which is scored and ranked globally and against regional and income peers: *Constraints on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice*. The Informal Justice is also a matter of assessment as one of the ingredients of the rule of law.

A set of five questionnaires based on the Index's conceptual framework have been developed and administered to experts and the general public. The Index's scores are built from the assessments of local residents (1,000 respondents per country) and local legal experts (more than 300 potential local experts per country), ensuring that the findings reflect the conditions experienced by the population, including marginalized sectors of society.

The 2015 RoL Index ranks Macedonia on the 44 place among 102 countries around the world and 3rd among 13 countries in the region according to the 9 dimensions of rule of law described above. The factors Constraints of Government Powers, Fundamental Rights and Regulatory Enforcement have faced declining trends form the past years of measuring[177].

National CSOs: There are many active CSOs that work in the area of the judiciary. Some have projects and missions directly related to the undertaken reforms in the Macedonian justice system, and the select group below is described to illustrate the level and scope of their attempt to monitor and thus measure and evaluate overall or certain aspects of this reform process. This list is not exhaustive:

European Policy Institute (EPI)

The European Policy Institute (EPI) is established as an EU-policy oriented think-tank. Its mission is, through high-quality research and proposals on European policy, to provide a sound base for debate and solutions, targeting decision-makers and the wider public[178].

175 http://worldjusticeproject.org
176 http://worldjusticeproject.org/methodology
177 http://data.worldjusticeproject.org/#/groups/MKD
178 http://epi.org.mk/

As far as the judiciary, the EPI strategy is the dispersed approach in working with the main stakeholders in the field, including the Judicial Council, Judges Association, Public Prosecutors Council, Court Administration Association.

One of the main projects of EPI is the IPA funded **Mreza23 (Network23)** which aims to promote the influence of the CSOs in the accession process towards the EU. The main objectives of the project are: creating structured coordination between CSOs regarding the implementation of the areas covered by Chapter 23 of the Acquis – Judiciary and Fundamental rights; increasing the capacity of CSO to act as watch-dog organization in the process of monitoring and evolution of Chapter 23 on national and local level through a concrete transfer of know-how, enabling mechanism for CSOs to influence the policy making process through coordinated input on the network; and finally by raising awareness on the implications of Chapter 23 on the overall progress of the accession process. Consequently, the specific aim is to foster commitment and capacity of civil society organization networks/partnerships to give citizens a voice and influence the key sector reforms in the country through analysis, monitoring and advocacy as a key factor for ensuring sustainability of democratic reforms in the area of rule of law. A paper *"Monitoring and Evaluation of Policies under Chapter 23 - Judiciary and Fundamental Rights of the EU Acquis"* has been issued in the frames of Mreza23, as a practical guiding tool that sets up processes and methods to be used for specific monitoring of policies, projects and programs under Chapter 23 providing universal methodology for any given context of monitoring and evaluation.

In July 2015 Mreza23 published the Analysis "Judiciary and Fundamental Rights in the Republic of Macedonia"[179] which explains the structure and content of Chapter 23, gives an overview at the situation in these areas in the country and provides recommendations for addressing the identified problems. At the same time, the analysis is the start of the "shadow report" on Chapter 23. This Analysis also incorporated the findings of the projects implemented by the civil organizations which were awarded grants within this project.

The Analysis points out the main concerns for the judiciary, including the non-compliance with the principle of separation of powers, distortion of the system of checks and balances, selective justice and lack of independence of the Judiciary due to the interference of the executive power, infringement on the freedom of expression and media pluralism and violation in the field of personal data protection through mass surveillance.

MERC 23[180] presented results from the public opinion survey on the **Independence of the Judicial Council of the Republic of Macedonia**, on a representative sample of 700 citizens[181].

Macedonian Young Lawyers' Association (MYLA)

The Macedonian Young Lawyers Association (MYLA) is a CSO that aims to implement actions for full implementation of the rule of law principle, and enforcement of the contribution of

179 http://epi.org.mk/docs/Analiza_Poglavje23_en.pdf
180 www.merc.org.mk
181 http://www.merc.org.mk/oblast/2/pravosudstvo

young lawyers in the development of the legal profession in Macedonia through projects and activities.

