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Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Convention on Human Rights

REPORT

Assessment of CEPEJ tools for the comprehensive statistical data collection on the length of court proceedings to comply with Article 6 of the European Convention on Human Rights

November 2020

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List of Abbreviations

CoE	Council of Europe
CM	Council of Ministers of the Council of Europe
Convention or ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
CEPEJ	European Commission for the Efficiency of Justice of the Council of Europe
Working Group	Supreme Court Working Group tasked with tasked with solving issues of an excessive length of court proceedings in the context of the execution of the judgments of the European Court of Human Rights in the cases of "*Svetlana Naumenko v Ukraine*" and "*Merit v. Ukraine".*
Project	Council of Europe project "Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Convention on Human Rights"
ICMS	Integrated case management system

Executive summary

The Supreme Court Working Group, tasked with solving issues regarding the excessive length of court proceedings, has requested an assessment of the mechanisms permitting the collection of data on the length of court proceedings based on the good practice of the Council of Europe member states. The report is prepared within the framework of the Council of Europe project "Further support for the execution by Ukraine of judgments in respect of Article 6 of the European Convention on Human Rights", which is funded by the Human Rights Trust Fund and implemented by the Justice and Legal Co-operation Department of the Council of Europe. The Project requested that Mr Adis Hodzic, who previously worked as an expert at the CEPEJ, participate in the project events and prepare this report.

In July 2020, the Project, jointly with the Supreme Court, conducted a high-level event aimed at discussing expert recommendations and proposing further steps that Ukrainian authorities should take to resolve issues regarding the excessive length of judicial proceedings in the context of the execution of the judgments of the European Court of Human Rights in the Svetlana Naumenko and Merit groups of cases. It was then proposed that the authorities consider establishing effective mechanisms for measuring the length of judicial proceedings and accelerating court proceedings to guarantee everyone the right to a final decision within a reasonable time. After the event, the Project conducted follow-up consultations with Mr Adis Hodzic and representatives of the Supreme Court, the State Judicial Administration of Ukraine, and the High Council of Justice to discuss in more detail the expert recommendations concerning the introduction of the necessary tools and instruments.

This report is based on those discussions, the Council of Europe standards and the judgments of the European Court of Human Rights, CEPEJ documents, and other relevant documents provided by the Project, including the current Ukrainian legislation, public reports, expert opinions, and existing legal analysis related to the functioning of the judiciary in Ukraine.

The scope of the report is to provide an overview of the best tools related to the introduction of comprehensive systems of data collection on the length of court proceedings and suggest recommendations about their application at all levels of jurisdiction in Ukraine. The introduction of such a comprehensive system of data collection will enable the Ukrainian authorities to assess whether changes to the legislation and the institutional framework of the operation of the judiciary have had a positive impact, whether additional measures are required and in what sectors of operation within the judiciary. Furthermore, the establishment of such data collection tools is expected by the Committee of Ministers for the execution of the European Court of Human Rights judgments in the Svetlana Naumenko and Merit groups of cases.[1]

The requirement for a reasonable timescale for judicial proceedings is an essential element of the right to a fair trial, which is safeguarded by Article 6 of the ECHR. Delays in obtaining and executing judgments undermine respect for the rule of law and constitute a procedural barrier to accessing justice. Therefore, states must organise their legal systems to enable their courts to comply with the obligation to determine cases within a reasonable time. Ukraine is amongst very few Council of Europe member states in which the European Court of Human Rights has identified a structural problem regarding the excessive length of court proceedings and which has yet to solve it.[2]

[1] See for details the Interim Resolution CM/ResDH (2020)208 adopted by the Committee of Ministers on 1 October 2020 at the 1383rd meeting of the Ministers' Deputies of the Council of Europe.
[2] For further details see the judgments of the ECtHR in the Merit group (Application No. 66561/01) and Svetlana Naumenko group (Application No. 41984/98) v. Ukraine.

In order to tackle and prevent the issue of the excessive length of judicial proceedings, the CEPEJ invites the Council of Europe members states to establish monitoring systems for violations of Article 6 of the ECHR. The Council of Europe members states with advanced judicial administrations (like Austria, Germany, the Netherlands, Norway) developed and standardised their court performance frameworks together with their governance practices covering the aspects of time, cost efficiency, and quality. These standardised court performance frameworks and governance practices are used not only to describe symptoms (such as court-case processing delays) but also to perform diagnostics allowing for a critical assessment of court performance. This enables states to transition from applying an experience-based management or "gut feeling" management (which sometimes conceals political favouritism or even corruption) to a transparent "scientific evidence" approach in managing court operations that eliminates unjustified excuses for requesting additional resources to deliver court services to citizens and identifies courts that really need help in handling their workload.

The CEPEJ found that increased or reduced court performance depends on a combination of factors, which includes the resources allocated, methods of evaluating court performance, and the use of IT that is seen as a lever for improvement rather than as an end in itself.[3] In this regard, it appears that the common features of advanced judicial administration include:

- the proactive role of the court president with clear managerial responsibility,
- performance-based budgeting with operational targets and objective measures for the courts, and
- a central co-ordinating body in charge of court administration (for example, the Norwegian Court Administration, the Department of Judicial Administration within the Ministry of Justice of Finland, the Federal Ministry of Justice of Austria).

In addition to the examples of the judicial administrations of Norway and Finland, the report explores the Austrian integrated case management system, aimed at proactively managing the length of judicial proceedings and suggests that Ukraine introduces an early warning system with a precisely defined information workflow directed at a central co-ordinating body. This could be achieved by setting up a reporting mechanism that activates supervisors to work on solution strategies once a problem is detected.

Also, to solve the problem of excessively long judicial proceedings, it is recommended that Ukraine applies an integrated approach to judicial administration, which covers five stages[4] of development for court monitoring and evaluation systems. These stages include bureaucratic data collection (assessing and utilising existing sources of data); normative frameworks (assessing existing definitions of success and formulating key performance indicators); institutional capacity (assessing existing institutional capacity and mapping key processes); performing monitoring and evaluation function (assessing existing monitoring and evaluation as well as policy-making functions); and accountability and action (assessing capacity to make decisions based on the evidence produced). Unfortunately, even if these recommendations are accepted, it appears that Ukraine still needs to identify actors to implement these changes.

[3] European Judicial Systems. Efficiency and quality of justice. CEPEJ studies N24, available at: https://rm.coe.int/european-judicial-systems-efficiency-and-quality-of-justice-cepej-stud/1680788229

[4] Based on "Monitoring and Evaluation of Court System: A Comparative Study", CEPEJ available at https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-monitoring-and/16807882ba

Introduction

In 2018 the Supreme Court established the Working Group with a purpose to address the issue of an excessive length of judicial proceedings and the lack of effective remedies for this problem, which was identified in the ECtHR judgments in the cases of "*Svetlana Naumenko v Ukraine"*[5] and "*Merit v. Ukraine"*[6]. In 2020, the Working Group restarted its work and focused on developing concrete measures aimed at setting up effective domestic remedies for the excessive length of proceedings and building a data collection system, which will ensure that the overall picture of the length of judicial proceedings may be readily ascertained.

Article 6 of the Convention sets out that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.[7]

The Working Group requested the Project to conduct a comprehensive analysis of the statistical data produced by the State Judicial Administration of Ukraine on the current average length of proceedings in civil, commercial, and administrative cases.[8] The report aimed to clarify the issues raised in the decision of the CM regarding the statistical representation of changes in the administration of justice by civil, commercial, and administrative courts that occurred after the introduction on 15 December 2017 of the new versions of the Code of Civil Procedure of Ukraine, the Code of Commercial Procedure of Ukraine, and the Administrative Court Procedure Code of Ukraine. According to report findings, the statistical data that would enable to track the effectiveness of innovations contained in the new versions of procedural codes are mostly fragmentary or absent. What is more, it was concluded that the official statistics do not enable tracking the real length of each specific judicial proceeding (as official reports calculate the length of proceedings only with respect to judicial instances and based on general indicators). The respective reports show the number of cases considered by courts of the first instance and courts of appeal within a certain indicated period: under one year, over one year, over two years, etc. If a first instance court considers a case, further reporting makes it impossible to assess the overall length of proceedings of this case in all courts (as a court of appeal starts calculating the length anew and records only the time of its consideration).

Also, another factor influencing the calculation of the overall length of proceedings concerns the introduction and application of a unified judicial case management system. In Ukraine, courts at different levels use various case management systems. This situation renders impossible keeping track of the overall length of court proceedings at all levels.

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[5] ECtHR case "Svetlana Naumenko v. Ukraine" (Application no. 41984/98). For more details see: file:///Users/user/Downloads/001-67357.pdf

[6] ECtHR case "Merit v. Ukraine" (Application no. 66561/01). For more details see: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-61685%22]}

[7] European Convention on Human Rights: https://www.echr.coe.int/documents/convention_eng.pdf

[8] For more details see the report "On court statistical data on the length of proceedings in civil, commercial, and administrative cases" prepared within the framework of the Project by Roman Kuybida on October 2020.

Monitoring of the violations of Article 6 of ECHR

According to CEPEJ, one of the essential elements for the smooth functioning of courts is the safeguarding of the fundamental right to a fair trial within a reasonable time (ECHR Article 6). This principle must be fully taken into account when managing the workload of a court, the duration of proceedings, and specific measures to reduce their length and improve their efficiency and effectiveness.[9] The CoE and the ECtHR pay specific attention to the "reasonable time" of judicial proceedings and the effective execution of judicial decisions. One of the aims of the CEPEJ consists in preventing complaints to the ECtHR based on the poor running of judicial systems by helping to improve the functioning of justice in the CoE member states. The ECtHR has based its rulings in several judgments on certain aspects of the work of the CEPEJ, in particular those aimed at preventing the violation of the requirement of reasonable timeframes of procedures.[10]

On several occasions, the ECtHR considered that one of the ways of guaranteeing the effectiveness and credibility of judicial systems is to ensure that a case is heard within a reasonable time.[11] More recently, the ECtHR concluded that:

> *"significant and recurring delays in the administration of justice were a matter of particular concern and likely to undermine public confidence in the effectiveness of the judicial system"*

and that in exceptional cases,

> *"the unjustified absence of a decision by the courts for a particularly prolonged period could in practice be regarded as a denial of justice".*[12]

With regard to the right to the implementation of justice, the ECtHR asserted that guaranteeing the "right to a court" would be "illusory if a Contracting State's domestic legal system allowed a final binding judicial decision to remain inoperative to the detriment of one party".[13]

Accordingly, the execution of a judgment given by any court "must be regarded as an integral part of the "trial" for the purposes of Article 6 [of the Convention]".[14] CEPEJ supports CoE member states in the creation of monitoring systems for violations of ECHR Article 6. More and more states and entities have set up such mechanisms regarding violations of timeframes for both civil and criminal procedures, as well as regarding non-enforcement of judicial decisions in civil procedures.[15]

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[9] See https://www.coe.int/en/web/cepej/documentation/cepej-studies - Length of court proceedings in the member States of the Council of Europe based on the case law of the European Court of Human Rights (2003, revised in 2011) – CEPEJ Studies No. 3

[10] See https://www.coe.int/en/web/cepej/documentation/echr-judgements.

[11] See the ECtHR case "H. v. France" (No. 10073/82) of 24 October 1989, for more details see: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-57502%22]}

[12] See the ECtHR case "Glykantzi v. Greece" (No. 40150/09) of 30 October 2012, for more details see: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-114100%22]}

[13] Ibid.

