

EXPERT REPORT

ON THE NUMBER OF JUDGES AND HUMAN RESOURCE PLANNING METHODOLOGIES

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VAIDA PETRAVIČIENĖ

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The aim of this paper (hereinafter referred as to the Expert Report) is to **carry out the analyse of the draft standards for personnel provisions of courts elaborated by the State Judicial Administration of Ukraine** (hereinafter referred as to the SJA), **to develop brief summary on the methodology employed in Lithuania** concerning human resource support for courts and the methodology for calculating the number of judges in courts of first instance and appeal, **to assess the methodology on human resource support for courts and the methodology for calculating the number of judges in courts of first instance and appeal prepared by the SJA** (both together hereinafter referred as to the Methodologies) and **to develop recommendations on the proposed Methodologies, taking into account operational methodologies from Lithuania and CEPEJ guidelines on the respective topics.**

This Expert Report contains the Expert's opinion, based on publicly available sources of information and the Expert's experience.

The Expert Report consists of four parts: 1) General remarks and observations on the concept of the Methodologies; 2) The methodology for calculating the number of judges in courts of first instance and appeals and practice of planning the human resources for courts in Lithuania; 3) Assessment and comments for the Methodologies; 4) Conclusions and recommendations.

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I. GENERAL REMARKS AND OBSERVATIONS ON THE CONCEPT OF THE METHODOLOGIES

After the acknowledgement of the Methodologies, their annexes and before the detailed evaluation and comments on them, some general remarks of the whole proposed legislative instrument are worth to be noted:

- The Explanatory Note constitutes the purpose and the main aim for the preparation of the draft Methodologies. Supporting the overall goal – **to ensure transparency and clear rules for planning and allocation of the resources for courts based on objectives and clearly defined criteria, the impact of the Methodologies should be assessed in a systematic manner**, considering how **it will affect the principles of judicial independence** and impartiality, the guarantees for the judiciary, the security of tenure of judges, and **how the changes in the judiciary will influence the quality of justice and the principle of access to justice**. The regulatory framework should be clear and unambiguous ensuring the efficient and effective functioning of the judicial system.

Following the Recommendations of the European Network of Councils for Judiciary (hereinafter referred as to the ENCJ), while it is recognized that funding based on output requires the measurement of output and processing times (workload measurement), such measurement systems need to remain simple and **the outcome should be used with caution to safeguard judicial independence**¹.

Thus, **the objective to create the Methodologies is considered as far-reaching approach** to the development of the judiciary, but these legal instruments **should not be applied alone**, it is recommended to plan the safeguards, **check and balance instruments**, for example such as:

- a) if the workload in certain courts is too low, the legal framework for redistribution of cases could be planned in order to avoid the automatic application of normative for the lowering number of judges due to reduced number of cases;
- b) if the workload in certain courts is too low or too high, the temporal transposition of judges from one court to another or from one instance of court to another might be considered;
- c) if the workload in certain courts is temporary too high, the additional remuneration for increased workload for judges could be considered, having the explicit and uniform regulation for such situations;

¹ [ENCJ report on Judicial Reform 2011-2012](#)

d) in order to balance the workload between judges from different courts of the same instance, the remapping of judicial system could be effective way, additionally ensuring the optimal resource management and efficient operation of judicial system.

- **The evaluation of the complexity of cases takes an important part in planning and distributing the resources necessary for adjudication of cases.** Although, the methodology for evaluating the complexity of cases was adopted and it corresponds one of the tendencies within European states to estimate the case complexity in time indicators, necessary for its adjudication, the periodical review and the evaluation how this methodology corresponds the needs and the actual performance² of the judiciary should be planned and performed.
- **The judicial assistants, their qualification, as well other personal, make impact in the overall adjudication of cases.** According to the Consultative Council of European Judges, competent judicial assistants can provide valuable support to judges and thereby help to improve the work of courts at all levels. In particular, judicial assistants can be an important tool to improve the efficiency of courts³. The positions of personal have less securities of independency, could be easier disposed between courts, dismissed, are tended to be less paid comparing to judges and etc. Thus, **seeking effective management of workloads and financial resources, the planning of the non-judges staff may give a considerable argument in the financial negotiations**⁴.
- The number of judges should be calculated and planned precisely and carefully, taking into account the risks of changes in business, economic relations, social and political processes. Thus, **the norms of application of these Methodologies are very important** in order to avoid the situation of improper application, political adjustment of these normative provisions in budget or other financial negotiations, political influence in evaluating the court's activities, violation of the independence of courts.

² For instance, the digitalization of judicial proceedings and the administration of court activities make an important effect for the duration of the proceedings; the changes in material law, application of alternative dispute resolutions method or changes of business or social relations influence the complexity of incoming cases.

³ [Consultative Council of European Judges Collection of Opinions, p. 232](#)

⁴ There was practice in the Lithuanian courts when additional positions for judicial assistants were created and financed in order to deal with the increased several years backlogs of first or appeal instance cases.