The main focus of MYLA is in the field of asylum and migrations, anti-discrimination, free legal aid and free access to information. During the period of 2010 – 2013 several projects related to free legal aid and the respective law has been implemented. MYLA monitored the implementation of the Law on Free Legal Aid based on a methodology that is updated at the beginning of each year.

The main methods used during the monitoring are: Collecting data based on the Law for Free Access to Information of Public Character, Monitoring trials for which a free legal aid has been allocated, strategic litigation, direct involvement in the FLA system through obtaining a special authorization for providing FLA[182].

In 2013 supported by CLRA a paper has been produced "Analysis of the mechanisms for prevention and protection against discrimination in the Republic of Macedonia"[183] measuring the developments in the anti-discrimination area using the strategic litigation[184] as a main method to collect evidence. Another study followed the next year "Analysis for strategic litigation of cases in a court procedure in the area of discrimination"[185] which analyzed trials of select cases against discrimination and the treatment of these cases by the respective courts, again by using the strategic litigation in the courts as a primary method of collecting information.

Coalition "All For Fair Trials"

Active for over 12 years, the Coalition of the Civil Association "All for Fair Trials" (the Coalition) is a partnership of civil associations from the Republic of Macedonia who have voluntarily joined together to observe the judicial proceedings before the competent courts in the Republic of Macedonia in order to: ensure the guaranteed rights to a fair trial as provided by the Constitution, laws and ratified international agreements; increase public awareness and strengthen the confidence of citizens in the institutions of the judicial system; identify the need for, and work towards the eventual reforms in the judicial proceedings; increase the practical knowledge of law students; strengthen the role and the capacities of the non-governmental organisations.

In 2014 the Coalition implemented a project "Supporting criminal justice reform to uphold the rule of law and fair trial standards" focused on monitoring of criminal cases trialed in accordance with the new Law on Criminal Procedure, assessing the implementation of the new LCP and the transparency of the judiciary. The monitoring is conducted with national observers who attend trials (during a period of 6 months) and based on the data fulfill

182 http://myla.org.mk/index.php/proekti/besplatna-pravna-pomos/nabluduvanje-na-primenata-na-zakonot-za-besplatna-pravna-pomos
183 http://myla.org.mk/images/pdf/amszd.pdf
184 Strategic litigation refers to court cases that are initiated to achieve legal and social change, or to clarify or update law. Strategic litigation is concerned with social justice and future outcomes as well as what happens to the individual(s) involved in the case. Strategic litigation can establish specific legal points, lead to certain actors and interests being accepted as having legal rights, change laws or policies, ensure that laws are interpreted and enforced properly. Sometimes they are 'test cases' to establish that a particular law applies to a particular situation or group. Other objectives can include raising awareness; building political pressure; identifying gaps in the law; fostering public discussion and coalition building.
185 http://myla.org.mk/images/pdf/asvp.pdf

questionnaires and prepare thematic reports on specific areas of the judiciary). Based on the findings the team prepares a qualitative and quantitative analysis which also includes recommendations (in a two month period).

Another interesting project is currently implemented by the Polish INPRIS[186] partnering with the Coalition named as "NGOs and the Judiciary – watch dog activities, interactions, collaboration, and communication.The aim of the project is to gather and share good practices in the area of cooperation between the NGOs and the judiciary, especially civic monitoring of judiciary, with focus on Western Balkans countries. NGOs are getting more and more involved in various activities related to judiciary (also cooperation projects) and many of these activities are various forms of monitoring[187].

The outcomes of the project are two folded: Citizens control the judiciary via various forms of monitoring by NGOs and by getting involved in trials and educational projects, NGOs empower the Judiciary, help with building professional capacity of judges and support activity of courts.

