



REPORT
EVALUATION OF THE LATVIAN JUDICIAL SYSTEM
on the basis of the methodology and tools developed by the CEPEJ

March 2018
CEPEJ-COOP(2018)1



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INTRODUCTION

The present report was drawn up between July 2017 and January 2018, as part of the project “*Evaluation of the Latvian judicial system*”¹ (hereinafter referred to as “*the project*”) targeting to improve the overall performance of the Latvian judicial system, in particular as regards its independence, efficiency and quality, through the application of the tools and methodology developed by the European Commission for the Efficiency of Justice (CEPEJ).

The project is contemporary to active policy reforms to improve the organisation and functioning of the national court system. In this context, the CEPEJ was invited by the Court Administration of Latvia to support its on-going efforts. As part of the Project, a team of CEPEJ experts was called to evaluate the organisation and functioning of the Latvian judiciary and to develop recommendations on the way to further improve the independence of the judiciary, efficiency of national courts and the quality of their services. In doing so, the CEPEJ expert team relies on the tools and methodology which are the result of the intergovernmental work based on inputs from the 47 member states of the Council of Europe (CoE).

In April 2017 the CEPEJ set up the team composed of the following experts:

- Mr Marko Aavik, Deputy Secretary General of the Judicial Administration Policy Department of the Ministry of Justice, CEPEJ member (Estonia);
- Mr Pierre Cornu, Judge, Court of Appeals of Neuchâtel, CoE/CEPEJ expert (Switzerland);
- Mr Harold Epineuse, Special Advisor to the Director of Court Services Department of the Ministry of Justice, author of the CEPEJ Guidelines on how to drive change towards Cyberjustice (France);
- Mr Marco Fabri, Director of the Research Institute on Judicial Systems of the National Research Council of Italy (IRSIG-CNR), Scientific expert of CEPEJ/SATURN (Italy);
- Mr Otto Nijhuis, Judge, representative of the District Court of Gelderland in the Network of the CEPEJ pilot courts (The Netherlands);
- Mr Francesco De Santis, Lawyer, researcher in civil procedure and judicial systems, expert of the CEPEJ Working Group on Quality of Justice (Italy).

Ms Federica Viapiana, of the Research Institute on Judicial Systems of Italy, assisted in processing the statistical data submitted by the Court Administration in view of its analysis. The expert team was supported by Mr Leonid Antohi, project coordinator in the Cooperation Unit of the CEPEJ Secretariat.

In July 2017 the CEPEJ team conducted a fact-finding visit to Latvia². As part of the mission, the CEPEJ experts had enriching exchanges with representatives of the Ministry of Justice, Court Administration, Judicial Council, Judicial Disciplinary, Qualification and Ethics Committees, Board of Sworn Attorneys, judges’ associations (the Latvian Association of Judges and the Latvian Association of Administrative Judges), Judicial Training Centre and with judges of different courts. The delegation visited the Supreme Court and the Regional Court of Riga. A large amount of varied information has been gathered, while the discussions with national

¹ Part of the project “*Justice for Growth*” financed by the European Social Fund.

² The visit was reflected on the [CEPEJ webpage](#), as well as by the national partners, such as the [Supreme Court of Latvia](#).

stakeholders and the visits to the courts allowed an insight into the organisation and functioning of Latvian courts.

One of the sources of information for the expert team constituted the data gathered by the CEPEJ Secretariat in the framework of its exercise to evaluate the European judicial systems. Most of this information is available on the CEPEJ-STAT dynamic database which contains various data on judicial systems of Council of Europe member states³. Factual data and analytical reports published by respected European institutions (e.g. the European Union (EU) and the European Network of Councils for the Judiciary (ENCJ)) were analysed and are referred to by the expert team.

Another major source of information for the assessment was the results of three “surveys” among judges, court managers, and senior court staff. To this end three questionnaires were designed by the CEPEJ expert team. The first was based on the Council of Europe [Recommendation CM/Rec\(2010\)12 of the Committee of Ministers to member states on “judges: independence, efficiency and responsibilities”](#). The second was built upon the [Revised SATURN “Guidelines for judicial time management” \(CEPEJ\(2014\)16\)](#), and the third was mainly inspired from the [“Checklist for promoting the quality of justice and courts” \(CEPEJ\(2008\)2\)](#). The questions were adapted to Latvian legal and institutional frameworks and coordinated with the Court Administration, which actively supported this exercise.

Unfortunately the response rates to the questionnaires were under the CEPEJ team’s expectations. Thus, between mid-August and mid-October 2017, 21 respondents answered the questionnaire about ensuring the independence of the judiciary and impartiality of judges, 24 persons filled in the questionnaire on time management and 60 persons replied to the questionnaire on quality issues. The Court Administration examined the large number of comments made by the respondents, selected and systematised the most important of them, and kindly ensured their translation into English.

Finally, the CEPEJ team received a vast amount of information in the form of translated legal provisions and strategic documents, explanatory and analytical notes, presentations and statistical data etc. from the Latvian Court Administration, Ministry of Justice, Supreme Court, Judicial Council and several other stakeholders. It is worth mentioning the wealth of information, including one available in English language, published on the websites of the main actors for the justice system, particularly those of the Supreme Court/Judicial Council and Court Administration. This availability of information, along with its high quality, certainly helped the expert team in assessing the current state of play in the organisation and functioning of the Latvian judicial system and understanding the direction envisaged for future developments.

As a result of the above activities and the acquired information, the CEPEJ team developed the present report containing an assessment of the current situation, recent achievements and actual challenges with which the judiciary and courts of Latvia seem to be confronted, as well as recommendations for the planned or new steps in pursuing related reforms.

³ Please visit the webpage: <https://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/STAT//>

A draft of the present report was reviewed by the main national partners and discussed during a mission of the CEPEJ team to Riga in February 2018. In addition, an important set of amendments to the Law on the Judicial Power – the main piece of Latvian legislation cited in the present report – was adopted by the Parliament of Latvia (*Saeima*) on 18 January 2018. Subsequently, the report was updated and complemented with some further information and comments, but it cannot be assumed that the newly adopted amendments or their potential effects are fully acknowledged and reflected in this report.

This report should support the Court Administration and other stakeholders of the justice system in their policy and decision-making processes in view of further reforms in the justice system.

It is obvious that the present report, being drawn up in a complex and quickly evolving context, cannot cover exhaustively the entire array of issues and focuses on aspects viewed by its authors as being of priority. At the same time, the CEPEJ team acknowledges the advanced stage of reforms promoted in the justice sector of Latvia and the clear evidence of high-level national expertise, based on the good knowledge of European standards and best practices in administration of justice.