II. THE METHODOLOGY FOR CALCULATING THE NUMBER OF JUDGES IN COURTS OF FIRST INSTANCE AND APPEALS AND PRACTICE OF PLANNING THE HUMAN RESOURCES FOR COURTS IN LITHUANIA

1. THE METHODOLOGY FOR CALCULATING THE NUMBER OF JUDGES IN COURTS OF FIRST INSTANCE AND APPEALS IN THE LITHUANIAN JUDICIARY

The Lithuanian court system consists of **21 courts**, particularly:

- 12 general competence district courts acting as courts of first instance. These courts are separate legal entities. 11 of them have separate court houses/chambers with their own particular territorial jurisdiction, one court – Vilnius city district court – is the biggest court of Lithuania, having 107 judges' positions and acting without any territorial units.
- 5 general competence regional courts, acting as courts of first and appeal instance. These courts are situated in the five biggest city of Lithuania – Vilnius, Kaunas, Klaipėda, Šiauliai, Panevėžys. The regional courts adjudicate more serious civil and criminal cases as the first instance courts, and as an appeal instance hearing the appeal cases of the first instance court decision adopted in the district court.
- The Appeal Court of Lithuania is the appeal instance for the cases which were examined in the regional courts as the first instance and for a small group of first instance cases, basically regarding the recognition and application of foreign courts' decision;
- The Supreme Court of Lithuania is the highest instance of general jurisdiction courts and is the court of cassation;
- The Regional Administrative Court of Lithuania is the first instance court for administrative cases. This court was reformed on the 1st January, 2024, by joining two administrative courts of first instance. From the beginning of this year, the Regional Administrative Court of Lithuania has five courthouses/chambers, operating in major cities of Lithuania, the same as the Regional Courts, - Vilnius, Kaunas, Klaipėda, Šiauliai, Panevėžys.
- The Supreme Administrative Court of Lithuania is the first instance for administrative cases, prescribed by law, and the appeal instance

for administrative cases, which were adjudicated in the Regional Administrative Court.

The procedure for stating the number of judges is prescribed in the Article No 12 of the Law on Courts of the Republic of Lithuania (hereinafter referred as to the Law on Courts)⁵:

- The number of judges of the Supreme Court of Lithuania is determined by the Seimas (Parliament) at the proposal of the President of the Republic, upon the proposal of the President of the Supreme Court of Lithuania.
- The number of judges of the Supreme Administrative Court of Lithuania is determined by the President of the Republic on the proposal of the Chairman of the Supreme Administrative Court of Lithuania.
- **The number of judges of other courts is determined by the President of the Republic on the advice of the Council of Judges.** When the court is made up of court chambers, the number of judges in the court chamber is determined by the President of the Republic on the advice of the Council of Judges.

The Council of Judges has more detailed competences, prescribed by the Law on Courts, in formation of judicial corpus and planning the resources for courts, in particular:

- 1) The Council of Judges gives reasoned advices to the President of the Republic on determining or changing the number of judges in courts (Para. 5, Art. 120 of the Law on Courts);
- 2) **The Council of Judges approves the model structure of district, regional courts and the Regional Administrative Court, the descriptions of particular positions and their functions (Para. 19, Art. 120 of the Law on Courts);**
- 3) The Council of Judges considers and approves proposals on courts investment projects and proposals on courts budget projects, submits them to the Government (Para. 20, Art. 120 of the Law on Courts). It should be noted that the Council of Judges considers the budget projects of all courts, as well as separate programs for financing the common needs of judiciary. The appropriations for these separate programs are assigned and administrated by the National Courts Administration of the Republic of Lithuania.⁶

⁵ [The Law on Courts of the Republic of Lithuania, Art. No 12.](#)

⁶ A more detailed description of the budgeting of the Lithuanian court system is beyond the scope of this Expert Report. In order to better understanding of the resource planning in the Lithuanian judiciary, it worth to note that the appropriations for the judiciary from the state budget are allocated to the judiciary as whole and the Council of Judges proposes how to allocate them to the individual courts. The appropriations allocated for courts cover the expenses

The current number of judges in the first and appeal instance courts are as follows:

	Court type	Number of judges
1.	District courts	481
2.	Regional courts*	162
3.	The Court of Appeal of Lithuania	33
4.	The Regional Administrative Court of Lithuania	47
5.	The Supreme Administrative Court of Lithuania	21

*There is no distinction for the number of judges for the first and appellate cases, as the judges work with both type of cases.

The criteria, which are considered for setting numbers of judges, **are as follows**:

- **The number of incoming cases (in units) within a certain period of time.** In majority cases the three-year term is applied, but for the more significant changes in judicial map (like reorganization of courts) to consider, the longer periods of five, ten years are applied. All data, regarding the cases received in the Lithuanian courts, is stored in the Lithuanian courts information system (hereinafter referred as to the LITEKO). The statistical reports of incoming cases are prepared in LITEKO using the standard criteria and forms approved by the Council of Judges.
- **The workload of courts**, comparing such data of different courts of the same instance, the deviations from the average workload of particular instance of courts. The methodology for calculating the workload of judges, working in the first and appeal instance courts, is approved by the Council of Judges⁷ and the reports on the workload of judges are prepared in LITEKO.
- The analyse of **the complexity of cases** in the particular instance. If the changes of number of judges in a particular court are considered, the complexity of incoming cases to the particular court and other courts of the same instance are evaluated.
- **The backlog of cases, pending cases** in particular courts or the instance of court within a certain period of time.

for payroll, social security taxes, expenses for maintenance of particular courts' infrastructure (such as heating, water supplying, electricity and etc.), postage, translation and communication services. The appropriations for reconstruction or major repairs of infrastructure, computerization facilities, the administration of information and communication technologies (all ICT technologies in the Lithuanian judiciary are centralized and administrated by the National Courts Administration), the costs of psychiatric services in judicial proceedings are assigned separately and administrated in the centralized programmes.