Zenith

Zenith analyzed the application and modification of the accession conditions for Macedonia's entry into EU. They are analyzing the degree of harmonization of certain components in the judiciary (independence, impartiality, professionalism and efficiency) with the EU measures, without further assessing the quality of their implementation[188].
A comparative report has been produced that analyzed the application of the EU recommendations in Croatia and Montenegro, thus anticipating what Macedonia needs to consider once the EU negotiation process starts. Measuring of the reforms in Montenegro and Macedonia in the context of the EU Judicial Scoreboard indicators was conducted in order to determine how the measurement will look like, once Macedonia becomes a member of the EU[189].
Also, Zenith produced a report aiming to analyze Macedonia's and Montenegro's judicial performance monitoring and evaluation systems and initiate their alignment with innovative EU mechanism in this sphere. The study analysis focuses on comparison and benchmarking the judicial performance and efficiency of administrative courts of the two countries' with those of EU Member States[190].

186 The project leader INPRIS Poland partnered with NGOs from Visegrad countries: CEELI Institute (Chech Republic), VIS IURIS (Slovakia), and following partners from Western Balkan countries: Albanian Helsinki Committee (Albania), Coalition of Civil Associations "All for fair trials" (Macedonia), Lawyers' Committee for Human Rights – YUCOM (Serbia)
187 The project can be divided into three phases – research, study visit in Poland combined with a meeting of all partners and workshops in Western Balkans. Possible civic activities include: monitoring of the judiciary by NGOs (of courts' activities, communication with citizens, judges appointments), trial observations (court watch), strategic litigation, involvement of NGOs in court trials, amicus curiae, trainings and workshops for judges organized by expert NGOs, collaboration of NGOs with judges associations, NGOs as organizations educating citizens in about the judiciary.
188 Analytical Report: Independence, Impartiality, Professionalism and Efficiency of the Judicial System, Zenith, December 2014
189 Embedding Rule of law in the Enlargement Process – A case for Political Conditionality in the Accession of the Western Balkan Countries, Zenith 2013
190 Increasing the efficiency of Macedonia's and Montenegro's Justice System: Introducing an Innovative EU Monitoring and Evaluation Mechanism in the sphere of Administrative Law, Zenith 2014

Foundation Open Society – Macedonia

The activities of the Foundation (FOSM) in the area of the judiciary are connected via its legal program to Chapters 23 and 24 of the EU Acquis, primarily through Network 23[191]. In addition to monitoring of the implementation of select laws of public interest[192] and analysis of the new legislation[193], especially through the prism of their harmonization with the EU law and standards, they also support activities that analyze the implementation of the judgements of the European Couth for Human Rights[194]. FOSM supports CSOs initiatives in the area of the rule of law and justice (anti-discrimination, free legal aid, strategic litigation, law watch etc.), which focus on analysis of the situation and citizens' perception about the same.

Institute for Human Rights (IHR)

Established from experienced judges and public prosecutors, as well as other legal experts, the work of IHR in the field of judiciary encompasses analysis of relevant laws and the practice focusing on the independence and impartiality of the judiciary[195] (Judicial Council). IHR also monitors the Judicial Council work though participation of the Institute on the sessions of the Council, as well as in the work of the newly established Council for verification of facts[196]. In regards to the measuring of the reforms in the judiciary, in the past years IHR has conducted several surveys with judges and members of the JC, as well as a phone survey on citizens' opinion about the work of the JC. IHR has implemented several projects directly related to judiciary and its independence against the internationally recognized standards and practices. Through its project Legal Dialogue[197] the Institute regularly analyzes the challenges of the judiciary reflecting on the main findings and evaluations noted in the relevant monitoring reports of the judicial reform.