A. Judicial system and court organisation

a. *Judicial independence and self-governing*

Introduction

Judicial independence is a requirement stemming from the citizens' right to an effective remedy before a tribunal. It guarantees the fairness, predictability and certainty of the legal system. Two aspects of judicial independence complement each other. External independence shields the judge from influence by other state powers and is an essential element of the rule of law. Internal independence ensures that a judge takes decisions only on the basis of the Constitution and laws and not on the basis of instructions given by higher ranking judges.⁴

The problem of establishing a comprehensive set of standards of judicial independence has been addressed in a considerable number of documents of differing detail, aimed at establishing reference points. These documents whether or not issued by international organisations, official bodies or independent groups, offer a comprehensive view of what the elements of judicial independence should be, the role and significance of judicial independence in ensuring the rule of law and the kind of challenges it may meet from the executive, the legislature, or others.

As experience shows in many countries, however, the best institutional rules cannot work without the good will of those responsible for their application and implementation.⁵ It is, therefore, important to ensure a consistent and consequent implementation of the existing standards in the legal and institutional frameworks, in the practical arrangements and through appropriate formal safeguards (such as effective judicial self-governing, an appropriate financing system, etc.), as well as through a "*change in the mindsets*", especially in societies where the judicial independence is not sustained through legal culture and traditions established over a long time.

At European level, the right to an independent and impartial tribunal is first of all guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR): "*1. 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...*". The case-law of the European Court of Human Rights (ECtHR, or the Court) sheds light on a number of important aspects of judicial independence but, by its very nature, does not approach the issue in a systematic way.⁶ The Court highlights four elements of judicial independence: manner of appointment of the judges, term of office, the existence of guarantees against outside pressure - including in budgetary matters - and whether the judiciary appears as independent and impartial.⁷

⁴ See the "[Report on the independence of the judicial system. Part I: The independence of judges](#)", adopted by the Venice Commission on 16 March 2010, p. 56.

⁵ *Idem*, pp. 9-10.

⁶ *Idem*, p. 13

⁷ See the "[Rule of Law checklist](#)", adopted by the Venice Commission on 18 March 2016, p. 75.

Apart the ECHR, as one of the most authoritative texts on the independence of the judiciary at the European level may be recognised the Council of Europe [Recommendation CM/Rec\(2010\)12 of the Committee of Ministers to member states on “judges: independence, efficiency and responsibilities”](#), adopted by the Committee of Ministers on 17 November 2010 (hereafter: Recommendation on Judges). It underlines, in its preamble, that the independence of judges *“is an inherent element of the rule of law, and indispensable to judges’ impartiality and to the functioning of the judicial system”*. Specific provisions mention that *“the purpose of independence, as laid down in Article 6 of the [ECHR], is to guarantee every person the fundamental right to have their case decided in a fair trial, on legal grounds only and without any improper influence”* (§ 3), and that the *“independence of judges is not a prerogative or privilege granted in judges’ own interest but in the interest of the rule of law and of persons seeking and expecting impartial justice. The independence of judges should be regarded as a guarantee of freedom, respect for human rights and impartial application of the law. Judges’ impartiality and independence are essential to guarantee the equality of parties before the courts”* (§ 11).

Constitution of the Republic of Latvia

The judiciary in Latvia is constitutionally independent from the executive and legislative branches, according to Article 83 of the Constitution of the Republic of Latvia, which states that *“Judges shall be independent and subject only to the law”*. This is in line with § 7 of the Recommendation on Judges, which provides that the *“independence of the judge and of the judiciary should be enshrined in the constitution or at the highest possible legal level in member states, with more specific rules provided at the legislative level”*.

General issues about judicial independence

During the meetings the CEPEJ expert team participated in July 2017, in Riga, a few issues related to a possible lack of judicial independence were raised.

The representatives of the judges’ associations didn’t mention major problems regarding independence, even if they see *“room for improvement”*. They mentioned, for example, that a matter frequently discussed within their associations is the fact that judicial resources are administered by the Court Administration (see the section about the Court Administration). They also referred to judges’ salaries, which are generally not considered as attractive in comparison with the salaries of certain categories of civil servants (see the chapter about budget, being kept in mind that according to § 54 of the Recommendation on Judges, *“judges’ remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions”*).

The Ministry of Justice envisages an overhauling of the salary model for judges, with a view to provide for a more effective remuneration system, ensuring the independence of judges, their financial safety and an adequate quality of life. According to an information provided by the Ministry of Justice, in 2018 the salary of judges was increased by 19,3%. Allegedly, under the updated system the salary of a judge would be *“independent from and not impacted by the*

work results/performance of a judge, or other conditions".⁸ In this context shall be mentioned the judgement of the Constitutional Court of Latvia, of 26 October 2017 (in the case No. 2016-31-01) which is centred on judges' remuneration system and reflects in detail the complexity of the problem. The Constitutional Court decided that the regulation of the remuneration system of judges is not compatible with the Constitution of the Republic of Latvia. Respectively, the *Saeima* must change during 2018 this regulation and find a solution for the remuneration of judges which would ensure the maintenance of the actual value of the judge's salary and the financial security in accordance with the principle of independence of judges.⁹

The representatives of the judges' associations are also concerned with the crucial role played in the process of selection of new judges by the Commissions for the Selection of Candidates to the Office of a Judge¹⁰, which are established by the Director of the Court Administration, even if different bodies are involved in the process (for more details see the section about the selection of judges and refer to § 46 of the Recommendation on Judges).

In the context of the appointment of judges, which is a sensitive issue and obviously influences both the internal and external perception of judicial independence, a case has been reported when, in January 2013, the *Saeima* refused to re-appoint a judge of a higher instance, as proposed by the Judicial Qualification Committee and the Minister of Justice¹¹. This refusal appears to be in conflict with §§ 46 and 47 of the Recommendation on Judges¹².

At the Regional Court of Riga, the issues regarding independence which were raised included "*some sort of control*" by the Ministry of Justice over judges (in particular the Minister of Justice's right to initiate disciplinary proceedings against them), the fact that the judges' opinions have apparently not been sufficiently taken into consideration when judicial reforms were planned (e.g.: reform of the number of courts) and the participation of the executive power in the selection of new judges, which is considered to be too extensive.