⁷ [The Order for Evaluation of Court Workload, approved by the Council of Judges.](#)

- **The duration of court proceedings in a particular court**, comparing such data with other courts of the same instance, the deviations from the average duration of particular instance of courts;
- The **separate evaluation of particular types of cases** received in these courts during the reporting period are taken into consideration, for example, insolvency, public procurement, asylum cases, if these courts have a specific jurisdiction or its territorial jurisdiction is in the centre of commercial, cross-country or other specific relations, raising the significant number of cases;
- The **number of positions for judicial assistants** in courts. The impact of a judicial assistant to the overall workload of judges is evaluated by $\frac{1}{2}$ coefficient, this stating that while counting the workload of judges, the $\frac{1}{2}$ working time of the judicial assistant is included in the general time, estimated for the adjudication of cases.
- If the question is regarding the number of the appeal court judges, **the possibility to form panels (new one or to lower number of panels), the workload of the panels** are assessed.
- According to the Art. No. 102 of the Law on Courts, the administration of courts is organized in two levels: the inner administration (referred for the organizing the functioning of the court and is performed by the President of the court) and the external administration (referred for the evaluation of the performance of courts and is performed by the higher instance court (for the district court – the competent regional court, for regional court – the Court of Appeal of Lithuania, for the Regional Administrative Court of Lithuania – the Supreme Administrative Court of Lithuania). The order of such administration is stated in the Provisions for the Administration of Courts, adopted by the Council of Judges⁸. The external administration following the mentioned legal act makes reports on the performance of the lower instance courts, on the applied practice of management to cope with the increased/decreased workload, the effective management of resources and other aspects. **The opinion of the external administrator is a part of arguments, which are taken into consideration while determining the number of judges in courts.**
- The **prognosis of how the change of the number of judges will affect the workload changes** in the particular court, the general workload of the instance of courts. Mathematical-statistic calculations are made and the situations are simulated evaluating the prognosis of incoming cases for a new period.
- The **additional criteria** should be taken into consideration, for example, changes of population, living in the territories of particular

⁸ [The Provisions for the Administration of Courts, adopted by the Council of Judges.](#)

courts, concentration of business, special territorial aspects, such as territory of harbour, imprisonment institutions and etc.

The systemic application of the criteria mentioned above allows to have the comprehensive evaluation of the necessity of additional judicial resources for particular courts or instance of courts. This may be constituted that these criteria correspond the European Commission for the Efficiency of Justice (hereinafter referred as to the CEPEJ) guidelines on the creation of Judicial Maps to Support Access to Justice within a Quality Judicial System (hereinafter referred as to the CEPEJ Guidelines) in part for calculating and planning the number of judges.

Despite the existing practice of detailed reasoning on changes in the number of judges, the Chief State Audit Institution, in its 2020 report on Lithuania's judiciary system, stated the need to develop a methodology for determining the optimal workload of judges in order to determine the optimal number of judges needed to deal with the incoming cases. Another recommendation worth mentioning in this report is the proposal to develop a common strategy for the formation of the judicial corpus, as during the period under review there were a considerable number of vacant judicial positions, especially in district courts, a shortage of applicants for judicial positions, and an increase in the number of judges who have applied for voluntary dismissal from their posts. This methodology and the strategy for building the corpus of the judiciary need to be aligned in order to ensure that the judiciary operates efficiently, avoids backlogs and makes the best use of financial resources.

The Council of Judges approved the Vision for the Development of Lithuanian Courts 2023-2033 on the 19th December, 2022, in which the adoption of measures set out above are foreseen.

The Methodology for Determining the Optimal Workload of a District Court Judge⁹ (hereinafter referred as to the Optimal Workload Methodology) was adopted on the 1st, December, 2023 by the Council of Judges. The implementation provisions specify that this Methodology shall be applied in the pilot courts for a six month period. The Methodology shall enter into force from the 1st July, 2024 and shall be applicable in all district courts.

This Optimal Workload Methodology has been developed on the basis of examples of methodologies used in other European Union Member states¹⁰ to calculate the optimal workload of a judge and number of judges, needed to hear cases.

⁹ [The Methodology for Determining the Optimal Workload of a District Court Judge, approved by the Council of Judges.](#)

¹⁰ During the preparation of the Optimal Workload Methodology, the practice of the respective methodologies in the Netherlands, Estonia was analysed.

The Optimal Workload Methodology is intended for the purpose of **defining the optimal workload of a district court judge, assessing the need for human resources for the implementation of the functions entrusted to the judiciary**, and for planning and taking decisions on the determination of the optimum number of district court judges, seeking the uniformity of the workload of the district courts.

The **indicators for calculating the optimal workload** of a district court judge, **are**:

- 1) The **number of cases**, received by a judge;
- 2) The score for the **complexity of a case**;
- 3) **Working hours of a district court judge**, referred for jurisdictional activities;
- 4) **Input of a judicial assistant** to the judge's jurisdictional activities.

The additional note should be made for the indicator No 3 - Working hours of a district court judge, referred for a jurisdictional activity. This indicator for a district court judge is **1 658 working hours** per calendar year. The working time figure is based on the following periods of work and rest/absence of the judge:

- the average annual number of working hours in a five-day week is 2002 working hours per year (251 working days in 12 months); this number of hours is determined on the basis of the annual average number of monthly working days and average monthly working hours approved annually by the Minister of Social Security and Labour of the Republic of Lithuania (with a view to 2022);
- a district court judge shall spend an average of 64 working hours (8 working days) per calendar year on qualification development, trainings;
- the average number of annual holidays per calendar year for a district court judge shall be 256 working hours (32 working days);
- the average period of sick leave of a district court judge per calendar year shall be 3 working days (24 working hours).