[14] See the ECtHR case Hornsby v. Greece (No 18357/91) of 19 March 1997, for more details see: file:///Users/user/Downloads/001-58020.pdf

[15] European judicial systems: efficiency and quality of justice. CEPEJ studies No 26, for more details see: https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c

In that regard, CEPEJ requests CoE member states and entities to provide information concerning cases brought before the ECtHR under Article 6 of the ECHR, similar cases brought before national courts, and measures designed to promote efficient court proceedings. Most states and entities report about adopting individual and general measures to prevent further violations. Some countries set up mechanisms at the national level, which aims to accelerate court proceedings (e.g. Republic of Moldova, Montenegro, Russian Federation, Slovenia, Spain) or that allow reopening of cases, in which violations of Article 6 of the ECHR of was found (e.g. Georgia, Latvia, Serbia, Slovenia).[16] While such remedies do not represent a monitoring system per se, they may enable the provision of redress to individuals whose rights were violated to take steps to remedy the situation, thus helping with the efficiency of ECtHR decisions. Other countries present comprehensive mechanisms aimed at the general prevention of violations, such as the monitoring and dissemination of the ECtHR case-law (e.g. Austria, Russian Federation, Spain, Switzerland), its inclusion in training curricula (Austria), reporting to the national parliament or government (e.g. France, Italy, Slovakia), preparing systematic changes or action plans to prevent further violations.[17] In most cases, the actions are taken by the Ministry of Justice or the Ministry of Foreign Affairs. Nevertheless, in some states such activities are promoted by other institutions or special bodies (e.g. the Expert Council - representatives of different bodies - in Croatia, the Constitutional Court in Malta, the Danish Institute for Human Rights in Denmark, the National Institution for Human Rights in Norway, the inter-ministerial Commission in "the former Yugoslav Republic of Macedonia").[18]

The CEPEJ continues to invite states and entities to work further on this issue. CEPEJ highlights that it is essential that states and entities are able to provide data on the cases brought against them before the ECtHR, which relate to Article 6 of the ECHR.[19] Such developments in the statistical systems are an essential tool for remedying the dysfunctions highlighted by the ECtHR and preventing further violations of the Convention. The CEPEJ supports the creation of specific bodies or working groups from different ministries and fields that can consider the judgments of the ECtHR from different angles to ensure the implementation of prevention mechanisms at state level.

According to the CEPEJ findings:

> *"It seems that the good level of development of IT tools cannot be systematically linked to a good level court performance.[20] Indeed, the most technologically advanced States do not always have the best indicators for efficiency. The reason for increased (or reduced) performance is in fact to be found in the combination of several factors such as the resources allocated, but also methods of evaluating court performance, and the use of IT as a lever for improvement rather than as an end in itself)."*[21]

[16] European judicial systems: efficiency and quality of justice. CEPEJ studies No 26, for more details see: https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c
[17] Ibid.
[18] Ibid.
[19] European judicial systems: efficiency and quality of justice. CEPEJ studies No 26, for more details see: https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c
[20] Performance is measured on the basis of indicators developed by the CEPEJ called Clearance Rate and Disposition Time.
[21] European judicial systems: efficiency and quality of justice. CEPEJ studies No 26, for more details see: https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c

Based on thematic report[22] related to use of information technology in European courts, the administration of the courts has been defined as "the way in which a court is organized so that judicial decisions can be delivered"[23]. Case management refers to the court's role in management of proceedings. This raises issues relating to the course of proceedings and the functioning and efficiency of the judicial system. The same report illustrates the level of IT equipment in judicial systems for the administration of the courts and case management, as presented in
Figure *1* below.

Figure 1: Level of IT equipment in judicial systems for the administration of the courts and case management[24]

The map presents a striking level of IT equipment in judicial systems for the administration of the courts and case management throughout the CoE member states.

[22] CEPEJ Studies No. 24, Thematic report, Use of information technology in European courts, available at:https://rm.coe.int/european-judicial-systems-efficiency-and-quality-of-justice-cepej-stud/1680788229

[23] CEPEJ Studies No. 4, "L'administration de la justice et la qualité des décisions de justice" ("Administration of justice and quality of court decisions"), in CEPEJ, "La qualite des decisions de justice" ("The quality of court decisions"), (Hélène PAULIAT, edited by Pascal MBONGO - French only).

[24] CEPEJ Studies No. 24, Thematic report, Use of information technology in European courts, pg. 24, available at:https://rm.coe.int/european-judicial-systems-efficiency-and-quality-of-justice-cepej-stud/1680788229

Figure 2: Existence of a monitoring system for violations related to Article 6 of the ECHR (number of states/entities)[25]

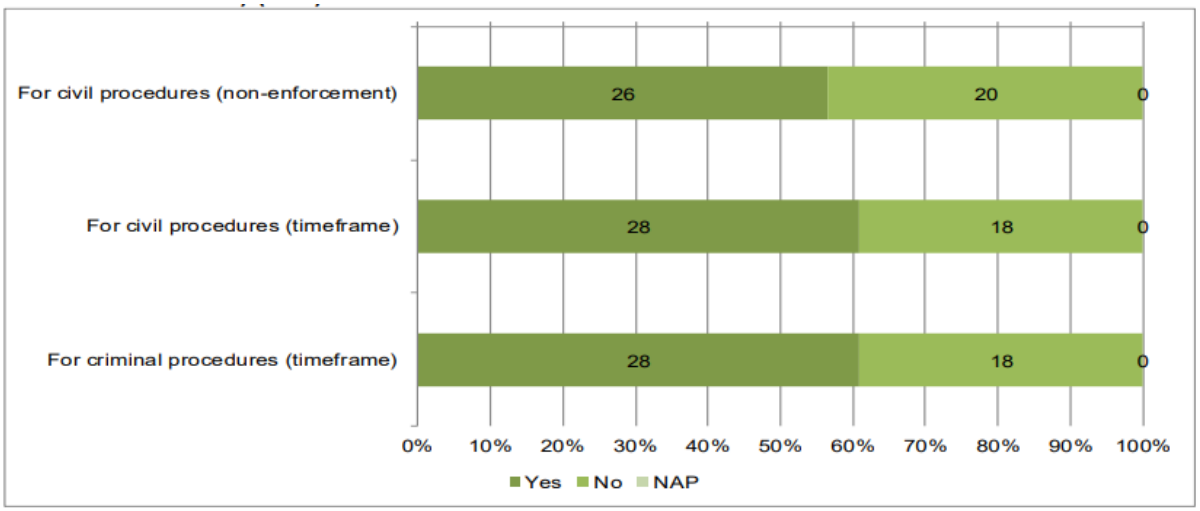


Table presents detailed breakdown of existence of monitoring system related to non-enforcement in civil procedure and timeframes in both civil and criminal procedure.

Table 1: Existence of a monitoring system for violations related to Article 6 of the ECHR (number of states / entities) detailed breakdown[26]

State / Entity	For civil procedure (non-enforcement)	For civil procedures (timeframe)	For criminal procedures (timeframe)
Albania			
Andorra			
Armenia			
Austria	x	x	x
Azerbaijan			
Belgium			
Bosnia and H.	x	x	x
Bulgaria		x	x
Croatia	x	x	x
Cyprus			
Czech Republic	x	x	x
Denmark	x	x	x
Estonia	x	x	x
Finland	x	x	x
France			
Georgia	x	x	x
Germany			
Greece		x	x
Hungary			
Iceland			
Ireland			

[25] Based on Figure 4.25 Existence of a monitoring system for violations related to Article 6 ECHR (number of States / entities) (Q86) of CEPEJ studies No. 26 available at https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c

[26] Based on CEPEJ STAT database, available on https://public.tableau.com/profile/cepej#!/vizhome/CEPEJ-Questionexplorerv5_0EN/QuestionExplorer

Israel			
Italy	x	x	x
Latvia	x	x	x
Lithuania			
Luxembourg			
Malta		x	x
Monaco	x	x	x
Montenegro	x	x	x
Morocco			
Netherlands	x	x	x
North Macedonia	x	x	x
Norway			
Poland	x	x	x
Portugal	x	x	x
Rep. of Moldova	x		
Romania	x	x	x
Russian Federation	x	x	x
Serbia	x	x	x
Slovakia	x	x	x
Slovenia	x	x	x
Spain	x	x	x
Sweden			
Switzerland	x	x	x
Turkey	x	x	x
UK-England and Wales			
UK-Northern Ireland			
Ukraine	x	x	x
UK-Scotland			
Grand Total	26	28	28

Yet,

Figure 2 and
Table presents detailed breakdown of existence of monitoring system related to non-enforcement in civil procedure and timeframes in both civil and criminal procedure.

Table 1 above present an overview of monitoring systems for violations related to Article 6 of the ECHR in CEPEJ member and observer states/entities, which is not corresponding to the high level of IT equipment available for the administration of the courts and case management. According to available data, a monitoring system for non-enforcement in the civil procedure is present in 57% of states/entities to and for the respect of timeframes in civil and criminal procedure in 61% states/entities. It appears that many entities still have to work on introducing a monitoring system for violations related to Article 6 of the ECHR.

Notable practice of Austria in court management

In order to establish a complete picture of the state of affairs as to the length of judicial proceedings in Ukraine and ensure that cases are handled in line with the ECHR and the ECtHR case-law as to "reasonable length", Ukraine should develop a proper court management system.

The information about possible backlog problems in courts is important but information alone will not solve the issue of an excessive length of judicial proceedings. It is necessary to develop an early warning system with a precisely defined information workflow directed at a central coordination body. This could be achieved by setting up a reporting mechanism that activates supervisors to work on solution strategies once a problem is detected.

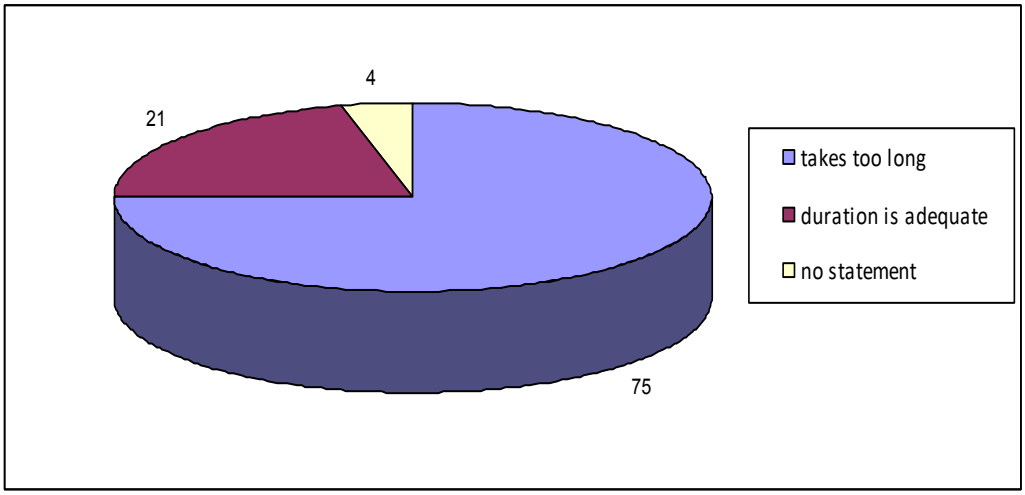
Presidents and/or chief judges should discuss the reports generated from the statistical system with competent presidents of the courts/departments and intend to make this a periodic routine, even publish abridged versions of these reports on courts' websites to encourage healthy competition and initiate a process of benchmarking among courts.

Austria has developed an advanced reporting mechanism that is based on key data from the Austrian integrated case management system (ICMS). This system may be an example of how to control backlog within the judicial system and speed up judicial proceedings.