The representatives of the Board of Sworn Attorneys mentioned no structural problem with the independence of the judiciary in Latvia. The only issue that was raised by the lawyers' representatives, and which could somehow be linked with the independence of judges, was the

⁸ This information was provided by representatives of the Ministry of Justice in January 2018 comments to a draft of the present report.

⁹ See details on the case and the decision in the English language [press-release published by the Constitutional Court](#):

¹⁰ See the Cabinet of Ministers' Regulation No. 204 of 3 March 2009 "*Procedures for the Selection, Apprenticeship and Taking of Qualification Examination of a Candidate to the Office of a Judge*", in particular pp. 10-13.

¹¹ See the report "[Challenges for judicial independence and impartiality in the member states of the Council of Europe](#)" (SG/Inf(2016)3rev), prepared jointly by the Bureau of the CCJE and the Bureau of the CCPE for the attention of the Secretary General of the Council of Europe, p. 56

¹² "46. *The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers.*"

47. *However, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary (without prejudice to the rules applicable to councils for the judiciary contained in Chapter IV) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice.*"

low number of cases where judges don't approve investigative measures requested by prosecutors. The experts believe that this kind of remark could probably be heard in many – if not all – countries and that the perception attorneys may have on that subject must not be considered as evidence of more or less systematic collusion between judges and prosecutors.

Remarks

Judges should behave, handle and decide cases in an independent manner. Their decisions and other behaviour show whether judges are independent in practice. These actions are observed – directly or indirectly, through the media – by groups in the society, such as citizens, court users and judges themselves, who all arrive to an assessment of the level of judicial independence. The ENCJ has defined the formal requirements or safeguards which it terms as *“objective independence”*, and made these measurable. The ENCJ has also defined the so-called *“perceived independence”*, to which it refers as *“subjective independence”*, using existing data sources about the perceptions in the society. In addition, it has conducted a survey among European judges about their perceptions of their own – and their colleagues' – independence, to fill in an important knowledge gap. This is the first time European judges have been asked about their perception of their independence.¹³

The survey conducted by the ENCJ among judges of 26 European countries¹⁴ showed that Latvia is among 5 countries in which judges rate their independence the lowest (between 6.5 and 7 on a 10-point scale). 11 % of Latvian judges responding to the survey reported being subjected to inappropriate pressure (first of all by *“Media”*, secondly – by *“Parties and their lawyers”* and thirdly – by *“Court Management (including a Court President), Government”*). The three most frequently given answers to the point *“I believe the following changes which occurred in my working conditions directly affected my independence”* are: pay, caseload, and court resources.

It also results from a comparative overview based on the *“2017 EU Justice Scoreboard”*¹⁵ (figure 51) that in Latvia the perceived independence of courts and judges among the general public is rated at least as *“fairly good”* by slightly under 50 % of the population (with a small improvement in this perception between 2016 and 2017). More than 40 % of the population perceive the independence of courts and judges as *“fairly bad”* and *“bad”*, while some 8 % didn't know what to reply to the respective questions.

Asked about the main reasons for the perceived lack of independence, 28 % of the respondents chose the answer *“status and position of judges do not sufficiently guarantee their independence”*, 35 % picked *“interference or pressure from economic or other specific interests”* and 34 % *“interference or pressure from government and politicians”*.

These results are not so encouraging, as they place Latvia in the third tier of EU member states, judging by the perceived independence of courts and judges among the general public. Whether

¹³ See *“Independence of judges: judicial perceptions and formal safeguards”*, Frans van Dijke, Frank van Tulder and Ymkje Lugten, Netherlands Council for the judiciary, January 2016, p.2

¹⁴ See the Report *“Data ENCJ Survey on the Independence of Judges. 2016-2017”*. Reportedly, 224 Latvian judges (75 % women and 25 % men) participated in the survey, or about 45 % of the total number of judges.

¹⁵ See the EU Justice Scoreboard 2017 translated in languages of the EU member states under the link: http://Europa.eu/rapid/press-release_IP-17-890_en.htm

this is the result of underlying challenges to judicial independence or of high expectations by the Latvian society towards its judiciary, the situation should be carefully analysed and addressed by legislative, organisational and other possible measures.

It has been mentioned that judicial independence is addressed in some sessions at the Latvian Judicial Training Centre, but that independence is no single topic discussed in specific sessions. From what the persons in charge of the Centre told the experts, judges are not particularly interested in discussing this subject and probably wouldn't register for sessions with this single topic on the agenda. Maybe this position could be reconsidered. In particular, the curricula of the Judicial Training Centre may include a training/seminar on the Council of Europe "standards" of judicial independence and impartiality.

From the information the CEPEJ expert team could gather and analyse for the purpose of this report, it may be concluded that the justice system in Latvia is basically independent and that the persons involved in this system believe it is. As in every country, there is some "room for improvement", as the representatives of judges' associations put it. Indeed, where the legal framework seems to be balanced, it is its steady implementation, along with a conscious respect by all actors for both the general principles and the detailed guarantees of judicial independence, which will allow an improvement in the perception about independence of courts and judges among the stakeholders and the general public.

INSTITUTIONAL AND ORGANISATIONAL FRAMEWORK

As § 4 of the Recommendation on Judges states, "*the independence of individual judges is safeguarded by the independence of the judiciary as a whole. As such, it is a fundamental aspect of the rule of law*". From this perspective, the institutional and organisational frameworks are of utmost importance. In this section, the role of the different authorities and bodies involved in the functioning of the justice system in Latvia will be examined. Having in mind the strong link between institutional independence of the judiciary and the individual independence of judges, this part of the report shall be read in conjunction with Chapter B. *Judges and judicial staff*.

Ministry of Justice

The Ministry of Justice is considered to be the leading state administrative institution in the sector of justice (legal policy and court administration), except for the Supreme Court. As such, it "*performs organisational management of district (city) courts, regional courts and land registry offices*"¹⁶.

According to a presentation made to the experts by representatives of the Ministry of Justice, this Ministry shall:

- a) develop state policies in the field of the court system (elaborate normative acts, action plans, etc.);

¹⁶ Documents provided by the national partners: "*Brief overview: Latvian court system and revision of judicial map*", pages 1 and 2

- b) issue internal regulations regarding organisational management issues of district courts, regional courts and land registry offices;
- c) perform organisational management of the district courts, regional courts and land registry offices;
- d) perform inspections and audits in district courts, regional courts and land registry offices;
- e) require explanations from judges and initiate disciplinary matters against judges;
- f) appoint presidents of district and regional courts, for 5 years, after coordination with the Judicial Council;
- g) supervise the fulfilment of the duties of presidents of district and regional courts and land registry offices, and their deputies, as well as heads of courthouses.