The working time of the President of the Court is 995 working hours per calendar year. The working time indicator is lowered evaluating the practice, that the President of the Court shall refer on average 40 % of his/her working time to the administrative activities of the court (663 working hours). The working time indicator for the Vice-President or the President of a Division is 1 244 working hours per calendar year. The working time is lessened due to the existing practice, that these managing positions shall refer on average 25 % of his/her working time to the administrative activities of the court (414 working hours). If a judge receives a case from another court or chamber of the court and the judge foresees the need to travel to another court or chamber of the

court to deal with the case, the working time indicator for jurisdictional activities shall be reduced by estimating the time spent travelling to the other court or chamber of the court in accordance with the working time allocated for travelling as provided for in the working time records kept by the court administration.

The **input of a judicial assistant** to a judge's jurisdictional activities is expressed in working hours and is on average equivalent to **553 working hours per calendar year**.

The Optimal Workload Methodology states **the optimal workload for a district court judge is 2211 content units** (the sum of the number of cases available for assignment multiplied by each complexity score) per calendar year. The following formula is used to assess whether a judge's workload is optimal:

$$\frac{\sum((B_1 * S_1 / 10) + (B_2 * S_2 / 10) + \dots + (B_N * S_N / 10))}{1658 + 553},$$

where:

B(1...N) is the number of LITEKO cases received by the judge during the calendar year;

S(1...N) is the complexity score of the case concerned;

the constant 1658 represents the judge's working time rate;

the constant 553 represents the input of a judicial assistant (counted in working hours).

The optimal workload for a President of a Court is 1548 content units (the sum of the number of cases available for assignment multiplied by each complexity score) per calendar year. The optimal workload for the Vice-President or the President of a Division is 1797 content units (the sum of the number of cases available for assignment multiplied by each complexity score) per calendar year).

It is regulated in the above-mentioned methodology that the deviation up to +/- 25 % from the indicated amount of content unit is appropriate and the workload is considered as optimal. The higher deviation shall be evaluated by the court managing authorities and the actions, seeking to ensure the optimal judge workload, shall be taken.

The Optimal Workload Methodology should be applied using the full calendar year data, as:

- the flows of incoming cases differ during the calendar year (especially during summer period, the beginning and ending of the calendar year);
- there are cycles for allocation of cases (for district and regional courts 90 days) and the flow for the cases assigned to a judge differ during these 90 days cycle;

- the working hours of a judge may differ during different month or quarter of a year.

All calculations and mathematical projections based on this Optimal Workload Methodology shall be done by the LITEKO calculating components.

Despite the creation of the Optimal Workload Methodology for planning the number of district court judges, necessary for adjudication of cases, **the systemic approach should prevail and additional criteria and factors** for ensuring the efficient and effective functioning of the court system **should be taken into consideration**.

In order to balance the workload between judges, working in different courts of the first or appeal instance, and to avoid the necessity of creating or abolishing the positions of judges, the additional measures may be applied:

- There are provisions in the Code of the Civil Procedure¹¹, which will enter into force from the 1st July, 2024, stating that particular group of cases shall be allocated between all judges of district or regional courts. These cases shall be submitted upon their territorial jurisdiction and afterwards the allocation of them shall be between the all judges of particular instance. According to the regulation, the jurisdiction shall not be altered and the assigned judge shall act in the name of the court, competent to hear the case.
- There are provisions in the Code of the Civil Procedure and in the Code of the Criminal Procedure¹² allowing the higher instance court, acting like external administrator, to make a decision to transfer unassigned cases from the competent court to other court, where the workload of judges is lower. The judges from the latter court shall act on behalf of the competent court.
- The Law on Courts contains provisions allowing a judge to be temporarily transferred to another court of the same or another instance. The conditions for such temporary replacement are designed to ensure that the independence of judges is not compromised.

¹¹ Articles No 62^{2,3} of the Code of the Civil Procedure of the Republic of Lithuania.

¹² Articles No 62¹ of the Code of the Civil Procedure of the Republic of Lithuania, Article No 229¹ of the Code of the Criminal Procedure of the Republic of Lithuania.

2. PRACTICE OF PLANNING THE HUMAN RESOURCES FOR COURTS IN LITHUANIA

All 21 courts operate as separate legal entities, organizing and implementing **the human resource policy independently**. **The Council of Judges**, implementing the competence dedicated by Para. 19, Art. 120 of the Law on Courts, **approves the model structure of district, regional courts and the Regional Administrative Court, the total number of positions** and the exemplary descriptions of particular positions and their functions.

This model structure is used as an example for planning and modelling the structure of higher instance courts.

The **approved model structures are used for planning the budget** of the whole judiciary. When the appropriations are assigned, the distribution of them among all courts are made basing on this model structure, the total number of positions an additional coefficient.

The latest model structure of district, regional courts and the Regional Administrative Court is approved by the Resolution of the Council of Judges on the Adoption of the Model Structures and the List of Positions for District Courts, Regional Courts and the Regional Administrative Courts, adopted on the 3rd May, 2024.

After the acknowledgment of this document, the following aspects could be highlighted:

- The **smallest court in Lithuania is the court with 14 positions for judges**. The other courts are bigger.
- The **number of positions of judicial assistants are equal to the number of judges**.
- The Court registrar's/chancellor's positions are established in each court to administrate the organizational work of court.
- The **separate divisions for ICT, asset management, document flow** are created in all courts while the division of finance is established only in the bigger courts.
- **There is the number of specialists positions, which particular court may use upon its needs**, for instance, there are no exact number of ICT specialist positions, so the court president/registrar may decide how many such specialists from this common pool are needed. Specialists could be as such: senior clerk, clerk/registrar of the hearing, registrar at the reception desk, Lithuanian language consultant/linguist, computer systems administrator, information and communication technology systems administrator, archivist, accounting specialist (financial officer), personnel specialist, procurement specialist, forensic psychologist, translator ant etc. The same principle is applied for the

qualified workers (drivers) and workers (cleaners, duty officers and etc.).