Center for Legal Research and Analysis (CLRA)

In 2014, the Center for Legal Research and Analysis (CLRA) conducted 2 filed surveys for the purposes of the EU funded Project on Preparation of the EU Justice Sector Support Programme (2014-2020). The CEPEJ Model User Satisfaction Measuring Methodology [198] has been used as the principal source of this activity, adopting the tool to the national justice sector in particular, and its legal and socio-political system in general. The Survey on User Satisfaction with Administration of Justice by Courts measured the perceptions of parties to a case and their representatives (not surveyor personally) with regard to the following main indicators (parameters): **Availability of Information and Transparency; Quality of Facilities and e-Justice; Access to Justice; Capacity, Independence and Impartiality of Judges; Fairness of Proceedings; Quality of Outcome of Proceedings (Judgments); General State and Trends in Quality of Administration of Justice.**

191 See section on EPI
192 http://www.fosm.mk/CMS/Files/Documents/20131810-Analiza-mk.pdf
193 http://www.fosm.mk/CMS/Files/Documents/Poveke_trud_za_podobar_sud_MK.pdf
194 http://www.fosm.mk/CMS/Files/Documents/Kniga-7-Presudite-treba-da-se%20implementiraat-mk.pdf
195 http://www.ihr.org.mk/mk/proekti/realizirani-proekti/207-nezavisnostnasudstvovorm.html
196 http://www.ihr.org.mk/images/pub/finalihr.pdf
197 http://www.ihr.org.mk/mk/proekti/realizirani-proekti/115-praven-dijalo-porast-na-kritickite-analizi.html
198 http://www.coe.int/t/dghl/cooperation/cepej/quality/default_en.asp

The second *Survey on Measuring Perceptions of Parties and Legal Professionals about Quality of Misdemeanor Law and Practice* gauged the opinion of the professionals who apply the law in practice. This Survey aimed at seeking and establishing the public opinion and the opinion of professional groups on some basic issues of misdemeanor law, which are especially important for the effectiveness and quality of misdemeanor justice and hence – for the balance between the need for good governance and human-rights. This Survey measured the perceptions of the target groups (not surveyor personally) with regard to the following main parameters/indicators: **Substantive misdemeanor law and practice (Clarity and foreseeability, Proportionality); Procedural misdemeanor law and practice (Access to justice, Fairness of proceedings, Effectiveness and efficiency); Quality of decision and Enforcement.**

CLRA also conducts analysis of laws and follows the judiciary reforms providing direct evidence for policy making contribution. Currently, CLRA implements projects on *"Supporting the establishment of unified court practice in the Macedonian legal system"*[199] and "*Development of monitoring indicators for the justice sector performance"*[200]. The main goal of the latter is development of reliable and comprehensive indicators matrix for tracking the progress of the judicial reform in Macedonia based on internationally recognized standards for the judiciary and the legal profession.

199 http://cpia.mk/web/wp-content/uploads/2015/07/Unificirana_Sudska_praksa.pdf
200 http://cpia.mk/web/wp-content/uploads/2015/07/Indikatori-za-monitoring-na-performansi.pdf

V EXPERT CONCLUSIONS AND RECOMMENDATIONS FOR THE MACEDONIAN CONTEXT

➢ ***Reforms' implementation specifics in different models of administration of justice system***

- In justice sector policy-making, administration and reforms' implementation is impossible without participation, consultation of all branches of powers (judicial, executive and legislative), nevertheless the extent of their influence in initial stage and further, responsibilities for successful implementation, etc. are different, depending on the system of justice management/administration. [201]

- Peculiarities of respected system of administration of justice must be considered and accordingly the process should be planned and managed. In comparing the reforms' mechanisms in respected countries the most relevant case is, for example, the reform of merging district courts, which was/is being performed in both Estonia[202] and Lithuania[203], but with different experiences, which could be related to different models of justice administration and accordingly to different actors and their roles in the process. If the justice system is completely independent from executive (autonomous model), **close cooperation with Ministry of Justice must be established** in order to receive political support and to facilitate the reform implementation.

➢ ***Do not underestimate the UK as a helpful model for evaluating judicial reform in Macedonia***

- There is a tendency in Europe's civil law jurisdictions to dismiss the UK as an outlier because of its common-law tradition and its seemingly less familiar

201 In this respect three main models of justice administration could be marked out in EU: *Unitary* - key role in administration play the executive institutions, mainly Ministry of Justice (MoJ), coordination and implementation of reforms at operational level – MoJ; *Decentralized* - administration is shared between executive (MoJ) and judiciary, such as Judicial Councils (JC), courts administrations (CA), etc., where coordination of reforms is performed by MoJ and the implementation by MoJ and/or Judiciary; and *Autonomous* - key role is played by the judiciary (judicial self-governance, i.e. JC, CA, etc.), coordination and implementation of reforms at operational level are performed by the Judiciary.