Why is there need to spotlight backlog problems?

The public's esteem of justice is strongly influenced by the duration of its proceedings. Overlong trials shake the public's trust in a well-functioning Justice and hurt its reputation. This makes efficient and proper court proceedings a top priority. In an opinion poll held in 2006 three out of four Austrians said that court proceedings are taking too long.[27]

Figure 3: Austria polling related to duration of court proceedings[28]



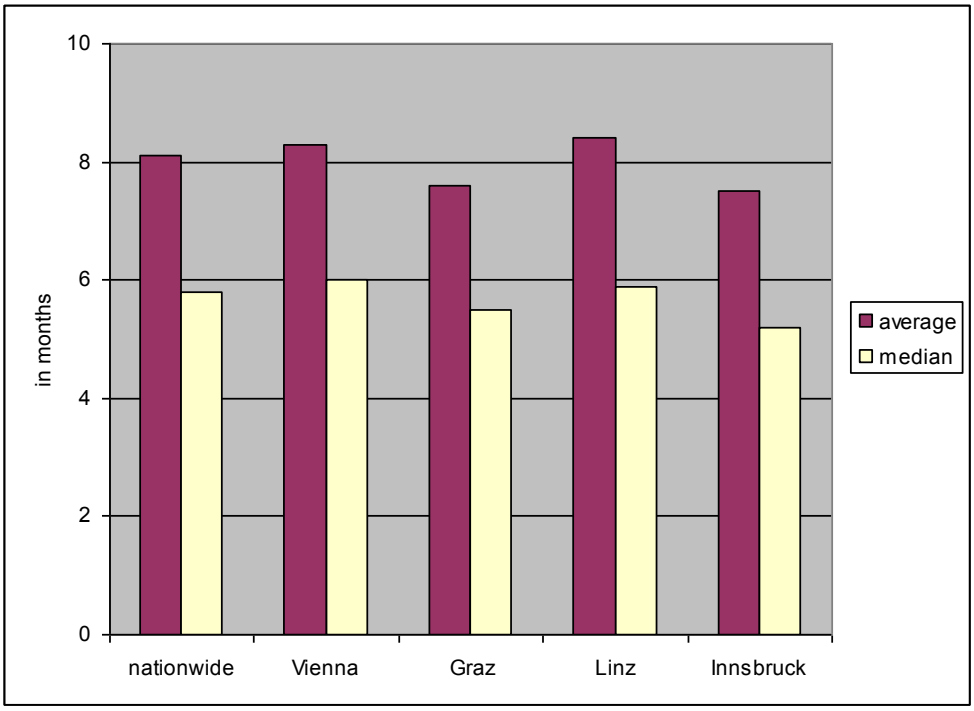
[27] Information were obtained from the documents by the Federal Ministry of Justice of Austria, through contact person Mr. Georg Stawa georg.stawa@bmj.gv.at.
[28] Ibid.

Table 2: Average duration proceedings (in months)[29]

Area	cases	average (months)	median (months)
nationwide	70,072	8.1	5.8
Vienna	32,758	8.3	6
Graz	12,704	7.6	5.5
Linz	14,713	8.4	5.9
Innsbruck	9,897	7.5	5.2

However, in 2005 Austria's municipal court proceedings in civil matters were closed after only 8 months on average. And that is not even counting quick trials with default decisions and judgments by confession.

Figure 4: Average and median duration of Austrian court proceedings in 2005 (in months)[30]



Overall, most Austrian court departments are working at a satisfactory or even remarkable output rate while maintaining high-quality standards. Nevertheless, there are some departments with backlog problems resulting in overlong trials and/or overdue verdicts. Unfortunately, it's these few that shape the public's opinion. These departments are termed "spotlighted departments" because the administration puts a spotlight on them with an efficient reporting mechanism.

[29] Ibid.
[30] Ibid.

Early Warning System

Based on the analyzed regular reports, the most effective way to reduce or avoid backlog and accelerate judicial proceedings are early countermeasures taken by the president of court.

In 1994 the Austrian Ministry of Justice issued a decree stressing the importance of performing the responsibilities of presidents of courts as supervisors. They are obliged to review their courts' departments and keep their superior president(s) informed on the status quo, essentially the workload and work output of their court departments.[31]

Regular inspection of court departments' efficiency by its president

It is essential that presidents of courts are aware of overlong cases and overdue verdicts in their courts as well as their subordinate courts. They are bound to review the IT-generated data from the Austrian ICMS, which provides monthly checklists, quarterly register evaluation, information on new and pending cases, lists of overlong trials, and overdue verdicts.

If problems are detected presidents of courts have to take action by themselves or - if not possible - suggest measures to their superior presidents.

To enable efficient self-monitoring, all judges receive automation generated checklists with data on their workload and work output every month.

Mandatory reports by presidents of courts to the Ministry of Justice

The 1st of October is reporting day. On this day, all overdue verdicts and all overlong trials in civil and criminal matters are identified by the Austrian ICMS.

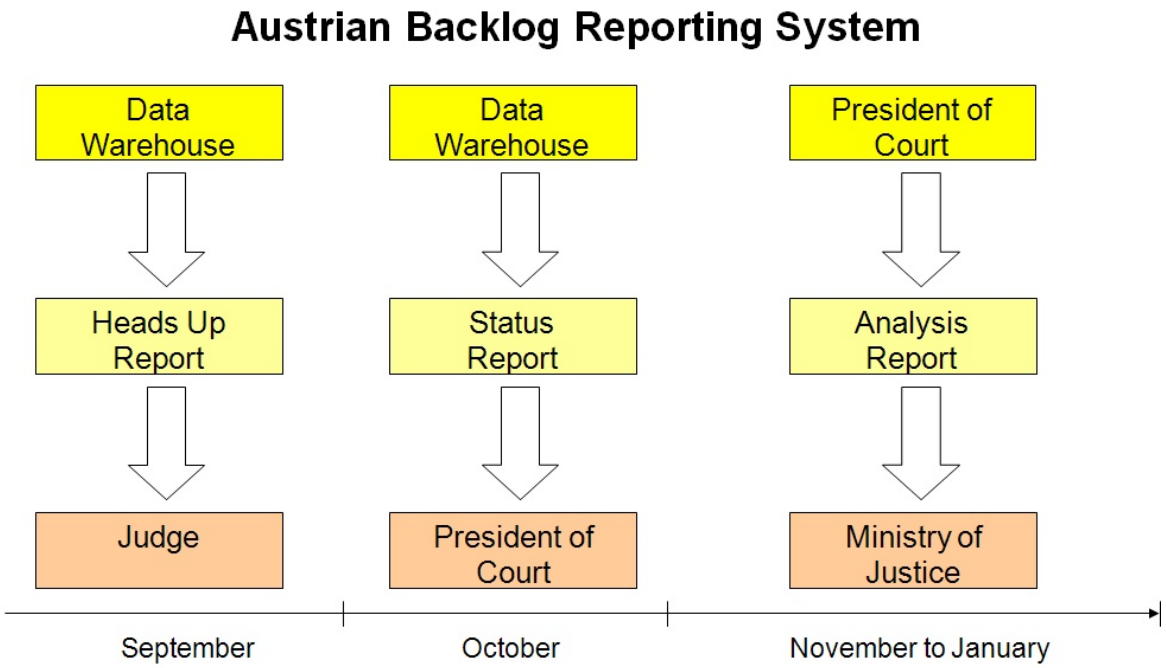
Prior to this, in September, all judges receive a "heads up" report from the data warehouse (BRZ), which lists possible backlog problems, namely[32]:

- all the judge's verdicts that would be overdue for more than 2 months come October 1st and
- all the judge's trials pending for longer than 6 months per October 1st.

The idea is to support and motivate judges in time to reduce their backlog before reporting. In October, presidents of courts receive status-reports about overlong trials and overdue decisions (per October 1) in their courts from the data warehouse (BRZ). The presidents are obliged to identify the cause of those delays and take countermeasures or convey suggestions to their superior president[33].

[31] Ibid.
[32] Ibid.
[33] Ibid.

Figure 5: Austrian Backlog Reporting System[34]



In the case of overlong trials or overdue verdicts, presidents themselves must report about a (spotlighted) court department. The criteria for a spotlighted department are:

Table 3: The criteria for a spotlighted department[35]

• at least one **verdict** is > 6 months overdue and/or	
• ≥ 5 **verdicts** is > 2 months overdue and/or	
•	> 10 **trials** lasting longer than **3 years** in civil cases before county courts, including labour & social security cases (Cg, Cga, Cgs) **2 years** in civil cases before municipal courts; (C) **1 year** in criminal cases (U, Hv) and/or
• > 20 (in Vienna: 30) **trials** longer than | Cgs)	**2 years** in civil cases before county courts, including labour & social security cases (Cg, Cga, **1 year** in civil cases before municipal courts; (C) **6 months** in criminal cases

[34] Ibid.
[35] Ibid.

Table 4: Mandatory Report by President of Court[36]

Mandatory Report by President of Court

OVERDUE VERDICTS	
at least 1 verdict	> 6 months overdue
> 5 verdicts	> 2 months overdue
OVERLONG TRIALS	
> 10 trials	> 3 years in civil cases before County Court
	> 2 years in civil cases before Municipal Court
	> 1 year in criminal cases
> 20 trials	> 2 years in civil cases before County Court
	> 1 year in civil cases before Municipal Court
	> 6 months in criminal cases

This analysis report of a court's president is standardized by a fill out form (to ensure that all important issues are covered) and contains information on:

- Why is there a problem? (What happened since the previous report from last year?)
- What has the president done to improve or support the spotlighted court department?
- What are the president's suggestions to the superior president?
- When has the overdue verdict (per Oct. 1st) been dispatched? (It is expected that the overdue verdict is on its way to the parties at the time of reporting).

The analysis report is put together by a president of a court and sent - via the president(s) of the superior court(s), who can add input - to the Ministry of Justice no later than January 31st of the following year. This late due date gives the judge time to improve the situation in the department and the president to include countermeasures and their effects in the report.

Basic principles

The principles on which this reporting system is based on are the following:

- By law, all presidents of courts are supervising bodies, obliged to actively keep themselves informed about the work output of their court and the subordinate courts.
- Whenever problems surface they are obliged to take or suggest remedial actions.
- There are precise criteria on what triggers mandatory reporting.

[36] Ibid.

- The presidents' analysis reports have the same content structure by use of forms. This creates a standardized basis for problem analysis.
- Judges are obliged (and enabled) to self-monitor their work by receiving automation generated monthly checklists; this also creates a competitive element among judges.
- The reporting system is focused on support and help for overburdened court departments.