- The model structure is used for planning and allocating funding for courts payroll. The salary coefficients for positions are laid down in the Civil Service Law, the Judicial Council's guidelines for the salary policy of the judiciary.
- The judge team should consist of the judge assistant and the clerk of the court hearing. Therefore, there have been cases in practice where the appeal instance court had temporarily created additional judicial assistant positions in the event of an increase in the volume of cases, particularly complex cases (especially criminal ones).
- **Before 2018, there were 47 district courts** operating as a separate legal entity. Due to the high administration costs, disbalances between the courts' workloads, complex administration and following the foreign states, such as Estonia, Norway, Finland, practice, the reorganization (court reform) was implemented and these separate legal entities (courts of 3-5 judges) **were merged into 12 courts as legal entities, of which 11 courts have 3-6 court houses/chambers** (these courthouses/chambers are the previous one small separate courts). In order to ensure the access to justice and implementation of CEPEJ Guidelines for judicial map, the territorial jurisdiction remained to the court houses (former courts), but the legal provisions (mentioned above of this Expert Report) for allocation of cases between few court houses/chambers were passed. After the analysis of the output of the mentioned court reform, growing disbalances between the workload of different courthouses/chambers of the same district court or different district courts, concentration of residents and business around the major cities, growing expenses for maintenance, as well as the need to raise salaries for court staff, insufficient funding, the need to raise the quality of judicial proceedings, **the new reform was initiated and will enter into force on the 1st July, 2024**. The aim of this second reform is to make courthouse bigger, this mean, merging the courthouses within the particular court and making the territorial jurisdiction bigger. There will be more judges, working in the same courthouse/chamber and the possibility to create specialization will be ensured. **The minimum number of judges in the court is 20, the minimum number of judges in the courthouse/chamber is 7.** Such size of a courthouse or a court correspond the CEPEJ Guidelines. Nevertheless, one district court - Plunge District Court – will have the lower number of judges, but there is the draft law for reorganization of this court, decomposing this court to other district courts.

After this reform, former courthouses, which have been merged, will remain and the judge will sit in the former locations, thus the access to justice for the court clients will not be affected.

It is worth to note that **court staff is employed by the court, not by specific courthouses**. Due to this, the separate courthouses/chambers does not have particular structure. The place of the substantive workplace is indicated in the agreements with employees, but this does not mean that their functions are confined to a particular courthouse/chamber, unless this is stated in the description of the position.

Therefore, it could be stated that **the governing bodies of the Lithuanian judiciary has chosen the way to centralize and optimize the administration of the management of courts, making it more cost effective, seeking to balance the workload of judges instead of abolishing the positions of judges or forming the new ones in the other courts**. In this way threats to judicial independence should be considered to be lowered to minimum ones.

DESCRIPTION OF MODEL STRUCTURES FOR DISTRICT COURTS¹³

Number of judges	Number of other court staff	Of these:																									
		Civil servant posts													Posts of contract staff												
		Total civil servants	Adviser to the President of the Court	Judicial assistants	Assistant to the President of the Court (Media and Public Relations)	Registrar	Administrative Secretary of the Court	Court Registry Unit						Senior Specialist (Forensic Psychologist)	Total contract staff	Head of the Archives Division	Head of Information Technology Unit	Finance		Specialist (Office of the Registrar)	Specialist (clerical administrator in the absence of separate chambers)	Other professional or qualified staff (not in the Economy Unit)	Economy / Asset Management Unit				Specialist (translator)
Head of the Registry Division	Head of the Registry Office of the Registry Division of the Chambers							Adviser to the Registry Unit	Registrar of hearings	Senior/Senior Specialist	Senior/Senior Specialist (not in the Central Palace)	Head of Finance and Accounting or Chief Financial Officer	Accounting Specialist (Financial Officer)					Head of the Economy/Property Management Unit	Qualified staff (housekeeper-driver outside the Central Palace)				Specialist or qualified staff (in the Economy Section)	Worker or skilled worker (on duty)			
14-19	61-81	39-47	1	14-19	0	1	1	1	2	0	14-19	2	2	1	22-34	1	1	1	1	1	0	6-11	1	2-3	1	6-9	1-2
20-23	86-95	51-57	1	20-23	1	1	1	1	1	1	20-23	2	1	1	35-38	1	1	1	1	1	2	11-14	1	2-3	2	9-11	2
25-33	116-142	65-81	1	25-33	1	1	1	1	3	1	25-33	2	3	1	51-61	1	1	1	1	1	3	14-20	1	4-6	2	14	6-11
35-47	139-180	83-107	1	35-47	1	1	1	1	2	1	35-47	2	2	1	56-73	1	1	1	2	2	1	24-34	1	3-4	3-4	14-18	2-3
81-85	296-308	176-184	1	81-85	1	1	1	1	1	1	81-85	4	1	2	120-124	1	1	1	3	4	2	64-68	1	3	6	28	6
104-108	341-352	221-229	1	104-108	1	1	1	1	0	2	104-108	4	0	2	120-123	1	1	1	3	4	0	85-88	1	0	7	3	14

¹³ This is an example of model structure prepared by the Expert from the publicly available sources of information about the model structures existing in the Lithuanian courts.