202 In Estonia for example, this reform was implemented successfully and in rather short time, which is representing decentralized model of administration of justice, where this function is shared between executive and judiciary. Here the initiative can be established by both players, but overall coordination is more in hands of executive power and operational level is on the judiciary. Likewise the unitary model here the advantage of complying with the general state policy in the area of public security and justice is also ensured as well as smooth coordination and implementation process (political support; efficient decision making). At the same time needs and experience of the system to be reformed are evaluated and presented be the main stakeholder, which is involved. These factors could be considered as the most important facilitators of the reform.

203 In Lithuania, which is representing autonomous model, where the administration of justice system is in hands of judicial institutions entirely, the implementation of district courts reform faced some obstacles, because of lack of political support. It has to be admitted, that in order to initiate and implement reforms entirely by the system itself the judiciary has to be unanimous, having strong willingness to make changes and development (which is not so inherent having in mind that justice and judiciary system are considered as those of most conservative ones), with well-established self-governance (clear hierarchy) and readiness to cooperate closely with executive and legislative branches of power. These lessons were learned and after the need of strong partnership between judiciary and policy-making institutions, namely Ministry of Justice was acknowledged and this partnership was established, the implementation of the reform has started.

legal system. The UK's judiciary may look unfamiliar but it is serving the same functions as the Macedonian courts and, at a day-to-day level, its work would look very familiar to Macedonian lawyers and judges. What is particularly striking about judicial reform in the UK in the past decade is the extent to which it focused on abstract questions of judicial independence as a constitutional principle; the same kinds of questions will also be weighing on EU candidate countries as they seek to show that they fulfil basic rule-of-law criteria. The other major reform – to legal aid – will also look familiar in any country imposing austerity programmes, and is likewise interesting because the major challenge to the reform is rooted in fundamental-rights principles which are common across Europe.

- ***Focus on the evaluation of reforms which have an agreed purpose closely related to the status of the judiciary*.**

- Evaluation of the legal-aid reforms is so difficult because among the many stakeholders involved, there are not only different views, but also suspicions as to real motives: British civil society, for ex. has (often humorously) presented those behind the changes as villainous figures with a hidden ideological agenda; those in favour of the changes can accuse their opponents of being self-interested lawyers only concerned about a cut to their income. In this context, it is difficult to imagine developing criteria to evaluate the success of the reform. Such reforms may need evaluation, but any evaluation will necessarily be partial (in more than one sense of the word). The focus should instead be on evaluating reforms which everyone agrees are designed and genuinely intended to achieve certain goals in relation to fundamental rights and democratic values; for those reforms it is possible to arrive at a more definitive evaluation based on criteria about which everyone can agree and credible evaluations.

- ***Invest responsibility for measuring the progress of judicial reform in a body that is perceived as independent (as possible) from the reform process and provide State support to non-government actors (particularly reputable academics) to carry out evaluations.***

- The success of the French Senate's evaluation – in that it was widely reported on and considered reputable, even by those it was criticising – seems to come mostly from the fact that the Senate was perceived as being outside the judicial reform process. It is impossible to apply this simplistically to Macedonia's unicameral legislature (and in any event not all upper houses are viewed as detached as the French Senate), but the lesson here seems to be to find a body that is viewed as being outside the process of judicial reform to put its branding on any evaluation of the reform. Taking a human rights-based approach, this is unlikely to be the judicial council (which has the main duty-bearer role in this case) or the Ministry of Justice (which is the duty-bearer to the judicial system's rights-bearer staff). It could be the state audit institution, but it would be necessary to find a way to ensure that institution's main focus is not on the

financial savings (as it seems to have been in France).