As was further explained to the CEPEJ experts by representatives of the Ministry of Justice, the Ministry, in order to strengthen the independence of the judiciary and reduce the influence of the executive and legislative powers on the career of judges, has developed amendments to assign – entirely or partially – the following competence to the Judicial Council:

- a) appointment of the presidents of district and regional courts;
- b) transfer of a judge to a vacant position in a higher or lower court;
- c) approval of the judicial training for judges and court staff;
- d) determination of the procedure of selection, internship and further examination of candidate judges.

The respective amendments were adopted by the *Saeima* on 18 January 2018 (in force as of 12 February 2018). The CEPEJ expert team believes that the implementation of these amendments should improve the situation regarding the independence of judges.

Court Administration

The *“Court Administration is an administrative institution subordinated to the Minister of Justice, which shall organise and ensure the administrative work of district (city) courts, regional courts and land registry offices”*.¹⁷ At the time of the present evaluation, the functioning of the Court Administration is secured by 93 employees. The court system (including land registries) is providing employment for 527 judges and 1,636 court employees. There are 11 members of the Court Administration, who are admitted to positions as judicial staff and are counted within the number of court staff.¹⁸ The Supreme Court has its own secretariat and the Court Administration isn’t involved in it.

The Court Administration was created in 2004 in view of centralising the administrative support to courts. Before 2004 the respective functions were carried out by a structural unit of the Ministry of Justice. As from the moment of its creation, the Court Administration is said to be an *“independent”* institution. But, it is still directly subordinated to the Minister of Justice and the extent of its independence is difficult to grasp. According to its representatives, the aim of this change enacted in 2004 was to make the administration of the courts more independent from

¹⁷ *Ibidem*.

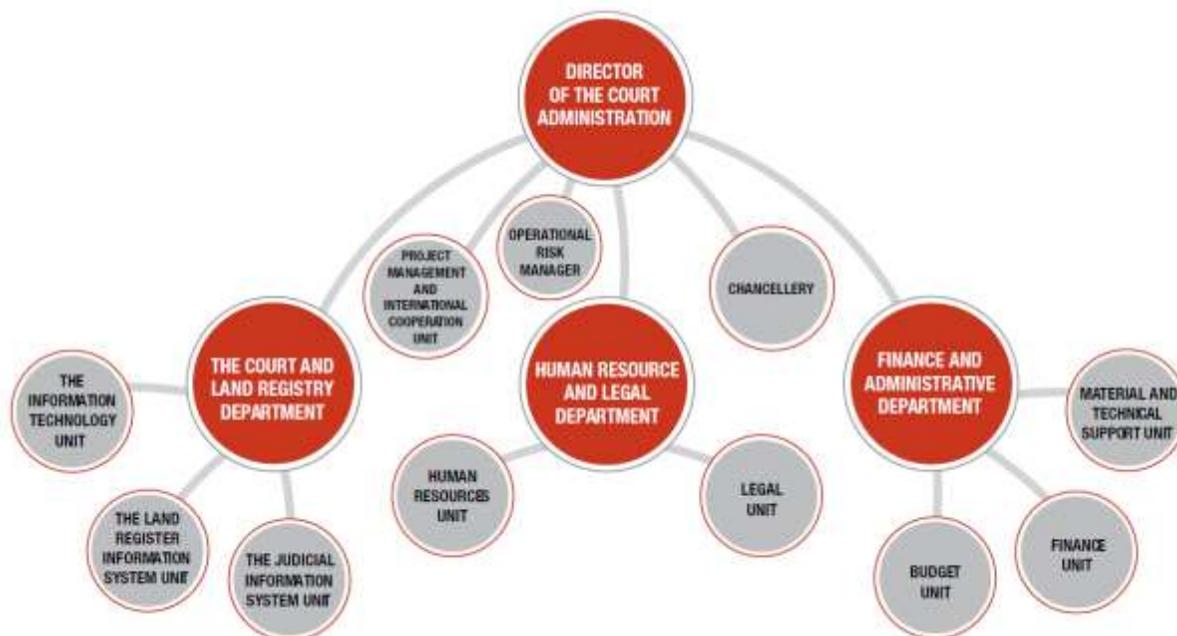
¹⁸ According to the information provided by the Court Administration in January 2018.

the Ministry of Justice, to answer a corresponding request by the judiciary. The representatives of the judges' associations however mentioned that, initially, the idea was to set the Court Administration under the authority of the Judicial Council, but that was not accepted by the policy maker.

Organisation

The Court Administration is organised by functions/tasks, not by courts. It is headed by a Director, who is appointed by the Minister of Justice for a term of 5 years. He¹⁹ can be re-appointed, with no limitation of the number of re-appointments. This arrangement has the potential of creating a high level of dependency of the Director of Court Administration, who should be a technocrat with the main objective to support and facilitate the functioning of courts and judges, paying utmost respect to their independence.

Figure 1: Structure of the Court Administration²⁰



Role in the management of the justice system

The Operational Strategy of the Court Administration for 2017-2019²¹, a medium-term development planning document, determines its activities and the basic directions of the institutional development of the Court Administration itself, but also the strategic objectives envisaged for the court system.

¹⁹ In the present report references to one gender imports all other genders, unless the context requires otherwise. The authors predominantly used “he”, “him” and “his” for the sake of simplicity.

²⁰ See the Brochure “[The Court Administration. Judicial system in Latvia](#)”, p. 7

²¹ See the Operational Strategy of the Court Administration under the link: https://www.ta.gov.lv/EN/court_administration/strategy_of_the_court_administration_1554

The Court Administration's main task consists in providing the district courts, regional courts and land registry offices with all the administrative support they need. That includes in particular procurement (e.g. IT), managing (incl. the budget and human resources) and accounting, which all are centralised. It also secures the maintenance and development of courts' information and communication systems (such as the State Unified Computerised Land Register, the Court Information System and the Register of Enforcement Cases). It is unclear whether there is any overlapping between the functions of the Court Administration and those of the Courthouse agency (TNA), a commercial company 100 % capital shares of which are held by the Ministry of Justice, and one of the declared functions of which is *"ensuring the operation of the IT infrastructure of Republic of Latvia courts, Ministry of Justice, its subordinate institutions and other clients, maintenance and administration of workstations, servers, and computer networks"*²².