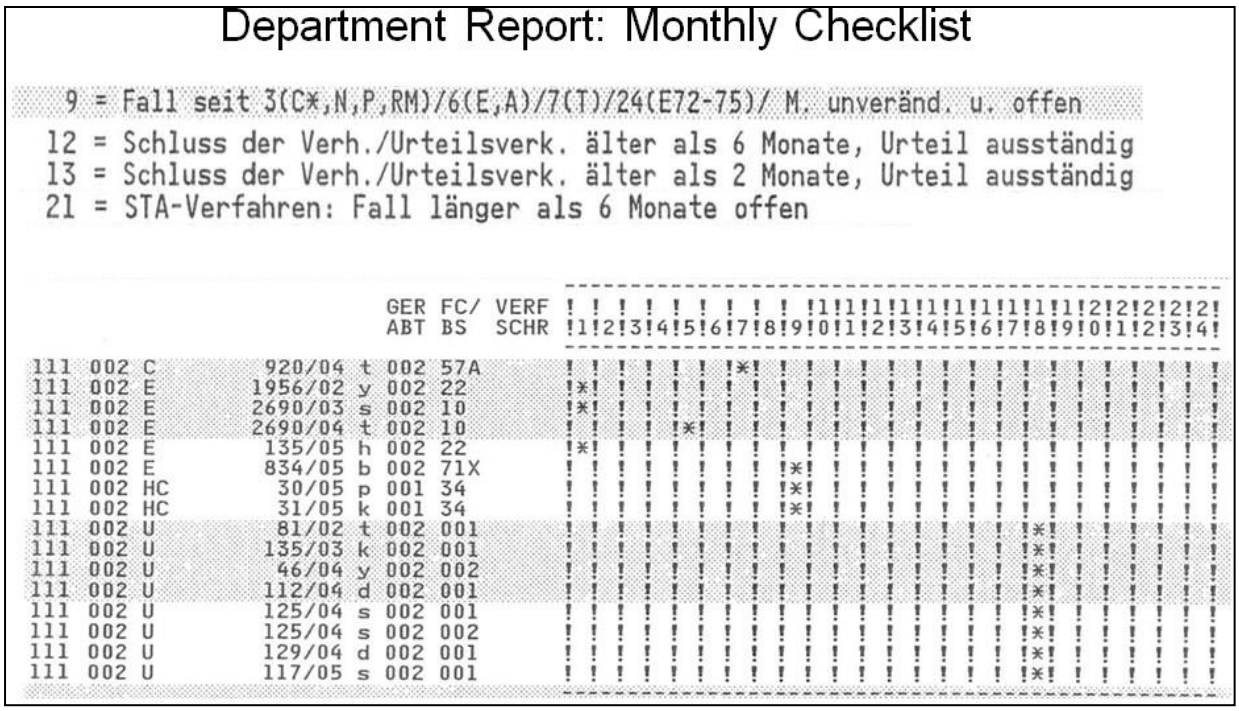
Influence on the Justice Administration

Taking care of and motivating judges will have an impact on spotlighted court departments. In particular, this may lead to:

- Adding personnel to transcription offices (a delay in the transcription of protocols is a common reason for delayed verdicts);
- Training for judges, e.g. in time management;
- Assigning trainee judges for assistance;
- Close monitoring of overlong trials;
- Taking measures of supervision (including last and least disciplinary action).

A look on status reports

Figure 6: Department Report: Monthly Checklist[37]



Department Report: Monthly Checklist

9 = Fall seit 3(C*,N,P,RM)/6(E,A)/7(T)/24(E72-75)/ M. unveränd. u. offen
12 = Schluss der Verh./Urteilsverk. älter als 6 Monate, Urteil ausständig
13 = Schluss der Verh./Urteilsverk. älter als 2 Monate, Urteil ausständig
21 = STA-Verfahren: Fall länger als 6 Monate offen

			GER ABT	FC/ BS	VERF SCHR	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34
111	002	C	920/04	t	002 57A						*																												
111	002	E	1956/02	y	002 22	*																																	
111	002	E	2690/03	s	002 10	*																																	
111	002	E	2690/04	t	002 10					*																													
111	002	E	135/05	h	002 22	*																																	
111	002	E	834/05	b	002 71X									*																									
111	002	HC	30/05	p	001 34									*																									
111	002	HC	31/05	k	001 34									*																									
111	002	U	81/02	t	002 001																																		
111	002	U	135/03	k	002 001																																		
111	002	U	46/04	y	002 002																																		
111	002	U	112/04	d	002 001																																		
111	002	U	125/04	s	002 001																																		
111	002	U	125/04	s	002 002																																		
111	002	U	129/04	d	002 001																																		
111	002	U	117/05	s	002 001																																		

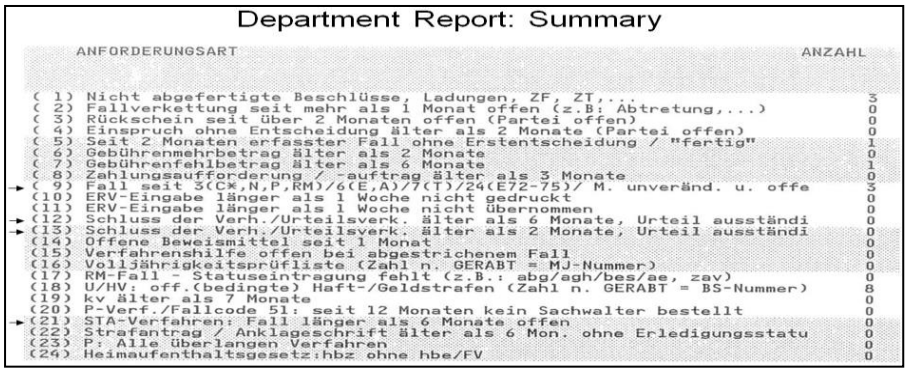
[37] Ibid.

This is an example of a monthly checklist, which is provided by the ICMS and distributed to presidents of courts and every court department. It contains a range of 24 criteria, usually indicating something running slow or wrong in the court department.

On top of the slide is a selection of four backlog related criteria (there are 24 overall). For example, criteria number 9 describes a case that has not been altered in the ICMS for at least three months (depending on the type of proceeding). In the summary below there are three cases in department 002 of court 111 that fulfill these criteria. The report also provides the exact case number to enable closer inspection.

The other three criteria from our selection describe overdue verdicts and overlong trials. Number 12 and 13 depict cases with verdicts 6, respectively 2 months overdue. Number 21 pinpoints proceedings by the public prosecutor pending for more than 6 months.

Figure 7: Department Report: Summary[38]



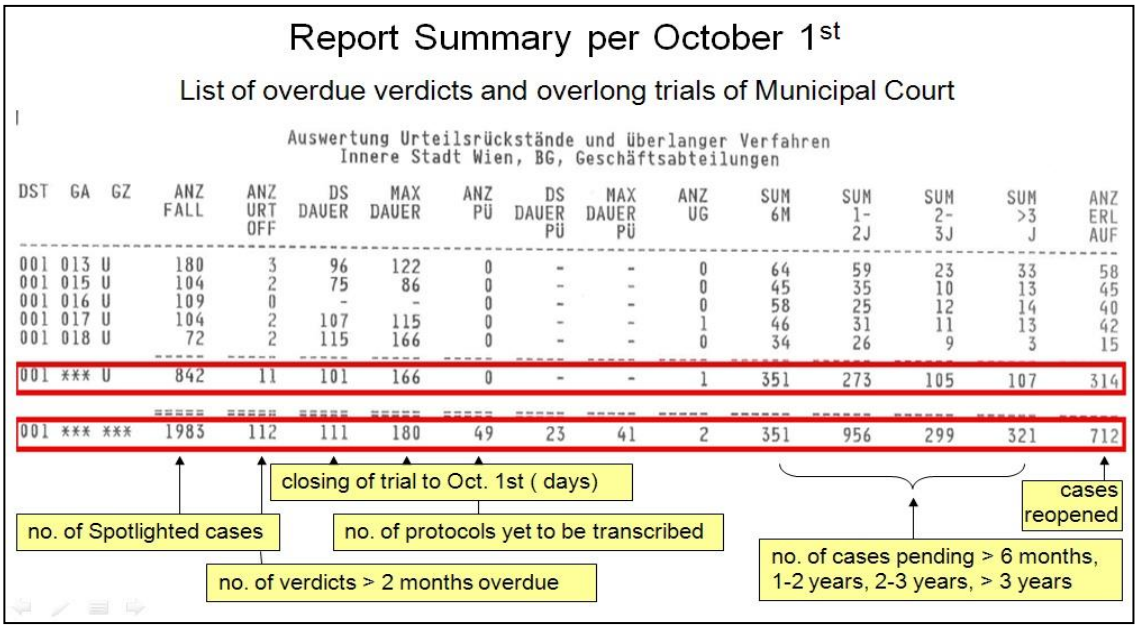
Department Report: Summary

	ANFORDERUNGSART	ANZAHL
(1)	Nicht abgefertigte Beschlüsse, Ladungen, ZF, ZT,...	3
(2)	Fallverkettung seit mehr als 1 Monat offen (z.B: Abtretung,...)	0
(3)	Rückschein seit über 2 Monaten offen (Partei offen)	0
(4)	Einspruch ohne Entscheidung älter als 2 Monate (Partei offen)	0
(5)	Seit 2 Monaten erfasster Fall ohne Erstentscheidung / "fertig"	1
(6)	Gebührenmehrbetrag älter als 2 Monate	0
(7)	Gebührenfehlbetrag älter als 6 Monate	1
(8)	Zahlungsaufforderung / -auftrag älter als 3 Monate	0
→ (9)	Fall seit 3(C%,N,P,RM)/6(E,A)/7(I)/24(E72-75)/ M. unveränd. u. offe	3
(10)	ERV-Eingabe länger als 1 Woche nicht gedruckt	0
(11)	ERV-Eingabe länger als 1 Woche nicht übernommen	0
→(12)	Schluss der Verh./Urteilsverk. älter als 6 Monate, Urteil ausständi	0
→(13)	Schluss der Verh./Urteilsverk. älter als 2 Monate, Urteil ausständi	0
(14)	Offene Beweismittel seit 1 Monat	0
(15)	Verfahrenshilfe offen bei abgestrichenem Fall	0
(16)	Volljährigkeitsprüfliste (Zahl n. GERABT = MJ-Nummer)	0
(17)	RM-Fall - Statuseintragung fehlt (z.B.: abg/agh/bes/ae, zav)	0
(18)	U/HV: off.(bedingte) Haft-/Geldstrafen (Zahl n. GERABT = BS-Nummer)	8
(19)	kv älter als 7 Monate	0
(20)	P-Verf./Fallcode 51: seit 12 Monaten kein Sachwalter bestellt	0
→(21)	STA-Verfahren: Fall länger als 6 Monate offen	0
(22)	Strafantrag / Anklageschrift älter als 6 Mon. ohne Erledigungsstatu	0
(23)	P: Alle überlangen Verfahren	0
(24)	Heimaufenthaltsgesetz:hbz ohne hbe/FV	0

This is the whole array of criteria, now summarized for one court department. It provides an overview of the number of cases meeting the listed criteria

[38] Ibid.

Figure 8: Report Summary per October 1st[39]



This excerpt of a report summary per October 1st lists the number of cases with overdue verdicts and overlong trials for a few court departments (here departments 13 to 18) of the largest Municipal Court in Vienna. Additional data is provided on the average and maximum time span of verdicts overdue and protocol transcription. The report is based on key dates from the ICMS like case filing, closure of hearing, protocol transcription. The overlong trials can be found here, categorized by duration (more than 6 months, 1 to 2 years).

Based on the above analysis, it is recommended that Ukraine use the experience of the Austrian judiciary as inspiration for implementing monitoring and evaluation function in the court system.

Namely, Austria has developed an advanced reporting mechanism, which may be an example for Ukraine on how to control backlog within the judicial system and speed up judicial proceedings. Austria managed to successfully apply all five stages in introducing proactive monitoring and evaluation function in the court system[40] covering:

1. Bureaucratic data collection
2. Normative framework
3. Institutional capacity
4. Performing monitoring and evaluation function
5. Accountability and action

While other judicial administrations (i.e. Scandinavian countries and Germany)[41] also have standardized court performance frameworks and governance practices, Austria demonstrated

[39] Ibid.
[40] Based on "Monitoring and Evaluation of Court System: A Comparative Study", CEPEJ available at https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-monitoring-and/16807882ba
[41] Assessment based on two CEPEJ publications ("Time management of justice systems: a Northern Europe study" available at https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-

innovative, resilient, comprehensive and effective approach in implementing monitoring and evaluation function in court system based on 1994 decree of Austrian Ministry of Justice stressing the importance of performing the responsibilities of presidents of courts as supervisors.