DESCRIPTION OF MODEL STRUCTURES FOR REGIONAL COURTS¹⁴

Number of judges	Number of other court staff	Of these:																							
		Civil servant posts												Posts of contract staff											
		Total civil servants	Adviser to the President of the Court	Adviser to the President of the Trial Division	Assistant to the President of the Court (Media and Public Relations)	Judicial assistants	Registrar	Administrative Secretary of the Court	Court Registry Unit				Senior Specialist (Forensic Psychologist)	Total contract staff	Head of the Archives Division	Head of Information Technology Unit	Finance		Specialist (Office of the Registrar)	Other professional or qualified staff (not in the Economy Unit)	Economy / Asset Management Unit		Specialist (translator)		
							Head of the Registry Division	Adviser to the Registry Unit	Head of the Criminal/Civil Registry Office	Registrar of hearings	Senior/Senior Specialist					Head of Finance and Accounting or Chief Financial Officer	Accounting Specialist (Financial Officer)								
15-19	64-75	43-51	1	2	1	15-19	1	1	1	0	2	15-19	3	1	21-24	1	1	1	1	1	6-9	1	2	6	1
23-27	89-100	60-68	1	2	1	23-27	1	1	1	1	2	23-27	3	1	29-32	1	1	1	1	1	12-15	1	3	5	3
40-44	150-162	95-103	1	2	1	40-44	1	1	1	1	2	40-44	4	1	55-59	1	1	1	2	2	26-30	1	5	12	4
54-58	189-200	125-132	1	2	1	56-59	1	1	1	1	2	54-58	4	1	64-68	1	1	1	2	2-3	39-42	1	6	3	8

¹⁴This is an example of model structure prepared by the Expert from the publicly available sources of information about the model structures existing in the Lithuanian courts.

III. ASSESSMENT AND COMMENTS FOR THE METHODOLOGIES

3.1. DRAFT METHODOLOGY FOR CALCULATING THE EXPECTED NUMBER OF CASES IN THE FIRST INSTANCE AND APPELLATE COURTS

The **Draft Methodology for Calculating the Expected Number of Cases in the First Instance and Appellate Courts** (hereinafter referred as to the **Case Number Methodology**), prepared by the SJA, is foreseen to be used to determine the number of incoming cases for future periods. The selected calculation method for the incoming cases seems to be **appropriate and based on mathematical-statistical methodology**. Nevertheless, seeking to have a more comprehensive view of the case flows, this might be noted:

- 1) It is highly recommended **to make such calculations and projections not only for total number of cases, but as well for separate groups of cases**, for instance, cases initiated by different material laws grounds (family, insolvency, contract), cases with simplified and full procedure and etc. Such statistical projections will provide a better picture of the overall volume and complexity of cases before the courts. Thus, **an assessment of the demands on judicial and other human resources will be more accurate**, for example, if the changes in the number of cases are more significant in groups of cases that are not complex one, maybe adjudicated in a simplified procedure, when the additional administrative staff could be sufficient to manage the changes in such caseload or the same number of judges can deal with that increase in caseload with the possibility of being extra paid.
- 2) Paragraph 2.1. regulates how the calculations are made if there is not statistic data of the full year. The **Multiplying of 4,3 or 2/3 seems to be inaccurate, as typically, the flow of cases received by the courts fluctuates throughout the year and is not statistically consistent from month to month**, quarter to quarter or semester to semester, for example, during the summer periods of the calendar year the flow of cases is particularly low. The statistical projections in the Lithuanian courts are prepared for the semester and the full year term.

- 3) Paragraph 3 states the conditions for the calculation if a court administrates justice for less than entire period reviewed. One such case is the changes in the territorial jurisdiction. **These changes in the territorial jurisdiction may apply to certain groups of cases not for all cases.** The more detailed overview of groups of cases proposed in point 1 above is therefore also useful in this respect.

3.2. DRAFT METHODOLOGY FOR CALCULATING THE NUMBER OF JUDGES IN THE FIRST INSTANCE AND APPELLATE COURTS

The **Draft Methodology for Calculating the Number of Judges in the First Instance and Appellate Courts** (hereinafter referred as to the **Judge Number Methodology**), prepared by the SJA, is expected to be used to determine the number of judges that is necessary to facilitate the consideration of incoming cases during the relevant reporting or the next reporting period.

The aim to adopt such Judge Number Methodology **is of great importance**, but the draft version of it **does not have any provisions regarding the application of the particular calculation results**. Due to this, it is not clear how the results and provisions will be applied practically and **what consequences will create**. Thus, drafting of such Judge Number Methodology and no communication about it may create uncertainty of application of its provisions, affect judicial independence and create unstable or **negative perception of such legal policy within judiciary**. Therefore, **it is highly recommended to draft provisions in the introductory or concluding provisions stating how the results will affect judiciary**, for instance, if it was encountered that the number of judges in particular courts should be lower within the reporting period (year), the longer-term review or projection should be estimated. **If the use of results is described in the other legal acts, it is suggested to make a link to it.**

The Case Number Methodology focuses on calculating the projections of incoming cases. But according to the CEPEJ Guidelines¹⁵, the practice of other countries, as well Lithuania, for determination of the number of judges **the productivity of judiciary should be measured evaluating how many cases have been received and solved during the reporting period, what number of pending cases are encountered**. Thus, it is recommended to consider **how the indicator of pending cases could be used for the more precise evaluation** of the number of judges.

According to the public information, there were 260 work days in Ukraine in 2023 (for a five work days week). It is stated that "*a working time that a judge uses in a year to administer justice*" is 205 work days (Para 2.3 of the Judge Number Methodology). **A more detailed explanation of how the number of working days has been reduced** (presumably after deducting the days for holidays, trainings and etc.) would show more reasoned method of assessment.