There are no court managers in each court and all the administration, except for secretarial work at the courts, is performed by the Court Administration, which also has the power to decide on matters related to the administration of the courts mentioned above, e.g. if new computers are to be purchased and installed in the courts or not.

The Court Administration prepares the budget for the district courts, regional courts and land registry offices, the draft then being sent to the Minister of Justice, who presents it to the Judicial Council for an opinion, before it goes to the Ministry of Finance and is finally submitted to the *Saeima* for adoption. A differing opinion of the Judicial Council regarding the draft budget does not prevent the submission thereof to the Ministry of Finance.²³

It also collects and publishes on its public website statistical data about the judicial system (number of cases, workload of courts, etc.) and interacts with the Minister of Justice on the on-going judicial reforms.

The Director of the Court Administration appoints a part of the members of the Commissions for the Selection of Candidates to the Office of a Judge, which are in charge of the preliminary examination of candidates to judges' positions.

In addition, the Court Administration is the secretariat of the Judicial Ethics Committee, the Judicial Qualification Committee, the Judicial Disciplinary Committee, and in the procedures for appointing judges (including tasks performed by the Commissions for the Selection of Candidates to the Office of a Judge).

The Recommendation on Judges provides that *"[t]he authorities responsible for the organisation and functioning of the judicial system are obliged to provide judges with conditions enabling them to fulfil their mission and should achieve efficiency while protecting and respecting judges' independence and impartiality"* (§ 32) and that *"[j]udges should be encouraged to be involved in courts' administration"* (§ 41).

By no means may one pretend that European principles on the independence of the judiciary would forbid the solution currently existing in Latvia, of a court administration performed by a

²² See under the link: <http://www.tna.lv/en/about-us/>

²³ See the Law on the Judicial Power, Article 50/2. Financing of the Court System.

body subordinated to the Minister of Justice. It is worth mentioning that nowadays court management witnesses an increasing professionalization of non-judicial court administrators and staff. In many countries, the responsibility for court operations is delegated almost entirely to professional court managers. Such “*professionalization*” of court management may be arranged both within a system of court management led by the executive, as is the case in Latvia, and in systems in which the judicial self-governing is more advanced, including the responsibility for (elements of) court management.

It is a fact that, as was mentioned to the experts by its Director, the tasks accomplished by the Court Administration make it possible for the court presidents and other judges to concentrate on the judicial work. According to the Court Administration representatives met by the experts, the court presidents rather enjoy being free of these administrative duties. The judges at the Regional Court of Riga stressed that the interaction with the Court Administration is excellent, regular, and that this body provides a very valuable support. Indeed, the relations between the courts and the Court Administration seem to be good. The premises and IT equipment of the Regional Court of Riga may be viewed as excellent.

However, the representatives of the judges’ associations underline that, if the Court Administration had been created as an executive branch of the Judicial Council, as it was originally imagined, this would have contributed to increasing the independence of the Latvian judiciary from the executive power. In fact, and even if the experts have reached a very good opinion of the Court Administration and its leadership, one may question the (indirect) role of the Minister of Justice in the administration of the courts (except for the Supreme Court). Such a system exists in different countries, but self-administration by the judiciary, which also exists in different countries, may better safeguard the independence of the judiciary and judges. The fact that the Court Administration Director is appointed for five years only, by the Minister of Justice, might be seen, at least by outsiders, as a way for the Government to influence the course of justice: would a Director who is “*on the side of the courts*” or is being perceived as such by the Minister of Justice be reappointed after his term? Who can say how the situation would be if other persons would be in charge of the Court Administration, i.e. if persons would be selected who would not, contrary to the present situation, interact with the courts in a way that ensures a smooth relationship? Does the design of the system in itself really guarantee that the courts can in fact get what they need and choose what is good for them, within the framework of the budget voted by the *Saeima*? This matter could therefore be reviewed.

Another concern relates to the Court Administration’s leading role in the selection of candidates to judges’ positions and in the evaluation of acting judges. Is the Court Administration the right body to perform these selections and evaluations, or should they be conducted under the authority of the Judicial Council? The experts believe that, even if the Judicial Council would need some administrative support, which could e.g. be provided in part by the Court Administration, selection and evaluation of candidates and judges should be a matter of judicial self-governance.

This being said, one must also stress that, from what the experts could learn in Latvia, the Court Administration is an efficient body, with a full dedication to help the judges perform their judicial tasks and doing an excellent job at it. In addition, there have been no complaints about the Minister of Justice’s attitude and actions regarding the budgetary matters. The experts

therefore don't see major problems in the current situation, even if other solutions might and possibly should be considered.

Conference of Judges

The conference of judges is regulated in the Law on the Judicial Power as a *“self-governing judicial institution in the work of which, with voting rights, shall participate judges of the Supreme Court, judges of regional courts, judges of district (city) courts and judges of land registry offices”*.

The conference of judges:

- 1) shall examine current issues of court practice;
- 2) shall submit to the Chief Justice of the Supreme Court submissions concerning legal norm interpretation issues, which should be discussed in the Plenary Session of the Supreme Court;
- 3) shall discuss issues of financial and social security, and other significant issues concerning the work of judges;
- 3/1) shall, by secret ballot elect the members of the Judicial Council for four years;
- 4) shall, by secret ballot, elect the Judicial Qualification Committee for four years;
- 5) shall, by secret ballot, elect the Judicial Disciplinary Committee for four years;
- 6) shall, by secret ballot, elect the Judicial Ethics Committee for four years;
- 7) approve the standards of judicial ethical rules.

According to § 3 of section 97 of the Law on the Judicial Power, a conference of the judges of the land registry offices may be convened for the examination of current issues of practice concerning the entering of real property and the recording of rights associated therewith.

It is not uncommon to declare a conference or a general meeting of judges as a judicial self-governing body. This approach may give the judges a feeling of enhanced *“judicial independence”*. Although the composition and decision making processes of such an entity objectively reduce the areas where it may effectively intervene in view of safeguarding the independence of the judiciary and of individual judges, the CEPEJ experts strongly approve of the conference of judges. It is recommended to consider the inclusion in the list of matters of its competence provisions such as: *“shall discuss matters in connection with judicial independence and impartiality and make recommendations to the Judicial Council”*, and/or *“shall discuss any other judicial matter which the conference deems appropriate and decide on resolutions to be submitted to the relevant bodies”*.