- It is striking that the judges in the UK were so attached to the old way of doing things that they were unlikely themselves to recognise the benefits of the CRA-related reforms. The Constitution Committee's evaluations were helpful but were always forward-looking, advocating new changes and new legislation. The most comprehensive and convincing evaluation was that carried out by academics with State funding administered by an independent public body. Their work is a model in terms of methodology (literature review, interviews, and focus groups, all guided by a clear, confident understanding of the principles). Indeed, it may be worthwhile to get in touch with the academics that carried out that research, to see how they could help with a similar exercise in Macedonia.

➢ ***Use a human rights-based approach[204] as a framework for developing indicators.***

- Countries (France, Hungary) are missing a rigorous framework for measuring judicial reform. There seems to have emerged a notion of a trade-off between efficiency on the one hand and justice as a value on the other, with no way holistically to express that balance. A human rights-based framework would capture all of these factors and find ways of expressing them compatibly. First and foremost it is necessary to identify rights-bearers and duty-bearers. At a very basic level, the rights-bearers are litigants or court-users and, in the context of judicial reform, the duty-bearers are the courts themselves, and the individuals working in them (notably judges and prosecutors). In neither country is the notion of "court as duty-bearer" very strong in the measurement of judicial reform, and very rarely is the right to a fair trial used as a standard for measuring judicial reform. The rights-bearer and duty-bearer analysis may of course need to be more nuanced; for example, judges and other court officials are also rights-bearers vis-à-vis the executive authorities, who have duties to ensure that judicial reform does not place inappropriate burdens on employees of the system. (The Baka case is an extreme version of this.) The tax-payer of course is also a rights-bearer, but in a much more vague sense, when compared with litigants. Judicial efficiency (speed and output) should primarily be viewed through the lens of the right to a trial within a reasonable time and balanced against the other factors that make up the right to a fair trial. Weight should be given to the views of duty-bearers mainly to the extent that it indicates their ability and willingness to respect the rights of rights-bearers. Weight should be given to the view of rights-bearers to the extent that those views are relevant to the rights they hold. There is of course gearing between a rights-bearer/duty-bearer approach and a customer-services relationship (which has been the main implicit mode used in France to evaluate judicial reform), but the two should not be confused.

- Stated goals of reform should not be the only measure. During judicial reform

204 The approach described here is based on principles which are developed in more detail by the UN. See http://hrbaportal.org/.

authorities often hesitate to apply general indicators based on a human rights approach, although application of that standard is prescribed by the Constitution. For example, the right to a fair trial is rarely used as a base for measuring judicial reform success despite the fact included in each international human right treaty accepted by the country which enforces judicial reform. Implementation of that principle during reform period and its use as a measure of success proves whether judicial reform put inappropriate burden on judges, court employees or other participants of judicial process and how to correct it.

- ***Planning, Implementation and Monitoring of the judicial reform***

- Aim and scope of the reform must be identified at the very first stage of the initiative.

- The key to the reform success is the proper identification of the outcomes that have to be achieved. Moreover the outcomes must be divided and oriented to system benefits and public benefits. Obviously they overlap in many ways and do not compete or oppose each other, but they also have some different aspects which have to be considered.

- Drawing those two vectors/directions it should be noted that the interest of the public is to see more efficient and effective system (the length of the proceedings shortened, easier access to court, etc., while the financial recourses, HR decreased or at least at the same level), more transparent system (communication is better, more publicity, no corruption). The need of the judiciary is to balance workload, to have enough time to study the material of the case, to prepare the case for hearing properly, to have possibility to work not only for quantity and time, but for quality as well, to increase public confidence, to have enough recourses (staff, possibility for trainings) needed.

- The accurate establishment of problems and challenges of current situation is essential part of planning. In this regard research/analysis/feasibility studies/ concepts as background justification facilitators are very important.