Notable practice of Norway in court management[42]

Norwegian Courts – Historical Background

Norwegian society has been characterized by stability for several hundred years. Constitution of 1814 ensures citizens' rights. Norway has been and an egalitarian society characterized by small differences and both the society and courts are transparent. Thanks to stable democracy, equality transparency, traditionally there is very little corruption, not least in the justice sector.

There is a long tradition that the judges are independent, independent of prosecutors, government, media, parties, and communities. In that regard, important to know that judges can not be terminated or transferred, and they are appointed for life, i.e. until they retire at the age of 70. This ensures independence. Prosecution Authority is also independent; prosecutors are independent of government and decide which issues they will investigate and prosecute and which they won`t. Courts and judges enjoying the great confidence of Norwegians.

The Norwegian Courts Administration (NCA)[43] and the Norwegian Court System

The Norwegian Courts Administration (NCA) administers the ordinary courts and the land consolidation courts. This means The Supreme Court, 6 courts of appeal, 63 district courts, and 34 land consolidation courts.

The NCA's purpose is to enable the courts to deal with the challenges presented before them. This is done for instance by providing the support necessary for judges and staff to carry out their roles and to deliver justice efficiently and effectively. The NCA covers a steering role as well as carrying out the administrative and support for the courts. The NCA also holds a superior employer function and works to increase public confidence in the courts. The NCA has about 90 employees and is located in Trondheim.

While judges are appointed by the Government, all courts constitute a unit, with a chief judge/court president. Court President is responsible for everything in the courts, but not legal decisions made by the (other) Judges. the court president is the leader of the court together with the Court Manager.

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time-managemen/16807882bb and "Case weighting in judicial systems, CEPEJ studies No. 28", available at 16809ede97 (coe.int)) and professional experience of the expert.

[42] Based on *"Court Management in Norway, Scoreboard in Court Management"*, available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjT3Ket0f_sAhVy5eAKHTTWDx4QFjABegQIARAC&url=http%3A%2F%2Frm.coe.int%2Fcourt-management-in-norway-scoreboards-in-court-management-bernt-bahr-%2F168078aa29&usg=AOv-Vaw0VPOhj0VUryxAI1AFm8XxF

[43] Based on *"The Courts of Norway"* available at Norwegian Courts Administration | Norges Domstoler

Allocation of court budgets – a tool for court management at National level

Each court receives its own annual budget – allotment of resources from the NCA and Expectations or requirements given to each court and Court President is expected to prepare and deliver Annual report to NCA.

Court Presidents; Appointment and training

Court presidents are appointed by the Government after a proposal by an independent body and they are entitled to a lifetime appointment. They attend training in groups after appointment over a period of 2 to 3 years and it is common to build a network with 2 – 4 colleagues together with their Court Managers.

Management in a Norwegian Court

In regard to management in a Norwegian dual leadership principle is applied:

- The President and the Court Manager is leading the Court
- The Court Manager derives its power from the President
- The President is also a judge and share his time between legal work and management
- The President points out the direction, the Manager is dealing with personnel, accounting, and general management

Earlier, the President was Chief Judge and was not so occupied with Management. Now, a demand both from the employees and from the Society for more Leadership. The most important task now is creating a culture of efficiency and management

In addition, earlier, each judge felt responsibility only for their own cases, “each judge made their own court" but now the judges feel responsible for the entire case portfolio – 13 judges, but one Court.

Trends in Managements strategies

In regards to trends in management strategies, leadership in Norwegian Courts has been directed towards the society and the Court users with a focus on dialogue to improve performance and service covering 1) External dialogue, 2) Court Users surveys, 3) Internal dialogue, 4) Interview with all judges and staff. All proposed improvements are considered in workgroups before the President makes decisions Regular meetings with the Unions in a separate liaison body

Due to often complaints on length of proceedings the chief judge is required to report to Committee on his/her supervision on concerned case

In that regard, The Dispute Act entered into force on January 1st, 2008 setting the target that All judges should handle their cases more speedily and make a judgment within 6 months period. The purpose of the Dispute Act was to introduce a new culture.

The President has to check out those judges that do not watch their workload and if a judge is working too slow with a case, the President should then handle the case himself or give it to the next judge on the distribution list.

- The Dispute Act - Entered into force January 1, 2008

Main content – a new culture!

The role of the chief judge

Section 11-7 Remedies in the event of poor case management

- (1) The president of the court shall ensure compliance with the duty to take an active part in the management of the case pursuant to section 11-6 and shall make such orders as are necessary to rectify deficiencies through neglected or delayed management of the case. A party may demand the president of the court's intervention.
- (2) In case of material neglect of duties pursuant to section 11-6, the president of the court shall transfer the case to another judge or take over the case himself if this is necessary for the proper conduct of the remaining proceedings.
- (3) The decision of the president of the court may be appealed. The appeal court has the same powers as the president of the court pursuant to subsection (1) and (2) to determine the management of the case and may also refer the case to another court.
- (4) If the president of the court is the preparatory judge or is incompetent to act for other reasons, an application pursuant to subsection (1) shall be ruled on by the immediately superior court. The same applies on application of a party if the president of the court has not made a ruling within one month after an application pursuant to subsection (1) was submitted. The rules on appeal against a decision pursuant to subsection (3) apply correspondingly.

Distribution of Civil Cases

It is important that the parties can not decide which judge is to decide the matter and no judge could pick their own cases, and distribution should be random.

Distribution of Criminal matters

Just like in civil cases, the distribution of criminal matters is also random. Criminal cases are distributed to the first judge, who is available to take the case. In Norway, the judges deal with both criminal and civil cases

The Management Criteria in Norwegian Courts

Management development is a strategic tool for achieving the goals that the courts set. Strengthening of management and the managerial role will therefore be a key focus area in the time ahead. According to a decision of NCA's board, key focus area that should form the foundation for all management and strategic work in the courts are:

- ❑ Professionally competent

- Result-oriented
- Employee-oriented
- User-oriented
- Development-oriented

The management criteria define and give substance to sound management as it is understood in the courts, and they characterize all management in Norwegian courts. The management criteria accorded a significant place in the management dialogue with NCA. Fundamentally, the same requirements for managers and management apply, regardless of local conditions, even though a certain degree of differentiation may be appropriate.

For the Court Manager/Chief Judge, this entails requirements of:

- Professionally competent
- Result-oriented
  - setting goals for the court's activities
  - implementing measures for achieving the established goals
  - ensuring rapid case processing
  - continuous development of routines

Targeted work and strategic planning are required to ensure fast and efficient case processing. The court manager is responsible for the court's defined goal achievement, and for it working in accordance with the principles set out for such goal achievement. The court manager shall prepare an annual plan of activities and evaluate it regularly. Planning must be undertaken in partnership with the court's employees, and the court manager must ensure that everyone works cooperatively to secure the defined goals.

In order to secure fast case processing, the court manager must continually develop the court's routines. The court manager is responsible for managing the processing of cases. Where necessary, the court manager shall instigate measures for tighter scheduling or reallocation of cases.

- Employee-oriented
  - being open, honest, enthusiastic, motivational and generous
  - strengthening team spirit and cooperation
  - setting requirements and delegating authority
  - conflict management

- User-oriented
  - interacting with partners and other stakeholders, including clarifying reciprocal expectations
  - strengthening of information and communication
  - about the courts and their activities
  - openness
  - ensuring users' access to the court

- Development-oriented
  - developing all aspects of the courts' activities,
  - including expertise, work processes, systems and employees
  - creating productive learning arenas
  - creating good learning processes
  - working in a targeted manner on developing quality in a broad sense

- focused and systematic work on developing employees

General developments in society and working life make it necessary for all organizations to focus on development in its broad sense. This implies a fundamental focus on the constant improvement and development of a learning-oriented culture. Development orientation involves working in a systematic and targeted way to maintain and improve quality and efficiency linked to both processes and outcomes. This makes the courts learning arenas and one of the manager's most important tasks is to facilitate good learning processes. This is done by working in a targeted way on communication and motivation and developing thereby an open and secure culture. Delegation of responsibility and tasks is a key tool for creating good learning processes and good learning arenas, and it is here that much of the development potential for court employees lie.

In order to attract and retain motivated and committed employees in the years ahead, it is crucial to work on professional and personal development for all employees.

On leadership

A high level of professional competence promotes trust in the courts and their legitimacy. The court manager is responsible for the court having a high professional level. The court manager must be a professional source of inspiration for all employees. The court manager must stimulate and ensure continuous professional development among all who work in the court. The court manager must therefore have a high level of professional expertise and analytical abilities.

The court manager shall oversee the preparation of competence plans and facilitate the participation of judges and case officers in competence-raising initiatives. The court manager is also responsible for his or her own professional development and must participate in management development measures implemented by the NCA. The court manager must have core ICT proficiency. The court manager must be a driving force for efficient use of the court's computer systems. The court manager shall also use IT tools in his or her management and planning of the court's activities.

Key principles related to leadership are:

- A high level of professional competence promotes trust in the courts and their legitimacy.
- The Court President is responsible for the court having a high professional level.
- The Court President must be a professional source of inspiration for all employees.
- The Court President must stimulate and ensure continuous professional development among all who work in the court.
- The Court President must therefore have a high level of professional expertise and analytical abilities.

The use of CMS, Scoreboard in Civil & Criminal cases

To fulfill commitments to court management both in the Dispute Act (see Trends in Managements strategies above) and to society and expectations from NCA, it is of vital importance to have managerial tools, primarily Case Management System (CMS) and scoreboard.

CMS and scoreboards are used to:

- Produce monthly report on incoming, decided cases, undecided cases and time used on the decided cases.
- Monitor the case load and to see if the Court is following the National Standards given for solving cases
- Monitor if the resources are being used on the right type of cases
- Monitor the case load of each judge
- Watch the number of unsolved cases
- Watch if the cases are handled with the speed according to the law, and the national standards
- Watch if the verdicts are not delayed after the hearing

Key managerial lessons obtained using Case Management System (CMS) and scoreboard are:

- The Courts are there not for the personal, but for the user/the society
- Try to create a culture for the importance of daily use of CMS
- Regular use of CMS will hopefully lead to a culture that everyone in the Court will be interested in figures from the CMS
- Talk about figures, but not only figures. Don`t forget to talk about competence and quality!
- Distribute to all in the Court monthly figures for the court
- Distribute to the judges the figures for him/her caseload, incoming and decided cases

Notable practice of Finland in court management[44]

The Finnish Judicial Administration

As a government department, the Ministry of Justice draws guidelines for legal policy and develops legislative policy. According to a Strategy Paper, the goal of the Ministry of Justice is an active and safe society where people may rely on that their rights are respected. Every individual, not just citizens, as well as every corporate entity, must have effective means to realize their rights. The quality of the judicial system and the enforcement of criminal justice are core elements.

Many of the duties and responsibilities of judicial administration and the development of courts of law still fall primarily within the jurisdiction of the Department of Judicial Administration within the Ministry of Justice. The main duty of the Department is to ensure that the preconditions for a functioning judicial system exist in Finland. In this regard, the Department aims to provide for the necessities of a fair trial and people's effective means of realizing their rights. To make all this happen, the department must ensure that the courts have:

- sufficient financial resources,

- sufficient staff,

- proper premises,

[44] Based on *"The Finish Judicial System"*, available at https://rm.coe.int/ministry-of-justice-department-of-judicial-administration-the-finnish-/168078f3d2

- facilities,

- communications, and

- sufficient training to maintain the professional skills of the staff at a high level.