The conference of judges will certainly trigger public interest and excitement among judges. It is a unique platform for the dialogue among judges and a forum which may assume passing directly messages from the body of judges to institutions within the judiciary or even to the legislative and executive powers. Therefore, holding such conferences regularly shall be welcomed. It is interesting to note in this context the recent innovative approaches to election of members of judicial self-governing through e-voting, without convocation of the conference

of judges²⁴. To the extent to which the introduction of such voting will expedite the election of new judicial representatives, will not abolish the regular convocation of the conference of judges and will not lead to a perception of “*framing*” the exercise of judges’ election rights in the conference of judges, the novelty may be welcomed as well.

Judicial Council²⁵

According to the Recommendation on Judges, “*Councils for the Judiciary are independent bodies, established by law or under the constitution, that seek to safeguard the independence of the judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system*” (§ 26). The Council of Europe and its bodies developed consistent recommendations on the role, institutional place, competences, composition of Councils for the Judiciary and the guarantees which shall be ensured to them.²⁶ Furthermore, the actual independence of a Council for the Judiciary is especially important as, according to the case-law of the ECtHR, a Council for the Judiciary, if it takes the decision to dismiss a judge, must meet the same requirements of independence and impartiality as other tribunals according to Article 6 of the ECHR.²⁷

The Latvian Judicial Council has been established in 2010, by amendments to the Law on the Judicial Power, entered into force on 1 August 2010 (introducing in the law the chapter 13¹ “*The Judicial Council*”).

It is meant as a collegial authority involved in the elaboration of policies and strategies for the judicial system, as well as the improvement of the work of the court system. Its overall mission is to safeguard the independence of the judiciary and have a leading role in issues regarding the court system.

One of its proclaimed goals is to maintain balanced relations between the judicial, executive and legislative powers. During the meeting the experts had with representatives of the Judicial Council, it has been stressed several times that they see this institution as a forum of dialogue with other stakeholders of the Latvian justice system (including the *Saeima*, Government, attorneys, prosecutors, etc.; see below the composition of the Judicial Council). The idea of ensuring a broad dialogue on justice-related issues is in line with § 12 of the Recommendation on Judges, which states: “*Without prejudice to their independence, judges and the judiciary should maintain constructive working relations with institutions and public authorities involved in the management and administration of the courts, as well as professionals whose tasks are related to the work of judges in order to facilitate an effective and efficient administration of*

²⁴ See the news on the Supreme Court’s website “[By means of Electronic Conference judges will elect members of the Judicial Qualification Committee and the Judicial Disciplinary Committee](#)”

²⁵ Also referred to in some English translations as the “*Board of Justice*”.

²⁶ See for further details the report “[Challenges for judicial independence and impartiality in the member states of the Council of Europe](#)” (SG/Inf(2016)3rev) and other sources to which it refers, such as the [Venice Commission’s “Report on the Independence of the Judicial System, Part I: the Independence of Judges”](#), adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010).

²⁷ See the ECtHR judgment in [Volkov v Ukraine](#) and [Mitrinovski v. “the former Yugoslav Republic of Macedonia”](#) cases.

justice". From the experts' experiences with similar institutions in their countries, it can indeed be useful to have a forum where judicial problems and issues can be discussed with different bodies and authorities, as it prevents conflicts and ensures some transparency in the functioning of the justice system.

The Judicial Council developed a Strategy for the years 2017-2019²⁸, which includes, as main aims, *"strengthening the independence of the judiciary"*, *"improving the efficiency of the judiciary"* and *"increasing the public confidence in the judiciary"*. In order to attain each of these aims, the Judicial Council adopted a number of more specific objectives, which are, in general, consonant with the opinions of the authors of the present report on the measures which seem to be necessary in view of improving the independence, efficiency and quality of the Latvian judiciary.

Composition

The Judicial Council comprises 15 members:

- a) 8 *ex officio* members (Chief Justice of the Supreme Court, President of the Constitutional Court, Minister of Justice, Chairperson of the *Saeima's* Legal Affairs Committee, Prosecutor General, Chairpersons of the Board of Sworn Advocates, Board of Sworn Notaries and Board of Sworn Court Bailiffs);
- b) 6 judges elected by the Conference of Judges, representing district courts and regional courts (elected for 4 years, with a maximum of two consecutive terms);
- c) one judge elected by the Plenum of the Supreme Court (elected for 4 years, with a maximum of two consecutive terms).

The Judicial Council may get assistance from advisory bodies, such as the Ombudsman, the Director of the Court Administration, representatives of the Academy of Sciences and of the judges' associations.

The experts note that the composition of the Judicial Council is not fully in compliance with § 27 of the Recommendation on Judges, which provides that *"[n]ot less than half the members of [judicial] councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary"*. Under the current system in Latvia, less than a half of the Judicial Council members are judges elected by their peers.

The number of *ex officio* members of the Judicial Council is rather unusual, as is the fact that these members constitute a majority in the Council. It should be mentioned that, according to p. 23 of the [CCJE Opinion n°10 \(2007\) on Council for the Judiciary in the service of society](#), *"Prospective members of the Council for the Judiciary, whether judges or non-judges, should not be active politicians, members of parliament, the executive or the administration. This means that neither the Head of the State, if he is the head of the government, nor any minister can be a member of the Council for the Judiciary. Each state should enact specific legal rules in this area"*.

²⁸ English translation of the Strategy may be found on the website of the Supreme Court, <http://at.gov.lv/en/the-board-of-justice/documents/>

The *ex officio* membership of the Prosecutor General in the Judicial Council is also highly debatable²⁹, except he does not take part in discussions on judicial appointment, promotion and discipline, and the court system is represented in an equivalent way in the council of prosecutors (which is not the case, as the Council of the Prosecutor General in Latvia is composed only of members of the Office of the Prosecutor, according to section 29 of the Office of the Prosecutor Law).³⁰

One may also reconsider the *ex officio* membership of the chairpersons of the Board of Sworn Notaries (except for opinions about the functioning of the land registry offices, but this could possibly be performed under an advisory role) and/or Board of Sworn Court Bailiffs (whose role in the judicial system of Latvia the experts don't know enough to formulate a final opinion about their representation in the Judicial Council), in order to increase the number of elected judges among the members of the Judicial Council and thus comply with the recommendation mentioned above.

According to section 89/7 of the Law on the Judicial Power, the Chief Justice of the Supreme Court is the Chair of the Judicial Council. Among the attributions of the Chair are: 1) leading the work of the Council; 2) convening the meetings of the Council and determining the agenda thereof; 3) representing the Council and signing its decisions and other documents.