- Implementation of any initiative, especially extensive one, always faces the issue of recourses. This issue is even more relevant in the situation, when public sector faces financial restrictions. Then the question arises: *how to do more with less?* The answer is to use all funding sources and possibilities alongside with effective management, which consists of several strictly defined and interrelated phases: Analysis (for example, in case of judiciary - workload, length of proceedings, financial, human resources, etc.) Planning (what results should be achieved, how the resources should be distributed, what evaluation indicators should be set) Implementation (activities implemented) Monitoring (calculating the indicators and evaluating if the results are achieved). Lithuanian experience proves that it is very efficient way

of funding new initiatives, which are well prepared, beneficial and valuable, is the accumulation or combination of different financial sources: state budget, EU funds, other grants (Norway, Switzerland).

- After the implementation stage, the monitoring and measuring of results is the key to establishing evidence of efficient implementation without speculations. Lack of precise monitoring aggravates the process of discussions on the expedience of initiatives.

➢ ***In setting measures for achieving goals and indicators for measuring, the emphasis should be put on clearly defined, reachable and measurable indicators, despite the nature of them: qualitative or quantitative***

- This report analysis shows a paradox: the most compelling evaluation surveyed (for ex. the French Senate's report on the reform of the judicial map) relied most on qualitative indicators about satisfaction, yet more commonly, those engaged in evaluation (for ex. the European Commission and the PNOJ in Hungary, the Ministry of Justice in France) fixate on numerical data. A rigorous system for measuring the progress of judicial reform needs to capture both and find a sophisticated way of comparing them. For example, the increase in judicial output and speed of cases (mainly quantitative) on its own is not a good indicator of the success of reform, nor is the satisfaction level of litigants (mainly qualitative – although quantifiable); the two have to be considered alongside each other.

- Though, it has to be expressly stated that results not always can be measured quantitatively. Some reforms, especially aimed at improvement of justice administration and client service, are focused on qualitative results. But those results also have to be measured by some in advance established indicators.

➢ ***Develop indicators based both on the specific, stated goals of the reform and based on general criteria that attract wide support.***

- Managerial approaches certainly have their place in evaluating judicial reform (and in modern European societies they will inevitably play a part), but these should be confined to determining whether a particular reform measures up to its own stated goals. This was done well in France, where the government was relatively clear about what it was trying to accomplish. This has been done poorly in Hungary, mainly because of the suspicion that there are sinister reasons behind judicial reform. However, a reform's stated goals should not be the only measure. There should also be some general indicators based on a human rights-based approach that apply regardless of the stated intention of the reform. Neither of the countries studied here has developed such indicators. They should result from an analysis of the constitutional principles that govern a particular system and the specific interpretation of those principles. They can include issues such as accessibility (financial and physical), impartiality,

and publicity, but these have to be converted to specific, measurable indicators. Unfortunately, France and Hungary do not provide examples of how to do that. They do reveal the consequences when such measures do not exist.

➢ ***Pilot changes should be considered when planning the extensive reform.***

- Pilots can be also used very successfully in the design of significant and expensive reforms (as it was concluded in respect of introduction of quality management system in Lithuanian courts). Pilot plays the role of some test for measurement of the results and evaluation of effectiveness of initiative. Also it helps in reasonable time to identify practical challenges of the implementation process, weaknesses and consequently to save recourses. It is much more expensive to fix problems and make amendments in extensive dimension than to try it on pilot and then to apply tested model more extensively. Nevertheless, the factor, that such process requires more time, must be considered.

➢ ***Combination of different financial sources helps to implement more extensive reforms.***

- For example, donor foundation can be used for a pilot and after the successful implementation, which proves the positive impact on the system, well-grounded and strongly supported application for state budget allocations can be submitted.

➢ ***Participation of all interested parties and prompt communication as factors for success.***

- Contribution of internal and external experts in preparation of significant initiatives is essential. Working groups, composed of experts, representatives of stakeholders, counterparties, are one of the most efficient form for preparation of initiative (research, analysis, suggestions), serving not only for the purpose of gathering all the best practices and ideas, but also for involvement of all interested parties and providing room for the exchange of views, discussions and communication/dispersion of initiative.