It is recommended to make Para 3 of the Judge Number Methodology more clear stating that the number of judges should be calculated annually in the beginning of the year, each semester or other period of time, as this section is referred for relevant reporting period and the general term "annually" makes uncertainty of moment of application.

Regarding the coefficients applied for the panel, it could be worth **to consider to have different coefficient for the judge rapporteur and other panel members**. For example, the methodology for calculation of the workload¹⁶ of Lithuanian judges of first and appeal instance states that the judge rapporteur has a coefficient 1, panel member – 0,5.

It has been noted that only working hours of a judge are taken into the calculations for determination of the number of judges, necessary for consideration of cases. From the submitted document of the model structure of local and appellate courts, it was noticed that each judge should have a judge assistant. From the publicly available version of the Average Time Required for Consideration of Cases document, approved by the High Council of Judges on the 24th November, 2020, **the working time of the judicial assistant is not encountered in the estimation of the case examination term**. A judge assistant is obliged to help a judge to administer justice, he/she

¹⁵ CEPEJ Guidelines para 2.3.3.: "(...) the analysis for the definition of the judicial map should be based on incoming and resolved cases only (where productivity is the ratio of these two factors), and **then a special and fixed-term team of judges (or even a special effort by the same judges working at each office)** should be assigned to the treatment of the pending cases until the stocks are set to zero."

¹⁶ [Order on the Procedure for Calculating Workload in the Courts, adopted by the Council of Judges](#)

is supposed to have legal education and practice of analyzing case law practice, so his/her impact for the whole adjudication of a case is expected. For the more strategically based and overall evaluation of the number of judges necessary for adjudication of cases, **all components which take a part in adjudication of cases should be taken into consideration**¹⁷. Therefore, it is recommended to consider to include the working time of a judicial assistant in assessing the number of judges.

If there are specializations of judges in courts or particular court, the number of judges in that particular specialization should be taken into account. Such provisions would make the Judge Number Methodology more comprehensive. It is worth to note that according to the ENCJ, to ensure that high quality justice is provided by specialisation **there must be adequate expert judicial resources and support resources**¹⁸. The specialization of judges has a direct impact for quality of justice. Therefore, **the positions of judges for specialization could have priority comparing with generalists' ones.**

3.3. ASSESSMENT OF HUMAN RESOURCES FOR COURTS

After a review of the methodology for calculating/planning the human resources for courts, the following can be noted:

1) GENERAL OBSERVATIONS:

- a) According to the ENCJ, to be effective, **judges must be provided with all necessary support. They must be able to rely on their staff and this requires highly qualified staff**¹⁹. Having competent staff with defined roles and a recognised status alongside judges is an essential precondition for the efficient functioning of judicial systems²⁰.

¹⁷ According to CEPEJ Guidelines, the digitalization of proceedings, the use of videoconferencing during the trials and other criteria are highly recommended to be taken into consideration while planning judicial resources.

¹⁸ [ENCJ Report on Judicial Reforms \(2012-2013 guidelines\)](#)

¹⁹ [ENCJ Report on Judicial Reforms](#)

²⁰ [European Judicial Systems CEPEJ Evaluation Report \(2022 Evaluation Cycle\), p. 54](#)

These directions should be followed in making any decisions regarding the changes of model structure of courts or making any changes in organization of courts work.

- b) **The average ratio of non-judge staff to professional judges within Europe is about 3,9 in 2020** (median: 3,3)²¹. According to the European Judicial Systems CEPEJ Evaluation Report (2022 Evaluation Cycle), **the number of non-judge staff per judge in Ukraine is above 5** (21,25 % higher than CoE Median)²². After the familiarisation of the draft methodology for calculating/planning the human resources for courts, the common tendency to optimise the number of other staff per judge could be envisaged. However, in some courts, in particular local general courts and local specialised courts, **this ratio is foreseen to be higher than the average ratio** indicated in the above mentioned latest CEPEJ report. It could be that in some courts due to the objective reasons (for instance, courts infrastructure peculiarities) optimisation may not be possible.
- c) From the methodology for calculating/planning the human resources for courts, it was envisaged that it is foreseen that each judge should have a judge assistant. Following conception that a judge team should consist of a judge and a judge assistant, in some jurisdiction of a clerk of a hearing as well, the positions of a judicial assistant could be excluded from the calculation of the "*Ratio of the number of staff to the number of judges*" and the result will present the other staff ratio per a judge. Such data would be more comprehensive for any consolidation or optimization decisions to make.
- d) Taking into consideration modern business management approach, the idea **to establish bigger structural administrative units** in smaller courts could be considered (for instant, common ICT and Asset Management Division), as **the head should be in each division and managing the team of 1 or few members would be too expensive**. What is more, the head of division is expected **to have a higher qualification and being more paid**. From the finance management perspective, this is not effective. More effective

²¹ [European Judicial Systems CEPEJ Evaluation Report \(2022 Evaluation Cycle\), p. 54](#)

²² [European Judicial Systems CEPEJ Evaluation Report \(2022 Evaluation Cycle\), p. 54;](#)

[European Judicial Systems CEPEJ Evaluation Report \(2022 Evaluation Cycle\), country profile,p.137](#)

administration results in improvement in timeliness and quality of delivery²³.

- e) While planning human resources, **the computerization level of courts and digitalization of court proceedings should be taken into account.** The more ICT solutions are employed the **less lower qualification employees would be needed and focus should be paid to the more qualified staff.** Thus, having the insufficient funding, the number of positions and their qualification requirements could need to be reconsidered.
- f) It is suggested to consider **to have the pool of positions for specialist**, thus allowing the court manager to rethink the necessity of particular position evaluating the administrative needs of particular court, for instance, considering the size of court or other circumstances, there could be more cost effective to procure some services instead of employing the specialists, thus the other specialists could be employed for these positions.
- g) **Merging courts or centralizing of some courts' functions**, for instance, accounting, HR specialists, especially in small courts, **may be more cost-effective, allow to employ higher qualification specialists**, therefore the higher administration quality could be ensured.