Certainly, the chair holds a key position within the Judicial Council. Two authoritative Council of Europe bodies have expressed slightly diverging positions in regard to selection/designation of the Chair of Judicial Council. The CCJE stressed in p. 33 of its Opinion n°10 that: *"It is necessary to ensure that the Chair of the Council for the Judiciary is held by an impartial person who is not close to political parties. Therefore, in parliamentary systems where the President / Head of State only has formal powers, there is no objection to appointing the Head of State as the chair of the Council for the Judiciary, whereas in other systems the chair should be elected by the Council itself and should be a judge."* The Venice Commission concurs with the above opinion except its final part. In its Report on judicial appointments, the Commission states *"...in (semi-) presidential systems, the chair of the council could be elected by the Council itself from among the non-judicial members of the council. Such a solution could bring about a balance between the necessary independence of the chair and the need to avoid possible corporatist tendencies within the council."*³¹ This lack of agreement is regrettable. Still, the recommendations of the CCJE and the Venice Commission do not include solutions like attributing *ex officio* the chairmanship of the Council to the Chief Justice of the Supreme Court. Of course, this solution would not be in breach of any firm standards.

²⁹ The ECtHR (in [Oleksandr Volkov v. Ukraine](#)), has stated that the presence of the Prosecutor General in a body concerned with the appointment, disciplining and removal of judges creates risks for the impartiality of that body.

³⁰ In the same context may be mentioned that GRECO recommended in its Evaluation Report on Republic of Moldova ["Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors in Republic of Moldova"](#), adopted 1 July 2016 (paras 16, 90, 91, 92), that the composition and operation of the Superior Council of Magistracy of Moldova (SCM) be reviewed, in particular by abolishing the *ex officio* participation of the Minister of Justice and the Prosecutor General, by allowing for more diverse profiles among lay members and by ensuring transparent procedures for electing both judicial and lay members of the SCM.

³¹ [Report on "Judicial appointments", adopted by the Venice Commission at its 70th Plenary Session](#), 16-17 March 2007, p. 35

It is the understanding of CEPEJ experts that, in systems where the hierarchy inside the judiciary is quite strong, as apparently is the case in Latvia, it is difficult to imagine the Chief Justice of the Supreme Court not chairing the Judicial Council. But, attributing this role to the Chief Justice is in a way depriving the judiciary of another important leader and of another strong institutional voice. It may be limiting the democracy and pluralism within the judicial power itself. Not negligible is the fact that this solution may generate some confusion among the public. Currently, when the person combining the two highest positions in the hierarchy of the courts and of judicial self-governing takes attitude on a certain issue, is it always clear in which capacity he expresses the position? The issue is worth further consideration.

According to the Law On Remuneration of Officials and Employees of State and Local Government Authorities, a judge elected in the Judicial Council receives a supplement of 3% of the monthly salary established for a judge of a district (city) court for each visited session of the Council. The Chairman of the Judicial Council receives a 5% bonus from the monthly salary determined for a judge of a district (city) court, for each sitting of the Council.

Even though the membership in judicial self-governing must be a matter of professional and personal prestige, it implies an important amount of work, if the vocation of these institutions is to be properly fulfilled. Therefore, a remuneration of members of the judicial self-governing, correlated with the time and efforts they invest in exercising the membership role, is recommendable. The arrangement described above, when this payment is strictly linked to the participation in the meetings of the respective body, may not be the most adapted and fair solution, as the participation in the meetings may be only one aspect of members' involvement or related tasks they have to perform, and it might not be the most "*labour*" intensive.

Administration

It seems that none of the members of the Judicial Council, including judges elected by their peers, is delegated/detached, for the period of the mandate, to focus his professional activity on the tasks of the Council (such as preparing, reviewing documents for the Council's meetings, drafting opinions to be approved by the Council, representing it in the relations with other state authorities and institutions etc.). This is not an exceptional approach to the functioning of similar councils in Council of Europe member states, but it shall be underlined that, in such a setup and having modest secretarial assistance, the situation can jeopardise the institutional "*place*" and capacity of the Judicial Council to become a leading institution in safeguarding both the independence of the judicial system and the independence of individual judges, and in exercising the autonomous government of the judicial power. However, the experts believe that the judges who are members of the Council should not be there in a full-time position, as it is important that they are still in touch with the day-to-day operations and realities of the courts. Therefore, one may possibly suggest that these judges' caseload in their courts is reduced, in order for them to have enough time to spend on their work with the Council.

The Judicial Council's secretarial support is ensured by a Secretariat which is a unit of the Supreme Court (according to amendments of 18 January 2018). Since January 2017 the Secretariat of the Council is composed of 4 Supreme Court employees, organised as a division of this court. This situation deserves a remark that the Judicial Council shall act independently and should not depend administratively of the Supreme Court. The question is whether the Chief

Justice, or members of the Judicial Council elected from among judges of the Supreme Court, have greater influence on the Judicial Council and its decisions through the authority they may have on the Secretariat which is part of the Supreme Court administration. It is generally recognised that judges of all tiers of jurisdictions shall be represented in the Judicial Council and equally influence its decisions. In this context, it is to be reminded that § 27 of the Recommendation on Judges says: *“Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary.”*

Representatives of the Secretariat of the Judicial Council expressed their opinions in comments to a draft of the present report. According to them, the Secretariat acts on the basis of a regulation of 4 October 2010. Taking into account the format of the work of the Council, the Secretariat consisting of only 4 employees does not form a sufficient basis for *“creation of an independent institution”*. At the same time, *“as the Chief Justice is ex officio the chairman of the Council, the Secretariat works efficiently within the premises of the Supreme Court; greater influence on the Judicial Council and its decisions through the authority of any member is excluded via transparent decision-making procedure”*.

The Judicial Council holds meetings approximately once a month, which indirectly also points to the relatively *“light weight”* of the institution in the current system of judicial administration in Latvia. These meetings are open, except when the Judicial Council decides otherwise. All judges can see the live broadcast of the meetings on the internet (see § 28 of the Recommendation on Judges: *“Councils for the judiciary should demonstrate the highest degree of transparency towards judges and society”*).