- The participation of all stakeholders and counterparties from the very beginning is crucial. Strong partnership between judiciary, policy-making institutions, other players of justice system has to be established. As it was already concluded for this purpose form of WG or other methods (round-table discussions, meetings with different target groups) can be successfully used.

- Some judicial reforms designed by the Ministry of Justice did not take into account the opinion of all relevant stakeholders, namely the judges[205]. Importance of the insight that judges have into the functioning of the judicial

205 See a public statement of the Slovenian Association of Judges, available at http://www.sodnisko-drustvo.si/SODNISKO_DRUSTVO,,sporocila_za_javnost.htm&showNews=NEWSTEHNRL752013145629&cPage=1.

system showed as a crucial one since some of the envisaged amendments proved to be impracticable and even unconstitutional (Slovenia).

- As it is described above, the success of the Supreme Court President's annual judicial report in Croatia is judged by members of Parliament who are mostly professional politicians and not lawyers, so hardly can recognise real success of enforced judicial reform measures and give useful proposals for the future. Simply, they are not authority capable to perform such a serious task and therefore that duty should be granted to more professional body or a group of independent professionals. Legally Croatian Bar Chamber and Public Notaries' Chamber are invited to express opinion about proposed drafts of new or amended laws. However, very rarely their proposals are accepted although they are the ones who latter deal with that laws in practice and clearly recognize their practical needs. Involving them deeply in that process authorises will not be forced so often to amend the laws creating atmosphere of legal insecurity.

➢ ***Communication plan has to be prepared at the same time when first steps of preparation for any initiative on reform starts.***

- Communication should be based on understanding of public interests and the needs and expectations of the system. The recognition of these interests would help to proper target-group oriented communication and creation of cooperative relations between all stakeholders as well as coping with the inside and outside resistance to changes.

- Prompt communication with well-defined target groups is playing key role to success of any significant initiative.

➢ ***Accession to EU should be recognized and used as one of the facilitating factors in justice sector reforms, if it contributes to state's aspiration of becoming Member State.***

- The combination of the input of internal and external experts creates extra value for the initiative, because it helps to get comparative approach with experiences, examples of best practices of other countries. Lithuanian experience for ex. has also proven (especially with regard to creation of separate administrative jurisdiction), that Lithuania's accession to EU, when the state pledged itself to meet the requirements and fulfill the recommendations with regard to strengthening justice system on the basis of best European practices, was very efficient inspiration for promoting significant changes.

➢ ***Avoid hyper production of laws during legal reform process.***

- In order to avoid backlog of cases and reach reasonable long trial of pending cases, the authorities are often changing procedural law provisions which leads

to procedural insecurity. Also it causes dilemma over practical enforcement of newly brought laws and extends pending trials instead of reducing their number. Unclear procedural amendments are confusing judges who hardly understand which law is applicable in certain situation and usually are increasing number of submitted appeals leaving impression of professional incapability of judges. Such counter effecting practice should be avoided during a judicial reform, since it undermines expected results. Too often and swift changes of legislation, without allowing some time for the changes to show results are contrary to legal stability and predictability which are fundamental for the rule of law. Some Slovenian laws have been amended too often (i.e. Criminal Procedure Act was first adopted in 1994 and amended thirteen times since while the Judicial Service Act, adopted in the same year, has been amended twelve times!). One of the survey shows that 67 % of laws were adopted in accelerated procedure. Quality of work of the judiciary depends also on the stability of the legislative framework.

- ***Permanent education and specialisation of judges.***

- Since we live in dynamic world which require implementation of wide range of legal provisions in different kind of legal matters which sometimes is hard to follow the judges should be specialised to lead certain type of cases. Such practice will improve quality and effectiveness of litigation both in front of the court of first and second instance. Failing to develop it the judges will face problems in implementation of European laws and country will be forced to pay damage for lost cases in front of the European Court. Therefore national judges should be exposed to permanent education and specialisation in order to learn how directly to apply European legal standards. However, that goal can be reached only if authorities in charge for judicial reform insure enough resources to make judges available important part of the European case law.

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