2) LOCAL GENERAL COURTS

- a) **Courts of 3-5 judges are very small, require quite much staff for operation.** What is more, there is high risk to ensure impartial allocation of cases, even the effective work of court, if there are vacant positions of judges or a judge is sick, on leave and etc. It is suggested to consider **longer term structural changes by merging these courts into larger legal entities** with locally operating courthouse/chambers, and perhaps in some cases the closure of the court could also be considered, while guaranteeing the access to justice in the other courts in conformity with the CEPEJ recommendations.

According to the CEPEJ Guidelines, **the curve of productivity is a parabola, i.e. the lowest levels are associated with courts of up to 20 judges, then the productivity increases with the increasing size of offices**, and finally it decreases again after the size of the court

²³ [ENCJ Report on Judicial Reforms](#)

attains (and exceeds) a certain (high) number of judges (..) the highest productivity at European level is attained in courts with an approximate number of judges between 40-80. The productivity fall again when the number of judges exceeds 100 (Para 2.3.2).

- b) **Timely and qualified communication about court activities is crucial for building public trust** and creating image of court within society. Due to this, it is highly recommended to have **a press specialist in bigger than 6 judges courts** (in court with 6-10, 11-20, 21-25 judges).
- c) The line No 25 indicates about planning to create managing position in division with only one other employee, especially in courts with less than 11 judges. This is very costly and the necessity of such position is doubtful. In case of necessity, this function could be dedicated as additional to some other employee without creating special managing position.
- d) The digitalization of work and installment of ICT facilities to faster routine work is one of the mega tendencies in the modern judiciary. If the increase of digitalization and computerization of court is foreseen, the ICT staff will be crucial for the new ICT technologies to be daily used. The outsourced services cannot ensure prompt reaction, personal assistance in a workplace. Thus, it is highly recommended to plan ICT specialists in all courts, otherwise the digitalization will struggle and will face resistance from judges.
- e) The general comment regarding the two many management positions for small teams of 2 members or even of 1 member is relevant for judicial statistics, courtroom administrators, archive divisions in this type of courts.

3) LOCAL SPECIALIZED COURTS:

- a) The ratio of other staff for a judge seems to be more proportional in bigger courts (more than 20 judges). Thus, some optimization of functions or remapping of courts of 11-20 judges could be considered.
- b) It is recommended to make departments bigger, covering more areas of administration of ordinary court functions. This will allow to have less management positions and to refer funding for more qualified personal to employ.
- c) Following the Line No 43, it is recommended to reconsider the necessity to establish the position for a head of the division, as only 1

position for the other staff in particular division in smaller courts (with less than 31 judge) is foreseen.

4) APPELLATE COURTS:

- a) The numbers of positions of the other staff in appellate court seems to be appropriate and the overall ratio of other staff for a judge is close to the standard (3.9) indicated in the CEPEJ report²⁴.
- b) The majority of appellate courts have 26-40 judges. According to the CEPEJ, the highest productivity at European level is attained in courts with an approximate number of judges between 40 and 80. Thus, some courts remapping ideas, estimating all the other conditions for judicial map, could be considered.
- c) Following the Lines No 47 and 52, it is recommended to reconsider the necessity of the head of the division, as only 1 position for the other staff in particular division in smaller courts is foreseen.

²⁴ [European Judicial Systems CEPEJ Evaluation Report \(2022 Evaluation Cycle\), p. 54](#)

IV. CONCLUSIONS AND RECOMMENDATIONS

During this Expert Report comprehensive analyse, comments and recommendations have been placed. Thus, in this final part of the Expert Report it is worth to point few general aspects.

- **All methodologies are considered to be innovative, based on strategic planning approach**, aiming to project and forecast the resources necessary for the effective functioning of courts.
- **The lack of implementation provisions**, check and balance, which would ensure the judicial independence, security for guarantees of judges, may make **their application in practice raising uncertainty within judiciary, resistance and dissatisfaction from the judiciary itself**. The judiciary should work in clear and determined conditions in order to avoid any potential impact on judges. Thus, the additional provisions, as suggested in this Expert Report, will make the methodologies application more effective.
- **The qualitative communication within the judiciary about the purpose of the Methodologies will help to perceive their expected effect more positively**.
- In order to have more comprehensive view of courts activities and to form more reasoned projections, it is recommended **to make the more detailed evaluation of the cases, their complexity, to review the impact of the other human resources** (particularly judicial assistants), **other organizational aspects** of courts activities such as digitalization level, computerization facilities.
- Following the CEPEJ Guidelines and seeking to administer judiciary in line with general principles of cost effectiveness, resource optimisation, **the review of judicial map may be needed. The consolidation of administration of courts may lead to effective use of resources, create possibilities to increase qualification of judges and court staff, ensure higher quality of justice without impact to access to justice**.

- Changes in business, social relations, progress of technological development **require the judiciary to have more qualified judges and staff. If the judiciary does not receive sufficient funding, the optimisation of functions and organizational structure may become crucial in order to administer justice qualitative.**
- In order to organize courts' work efficiently and to have a common model for number of positions, it is recommended that **the structural model should be as versatile as possible** and should have a common pool of specialists, allowing court administrators to decide what kind of specialists are needed for a specific court.