The staff of the Department of Judicial Administration also takes part in the drafting of new legislation, especially concerning the organization of the courts. The Department also follows up that legislative reform has been properly implemented.

Quantitative Evaluation of Judicial Work and Financial Administration

Great progress has been made in Finland in terms of the evaluation of judicial work and modern financial administration**.** In Finland, the judicial system in its entirety switched to the *management by results* system in 1995. Through the extensive delegation of authority to the individual courts in this regard, the role of a chief judge has become more significant.

The State Budget Act and accompanying decree provide the statutory background to the introduction of this system. According to these statutes, the ministries must prepare among other things an operating plan and a financial plan not only for one year in advance but also for five years ahead (budgetary framework). These plans must include operational targets, the achievement of which is set as an objective measurement for the courts.

The *management by results* system is one aspect of the political accountability of the courts. Every year when confirming the state budget parliament sets specific results targets for each and every administrative sector including the courts. Targets incorporated in the budget of the judicial system include, for example, handling time targets for different types of cases and different courts. The budget entry for the judicial system also includes a description of the main focal points of the judicial system earmarked for development.

The Ministry of Justice is responsible for drafting the budget proposal for this administrative sector and cooperates with the courts during the drafting stage. According to the decree governing the state budget, the results targets of the offices and departments of an administrative sector are approved in connection with the implementation of the budget.

After parliament has announced the state budget, the responsible ministry (in this case the Ministry of Justice) must approve and publish the results targets of the sector without delay. As part of the system the Ministry of Finance, the external auditors, and the State Auditor's Office are informed of the results targets. The annual report drawn up by the Ministry of Justice shows, among other things, whether or not these targets have been achieved. The courts with general jurisdiction and the administrative courts produce their own separate annual reports.

Annual Budget and Targeting - Negotiations Between the Ministry of Justice and the Courts

The Department of Judicial Administration negotiates "face to face "on annual basis with almost 50 court entities in order to set targets and objectives for the next calendar year. The discussions start with a general review of the present state of the judicial system, a look at what reform projects are being considered, and an analysis of the extent to which the objectives of different projects have been realized, and so on.

The discussions then move on to an examination of the present work situation in the court in question; i.e., how many different cases are expected to come to court the following year, how many of them the court will resolve, and the length of proceedings for different kinds of cases. Of course, a prerequisite for such discussions is the production of good statistics on the cases handled by the courts.

Permanent staff numbers and possible additional judges or other staff for a temporary period are decided upon through negotiation. In addition, time targets are set, for example, for civil, criminal, and insolvency cases. Issues and problems associated with developing the activities of the courts are also discussed within the framework of the results discussions. Finally, the appropriation to cover the cost of court operations is agreed upon through negotiation. With this appropriation, the court can buy certain furniture, equipment, pay rent and staff salaries, etc.

A protocol is kept during the negotiation, which includes the results targets and estimated workloads. It is signed by the representative of the ministry of justice and the head judge of the court in question. The negotiation usually takes 2-4 hours.

The transition to management by results system has meant that the court itself must actively monitor its own operations and the progress of cases, and both plan and examine the use of resources more closely than before. As preparation for the results negotiations, the courts should have internal discussions of their workloads and working practices. The system has confronted in particular the judges responsible for court operations with new kinds of challenges. They are expected to have more administrative expertise than before and should participate in the development of their work and their jurisdiction.

Indicators to Assess the Operational Performance of the Courts

The Department of Judicial Administration together with the courts establish indicators to assess the operational performance of the courts. Their performance is assessed by indicators that measure the productivity, economy, and authority of the courts.

1. Productivity of the courts
Productivity means either the number of judicial decisions per judge or the number of judgments made by the court divided by the number of personnel working in that court.

2. Economy or operational efficiency of the courts
This key figure is arrived at by dividing the expended appropriation by the number of judicial decisions the court has made.

3. The effectiveness of the court system
The first two indicators are based primarily on mathematical calculations. Effectiveness as a concept is considerably more difficult to define and quantify. It could mean the qualitative criteria governing the operations of the court. The problem is, however, that it is very difficult to set qualitative criteria for a court in its administration of justice. In Finland, one measure of the effectiveness of the court is the length of court proceedings. From the point of view of due process and citizens` rights, it is of key importance that court cases are settled within a reasonable time frame.

Timeliness of Court Proceedings - Justice Delayed is Justice Denied

Comparatively speaking, Finnish courts function relatively quickly. In courts of the first instance the average handling time for summary procedure cases, most of which were undisputed debt collection cases, was 2 months and for extensive civil cases (involving a full-scale trial with preliminary hearings and the main hearing) 8 months. In criminal cases, the average handling time was about 3 months.

The average handling time for appeals in courts of appeal is about 7 months, but the handling time really depended on whether the case was resolved through a trial procedure or on the basis of minutes. An oral hearing is time-consuming and lengthens handling times. There were also big differences between the courts of appeal.

The handling time for appeals in the Supreme Court is about 4 months for cases in which leave to appeal was not granted and 17 months when it was. One of the duties of the Supreme Court is to guide the decision-making of lower courts by establishing precedents, so the longer handling time was for cases where a totally new evaluation of the substantive evidence was made.

The average handling time in administrative courts in 2010 was under 8 months and 11 months in the Supreme Administrative Court. In the Insurance Court, it was 10 months, in the Labour Court 4,5 months and under 9 months in the Market Court.

In summary, one can state that compared to many European countries Finnish courts are capable of resolving legal issues quite quickly. For this reason, it has been surprising that the ECtHR has rendered a few condemnatory decisions against Finland for excessively long legal proceedings. These cases illustrate rather well that even though average handling times in Finland compare favourably with those of other countries, there are to some degree individual cases being dealt with by the courts, the handling time of which is considerably longer than the statistical average.

The Qualitative Evaluation of Court Work

Different branches of the state administration in Finland have tried to develop different kinds of quality models. The judiciary can not divorce itself from such development work. In 1998 a working group headed by the permanent secretary of the ministry of justice submitted a report entitled: “Quality and Operational Performance in Courts of Law“. The working group proposed that the management by results system should be supplemented and developed by setting qualitative targets for the courts in addition to the quantitative targets outlined earlier.

It has been said that the courts have always tried to do quality work. But what is meant by quality in this context? Of course, the starting point must be the primary function of the courts, which is to render high-quality judgments and decisions. This presupposes that the judgment is legal and given within a reasonable space of time and at a reasonable expense. The operative question is: How does a court achieve high-quality decisions? That question presupposes that judges are highly skilled and know the law. A secondary requirement is that judges manage proceedings and parties effectively in accordance with procedural law.

The Quality Project of the Rovaniemi Court of Appeals

The jurisdiction of the Rovaniemi Court of Appeals consists of 7 district courts and one court of appeal. The quality project was launched in 1999 when quality targets for 2000 with respect

to the administration of justice were set for the courts in this appellate district. The setting of quality targets in this matter was seen as the specific task of the judges and of the courts alone. The Ministry of Justice did not participate in the setting of these targets. Final reports were given in 2008.

The quality targets for the administration of justice were drafted by four working groups which were set up in a conference held in the Court of Appeals of Rovaniemi, with all District Courts in its appellate jurisdiction participating. All judges in this jurisdiction were involved in one or other of these working groups. The working groups produced reports on their assigned fields. The reports were then taken up for discussion in a seminar. The quality targets for the following year were set on the basis of the discussions in the seminar. In general, the quality of the work done in a court can be examined from three perspectives:

1. Quality of court proceedings
What are good court proceedings? What is a good trial? The whole purpose of the exercise from the point of view of the judge or the court is to determine substantive truth. Thus, the proceedings must be in accordance with procedural rules. The judge must get to the bottom of the matter by procedural means and so substantive conduct of proceedings is emphasized. The proceedings may not conflict either with the norms set in the European Convention on Human Rights. The foundations for a good judgment/decision should be laid during the trial.

2. Quality of the judicial decision or judgment
Of course, a high-quality decision must be legal. Because laws and statutes often leave judges with some leeway to interpret the law, decision-making is guided by doctrine on sources of law and case law. Making decisions therefore requires great professional skill on the part of judges. To develop their professional skills judges must be active and undergo continuous training. A high-quality decision must also be underpinned with sound reasoning.

3. Organization and quality of customer service
Compared with the first two quality factors this third factor is more traditional and to a certain extent easier to conceptualize. A modern-day court must be able to provide good customer service. That requires the court staff to be well trained and motivated. The public must be provided with appropriate and courteous guidance and counsel, which means among other things that the special features of providing customer service over the phone through call centers or other comparable means must be taken into account.

A court of law is a working environment or community encompassing different groups of people handling or involved in different kinds of matters. For this reason, it is incumbent upon court staff in leadership positions to actively develop the information services and workflow of the court and to monitor how different work volumes are developing in court units or departments.

New way of systematic management of delay reduction projects in courts – combining external expertise and internal participation

Finish Ministry of Justice implemented a project related to the new way of systematic management of delay reduction projects in courts[45]

[45] Based on “New way of systematic management of delay reduction projects in courts” available at "New way of systematic management of delay reduction ... - Coe rm.coe.int › new-way-of-systematic-management-of-de... (google.com)

The aim of the project was to:

- Analyze the judicial processes and improvement potentials from an operations management perspective
- Create collectively designed tools and procedures to reduce delays, improve process performance and enhance time management in court

Lessons learned from delay reduction projects were:

1. Commitment and willingness to change – current and important issue
    - clear emphasis that delay reduction is important
    - continuous process improvement culture
2. Visible involvement and commitment of top management and wide internal participation
    - affirmative attitude towards changes made, nature of work and suitable working methods
3. External expertise and new improvement methods
4. Easily acceptable and adoptable solutions
    - "simple" planning solutions
5. Enough time to adopt and internalize changes
    - gradual changes and improvement projects
    - systematic improvement efforts

The project successfully improved the process and implemented changes in management and production system and incorporated the improvements into the ICT system as presented in

Figure 9 and Figure 10 below.

Figure 9: Summary of process improvement solutions[46]

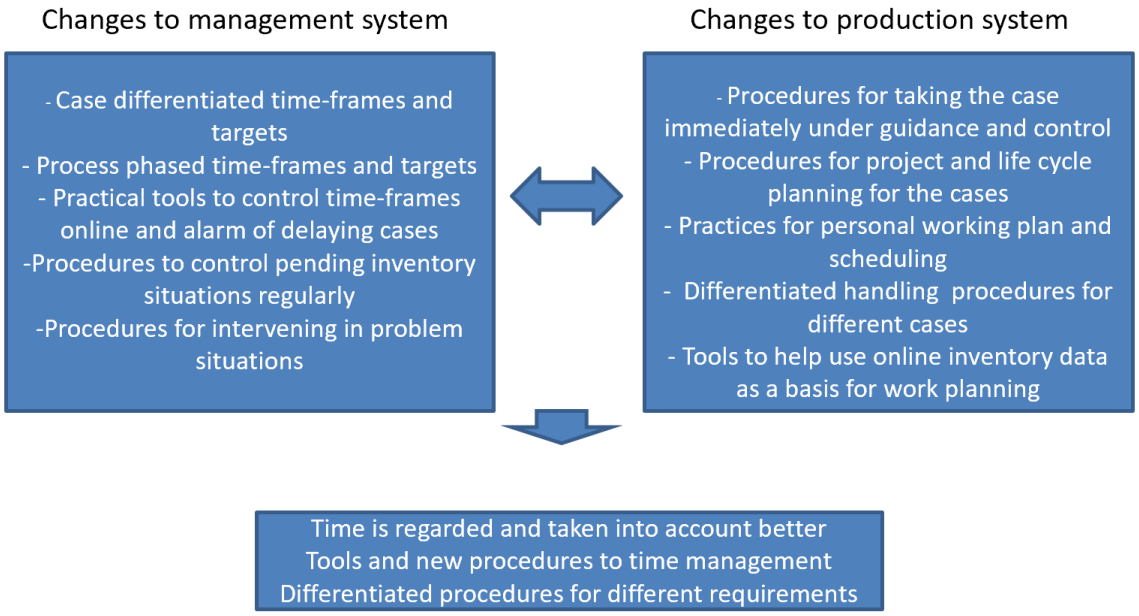
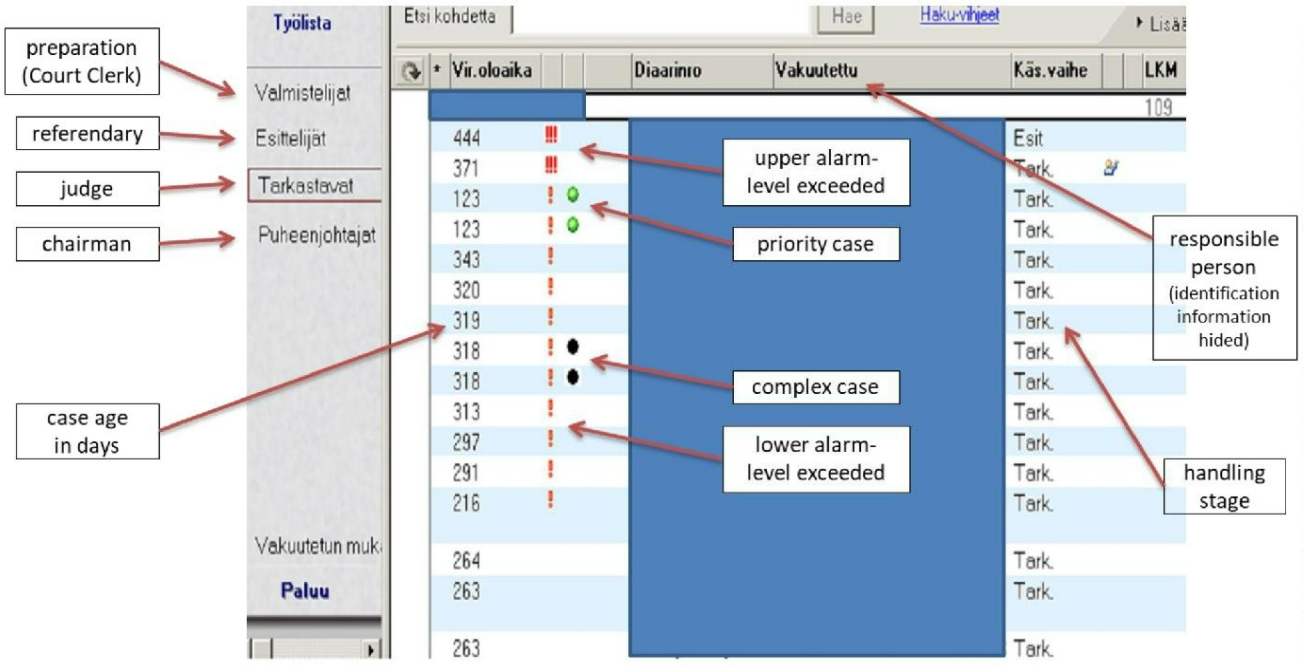


Figure 10: Example of the basic scene in the Insurance Court data system[47]



[46] Ibid.
[47] Ibid.

Main conclusions and recommendations

Ukraine is amongst a very few remaining Council of Europe member states[48] where, despite the European Court of Human Rights identifying an issue with the excessive length of judicial proceedings, no effective measures have been introduced to combat this yet.

The Supreme Court established the Working Group to develop proposals for the amendment of the Ukrainian legislation and the practice of courts in reducing the length of judicial proceedings and establishing effective remedies in this respect for the full execution of the European Court of Human Rights judgments in the Svetlana Naumenko and Merit groups of cases.[49]

At the request of the Working Group, an analysis of official statistical data on the length of judicial proceedings in civil, commercial, and administrative cases was conducted. It shows that the available statistical data on the length of proceedings is grouped by courts of different levels, and therefore do not allow for the monitoring of compliance with reasonable time limits in resolving cases from the first complaint reaching a court to the final judgment of the case. Therefore, these data are not sufficiently informative to enable any conclusions to be drawn about upholding reasonable time limits for judicial proceedings.

As a consequence, the Ukrainian authorities were asked to develop the recommendations based on the CEPEJ tools for the introduction of a comprehensive statistical data collection system on the length of court proceedings in Ukraine.

The CEPEJ encourages the Council of Europe member states to establish effective monitoring systems regarding violations of Article 6 of the ECHR, including violations of time limits for civil and criminal procedures, as well as the non-enforcement of judicial decisions in judicial proceedings.

The CEPEJ also found that increased or reduced court performance depends on a combination of factors, which includes the resources allocated, methods of evaluating court performance, and the use of IT that is seen as a lever for improvement rather than as an end in itself.[50] In this regard, it appears that the common features of advanced judicial administration include:

- the proactive role of the court president with clear managerial responsibility,
- performance-based budgeting with operational targets and objective measures for the courts, and
- a central co-ordinating body in charge of court administration (for example, the Norwegian Court Administration, the Department of Judicial Administration within the Ministry of Justice of Finland, the Federal Ministry of Justice of Austria).

In this regard, Austria has developed an advanced reporting mechanism, which may be an example for Ukraine on how to control backlog within the judicial system and speed up judicial

[48] Together with Azerbaijan, Hungary, Ireland

[49] See for details the Interim Resolution CM/ResDH (2020)208 adopted by the Committee of Ministers on 1 October 2020 at the 1383rd meeting of the Ministers' Deputies of the Council of Europe.

[50] European Judicial Systems. Efficiency and quality of justice. CEPEJ studies N24, available at: https://rm.coe.int/european-judicial-systems-efficiency-and-quality-of-justice-cepej-stud/1680788229

proceedings. Namely, Austria managed to successfully apply all five stages by introducing proactive monitoring and an evaluation function to the court system[51] covering:

1. Bureaucratic data collection
2. Normative frameworks
3. Institutional capacity
4. Performing monitoring and evaluation functions
5. Accountability and action

While other judicial administrations (namely the Nordic countries and Germany)[52] also have standardised court performance frameworks and governance practices, Austria demonstrated an innovative, resilient, comprehensive, and effective approach in implementing a monitoring and evaluation function for the court system, based on the 1994 decree of the Austrian Ministry of Justice stressing the importance of court presidents performing their responsibilities as supervisors.

In this regard, it is recommended that Ukraine's judiciary follows the example of Austria by applying a holistic approach covering these five stages in introducing decentralized monitoring and an evaluation function in every Ukrainian court:

1) Bureaucratic data collection (assessing and utilizing existing sources of data)

For the purpose of developing and implementing system to monitor cases related to Article 6 of the ECHR, the minimum requirements are the following:

- Register of individual open cases older than some time limit defined (i.e. three years)
- Unique case identification number (ID) at first instance
- Initial (original) filing date at the first instance,
- Unique case identification number (ID) at current court
- Case registration date at current court
- Case type
- Status of a case
- Reporting date

2) Normative framework (assessing existing definitions of success and formulating key performance indicators (KPIs)

Advanced judicial administrations have clearly defined success criteria related to time management, cost efficiency/productivity, and quality. To develop and implement a system to monitor cases related to Article 6 of the ECHR, it is necessary to clearly define and establish timeframes established for major case types and monitor their implementation. In this regard, key performance indicators (KPIs) should be clearly defined, with targets set and communicated to all court presidents. Table 3: The criteria for a spotlighted *department* can serve as an example of criteria for establishing key performance indicators.

[51] Based on "Monitoring and Evaluation of Court System: A Comparative Study", CEPEJ available at https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-monitoring-and/16807882ba

[52] Assessment based on two CEPEJ publications ("Time management of justice systems: a Northern Europe study" available at https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-time-managemen/16807882bb and "Case weighting in judicial systems, CEPEJ studies No. 28", available at 16809ede97 (coe.int)) and professional experience of the expert.

However, measuring the time and duration of judicial proceedings will only detect "symptoms" related to court-case processing delays. Besides the aspect of time, countries with advanced judicial administrations (Austria, Germany, the Netherlands, Norway, etc.)[53] have scientifically developed and standardised court performance frameworks and governance practices also covering the dimensions of cost efficiency and quality. Such standardised court performance frameworks and governance practices are used not only to describe symptoms (such as court-case processing delays) but also to perform diagnostics allowing for the critical assessment of court performance, making the switch from experience-based management or "gut feeling" (sometimes concealing political favouritism or even corruption) to a transparent "scientific evidence" approach in managing court operations, eliminating unjustified excuses for additional resources to deliver a court service to citizens, while identifying courts that really need help to handle their workload.

3) Institutional capacity (assessing existing institutional capacity and mapping key processes)

This stage should address building strategic and operational processes related to performance management. like introducing standardised (short) monthly/quarterly management meetings where KPIs should be discussed at court (operational) and at a centralised strategic level (namely the Supreme Court). To this end, clear responsibilities should be assigned to court presidents at operational as well as at the strategic centralised level (the Supreme Court).

In order to support the described key court performance management processes at operational and strategic levels, implementing at least the basic elements of Public Internal Financial Control (PIFC) promoted by the European Union and required by Chapter 32: Financial control[54] of the *acquis* should be considered. PIFC requires mapping of institutional structures, key processes in the state institutions, and accompanying risks that could affect the declared goals and objectives of the state institutions.

The *acquis* under *Chapter 32* relates to the adoption of internationally recognised frameworks and standards, as well as the good practice of the European Union, on public internal financial control, based upon the principle of decentralised managerial accountability.[55] PIFC should apply across the entire public sector and include the internal control of the financial management of both national and European Union funds. In particular, the *acquis* requires the existence of effective and transparent management systems, including accountability arrangements for the achievement of objectives; a functionally independent internal audit; and relevant organisational structures, including central co-ordination of PIFC development across the public sector. The chapter also requires an institutionally, operationally, and financially independent external audit institution that implements its audit mandate in line with the standards of the International Organization of Supreme Audit Institutions (INTOSAI) and reports to the parliament on the use of public sector resources.

In essence, PIFC consists of "… effective and transparent management systems, including accountability arrangements for the achievement of objectives; a functionally independent internal audit; and relevant organizational structures".[56] In this regard, Chapter 32 and PIFC are

[53] Assessment based on two CEPEJ publications ("Time management of justice systems: a Northern Europe study" available at https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-time-managemen/16807882bb and "Case weighting in judicial systems, CEPEJ studies No. 28", available at 16809ede97 (coe.int)) and professional experience of the expert.
[54] Chapters of the acquis | European Neighborhood Policy And Enlargement Negotiations (europa.eu)
[55] Ibid.
[56] Ibid.

of great importance for both Ukraine's administration and citizens, as many policies and procedures delve into the very essence of how an administration operates, spends taxpayers' money, and whether there are results for the money spent.

Finally, to ensure the integrity of data and performance measurement, reporting procedures should be standardised (and eventually automated).

4) Performing monitoring and evaluation function (assessing existing monitoring and evaluation, as well as policy-making functions)

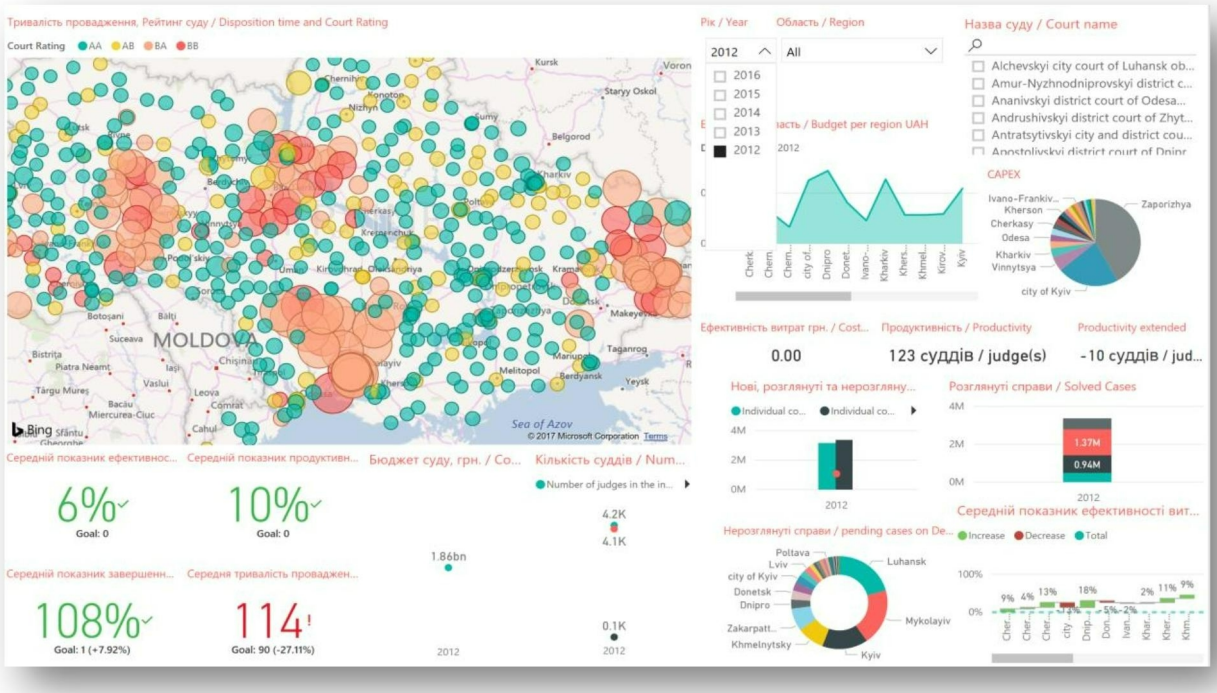
Business Intelligence dashboards should be used to transparently share and visualize the performance of individual courts among the court presidents establishing a "common truth" foundation in the judiciary. Unit related to court performance management could be formed at the strategic level (i.e. in the Supreme court) to monitor, evaluate, formulate, and recommend policies related to court performance management.

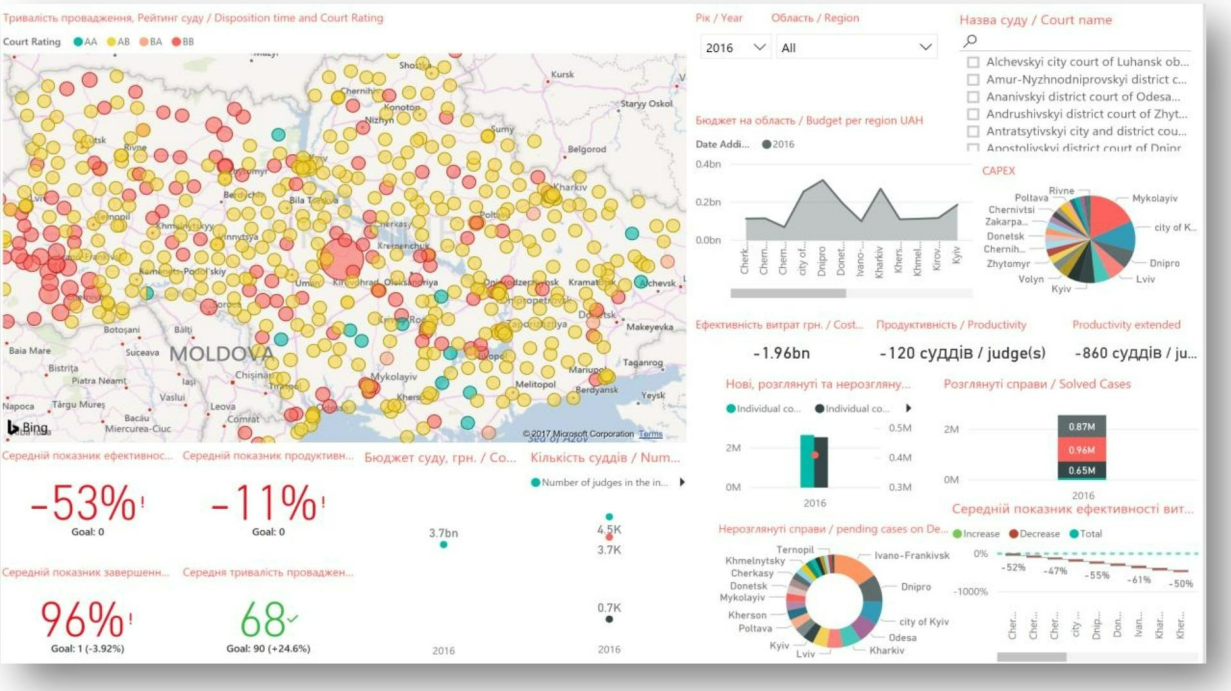
Such a unit is usually also responsible for strategic planning at the national level. Obligatory training in evaluation, monitoring, and performance management should be provided to key policymakers, court presidents, and members of the Unit for monitoring and evaluation.

An example of business intelligence dashboards developed under the project of the European Union is presented in

Figure 11: Business Intelligence Dashboards in courts in Ukraine, attesting good performance in 2012 (with few "fire spots") …. and deterioration in performance in 2016 below:

Figure 11: Business Intelligence Dashboards in courts in Ukraine, attesting good performance in 2012 (with few "fire spots") …. and deterioration in performance in 2016





5) Accountability and action (assessing capacity to make decisions based on evidence produced)

In regards to accountability and action, it is necessary to develop an early warning system with a precisely defined information workflow directed at a central coordination body (i.e. unit in the Supreme court). This could be achieved by setting up a reporting mechanism that activates supervisors to work on solution strategies once a problem is detected.

Therefore, it is a step in the right direction that presidents/chief judges are discussing the reports generated from the statistical system with the competent presidents of the courts/departments and intend to make this a periodic routine, maybe even publish abridged versions of these reports on the justice intranet website to encourage healthy competition and initiate a process of benchmarking among the courts.

At the strategic level, the Supreme Court should react and make decisions based on policy recommendations and inputs provided by the monitoring and evaluation unit.

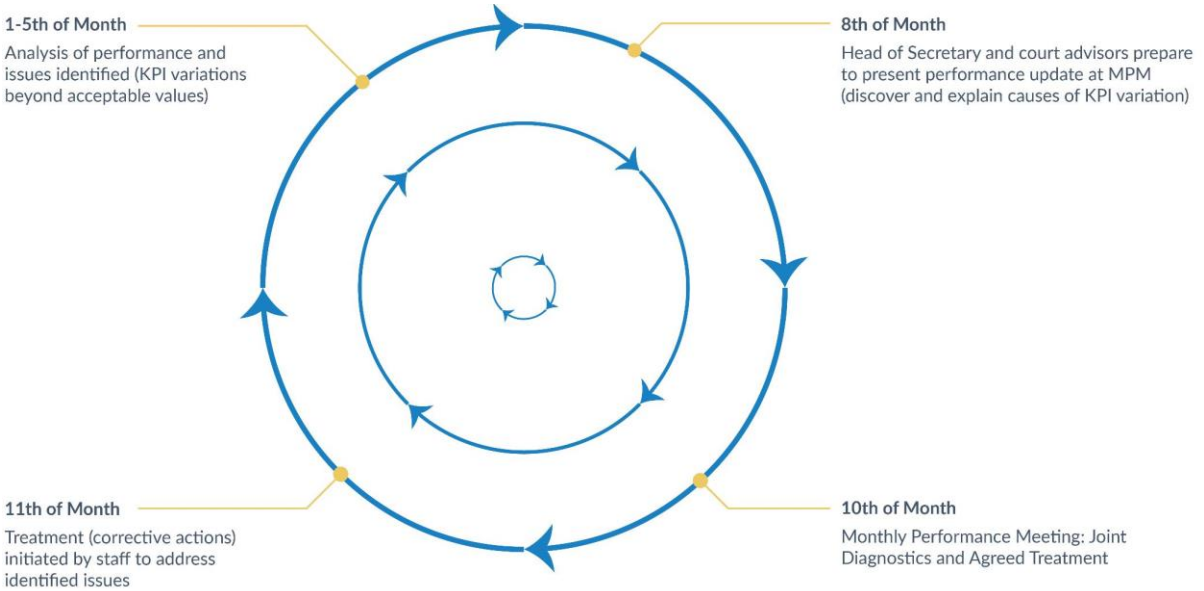
> At the operational (or tactical) level, court presidents should manage the court using business intelligence dashboards taking into account KPI trends and monthly/quarterly performance management meetings at the court level, as presented in

Figure 12: Monthly reporting and decision-making *cycle*.

Monthly, quarterly and annual assessments should be standardized at the level of individual court and the judicial council in the form of performance management meeting consisting of fixed agenda, diagnostics / corrective actions and meeting minutes,

Finally, periodic review or audit of data and collections processes by an independent party should be ensured.

Figure 12: Monthly reporting and decision-making cycle



Appendices

I. CEPEJ Evaluation scheme, question 86

86. Is there in your country a monitoring system for the violations related to Article 6 of the European Convention on Human Rights?[57]

For civil procedures (non-enforcement): ☐ Yes ☐ No ☐NAP
For civil procedures (timeframe): ☐ Yes ☐ No ☐NAP
For criminal procedures (timeframe): ☐ Yes ☐ No ☐NAP

Please, specify what are the terms and conditions of this monitoring system (information related to acknowledged violations by ECHR at the State/courts level; implementation of internal systems to prevent other violations (that are similar) and if possible to measure the evolution of the established violations).

II. CEPEJ Explanatory note, question 86

Questions 86 and 86-1[58]

This question 86 concerns the monitoring system implemented in a state after the ECtHR has recognised a violation by the State related to Article 6 of the ECHR, specifying civil (including commercial and administrative law cases) and criminal cases.

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice".[59]

This monitoring system can consist of actions such as: recognising violations at state and/or court levels (for example the implementation of a condemnations dashboard), actively informing on violations on national or court level, implementation of an internal system to remedy the established violation (for example the setting up of a review procedure – Q 86-1-), the implementation of internal systems to prevent other violations that are similar (for example the establishment of an effective remedy), measuring the evolution of the established violations etc. For observer countries, the answer is NAP.

[57] CEPEJ Evaluation scheme, question 86, for more details see: https://rm.coe.int/cepej-grille-en-rev7/native/168093addf
[58] CEPEJ Explanatory note, question 86, for more details see: https://rm.coe.int/cepej-explanatory-note-25-mars/168093ad3e
[59] Art. 6 of the ECHR: https://www.echr.coe.int/documents/convention_eng.pdf

III. List of figures

IV. List of tables