Specific tasks

After reviewing the competences of the Judicial Council as regulated by the Law on the Judicial Power, in particular after recent amendments adopted by the *Saeima* on 18 January 2018, one may note that this Council now has the power to appoint and remove the presidents of district (city) and regional courts, upon the proposals of the Minister for Justice (Sections 33 and 40, as amended), to determine the territory of operation and locations of district (city) and regional courts, their courthouses and land registry offices (Sections 29 and 35), to determine the procedure for selection, traineeship and qualification examinations for a candidate judge of a district (city) court and a regional court (Section 54/1), and for the candidates to the position of a judge of the Supreme Court (Section 54/2), to transfer a judge to a court or courthouse of the same level or of a lower level (Section 73/1). As examples of other matters in which the Council may actually adopt decisions can be mentioned: the transfer of a judge to a court or courthouse of the same level (pursuant to a recommendation by the Minister of Justice, on the basis of a favourable opinion from the Judicial Qualification Committee); assigning a judge to another court for a period not exceeding two years (upon certain conditions); adopting *“procedures for the use of robes and insignia of office [of judge]”*; approving the ID to be issued to judges; granting of the title of *judge emeritus* etc.

It is obvious that, when the Law on the Judicial Power was initially developed and adopted, the Judicial Council was not envisaged as part of the judicial self-governing. The chapter 13¹, introduced in 2010, focused more on regulating the composition and procedural details in

regard to the Council and is very brief on its functions. Specific tasks of the Judicial Council are related to:

- a) taking part in the appointment of judges and decisions relating to their careers (limited though: opinion about the transfer of judges in the same court instance, opinions about candidates for the Constitutional Court, recommendations regarding the total number of judges in courts, etc.);
- b) advising on the evaluation of judges (determination of the content and procedures of qualification examinations, approbation of the document samples for this examination);
- c) approving the basic principles for the specialisation of judges and the procedure for the determination of the case workload, as well as developing guidelines in the other matters of the work organisation of courts and land registry offices;
- d) approving the rules of procedures for the work of the Judicial Ethics Committee and the Judicial Qualification Committee;
- e) recommending to the *Saeima* the total number of judges in national courts and determining the number of judges in each court, upon the recommendation of the Minister of Justice (of the Chief Justice for the Supreme Court);
- f) determining the specific district (city) court or the courthouse with the corresponding place of performance of the function by a newly appointed judge;
- g) issuing opinions on judicial reform and laws;
- h) issues concerning relations with the other state powers.

In addition to the above, the Judicial Council is consulted by the Ministry of Justice before it sends the draft budget to the *Saeima*. This is consistent with § 40 of the Recommendation on Judges, which states: *“Councils for the judiciary, where existing, ... may be consulted when the judicial system’s budget is being prepared”*.

The budget for the judiciary, as part of the state budget, is presented to the *Saeima* by the Government/Finance Minister in a ceremonial procedure and the vote of the state budget is in fact a vote of confidence in the Government.

The experts have been told that, before the budget being presented to the *Saeima*, there are *“discussions”* with the Judicial Council. The fact is that, as far as the experts can understand the process, the final decision on what budget will be submitted to the *Saeima* and the discussions with the *Saeima’s* finance committee lies with the Government (Ministry of Justice and Ministry of Finance). This is not at all unusual in Europe and certainly not contrary to any binding regulation. But, to increase independence and self-administration by the judiciary, one might consider the possibility that the Judicial Council is entitled to be represented during the discussions with the *Saeima’s* finance committee. In the same vein, the [CCJE Opinion No. 2 \(2001\) on the funding and management of courts](#) considers important that the arrangements for parliamentary adoption of the judicial budget include a procedure that takes into account judicial views. One form which this active judicial involvement in drawing up the budget could take would be to give the Judicial Council a co-ordinating role in preparing requests for court funding, and to make this body Parliament’s direct contact for evaluating the needs of the courts. It is desirable for the Judicial Council to be responsible for submitting budget requests to Parliament or its special committee.

Also in the view of judges' associations the Judicial Council should play a more important role in the discussion of the budget. Current discussions within the Judicial Council include topics like the system of remuneration of judges and the gradual increase of court employees' salaries (already initiated in 2017).

The experts have been informed about the possibility for all judges to write to the Judicial Council, in particular if they consider that their independence is threatened, and that all such letters would be referred to all members of the Judicial Council for discussion and analysis (see § 8 of the Recommendation on Judges: *"Where judges consider that their independence is threatened, they should be able to have recourse to a council for the judiciary or another independent authority, or they should have effective means of remedy"*).

No mention was made to the experts of any Judicial Council interference in the independence of individual judges (see § 29 of the Recommendation on Judges: *"In exercising their functions, councils for the judiciary should not interfere with the independence of individual judges"*).

The Judicial Council has prepared proposals for amendments to the Law on the Judicial Power, which have then be submitted by the Ministry of Justice to the *Saeima*. These proposals focus on strengthening the powers of the Judicial Council, in the selection of new judges and the extension of the Council's authority regarding decisions on the career of judges after their first appointment. As mentioned, the amendments were been adopted by the *Saeima* on 18 January 2018.

Other initiatives with regard to strengthening the role of the Judicial Council are promoted by the President of the Republic of Latvia³² and the Commission for Legal Environment Improvement which drew up the report *"On improvement of the work of the Council for the Judiciary"*³³.

If a decision to *"strengthening the role of the Judicial Council"*, fully supported by the CEPEJ team, is taken by the Latvian legislator, it will certainly be useful to seek inspiration from the provisions of the [CCJE Opinion n°10 on Council for the Judiciary in the service of society](#). This document details a consensus attained among representatives of judges from all Council of Europe member states on such aspects as the mission, membership, extensive (!) powers, and resources of a Judicial Council, as well as the requirements for accountability and transparency which should be met by such an authority.

Following amendments adopted on 18 January 2018, a judge who is subject of a decision of the Judicial Council on the nomination for appointment, promotion, transfer or dismissal from the office can appeal this decision to the Disciplinary Court (new Section 89/12 of the Law on the Judicial Power). The Disciplinary Court will consider only the procedural aspects and may leave the decision of the Council without amendments and reject the complaint, or revoke the

³² See the articles ["The President of Latvia calls for strengthening the Judicial Council"](#) and ["Proposed legislation of the President of Latvia on the Council for the Judiciary"](#).

³³ The Commission for Legal Environment Improvement, which provides support to the President of Latvia in fulfilment of his functions stipulated under the Constitution and in promoting the strengthening of democratic traditions, draw up a thematic report ["On improvement of the work of the Council for the Judiciary"](#), visited in September 2017.

decision of the Council and send the materials for re-examination (to the same Council of Justice, of course).

Critical statements by the judges' associations³⁴

Representatives of the judges' associations met by the CEPEJ team casted some doubts about the actual capacity of the Judicial Council to play an effective role in the protection of the judiciary and the judges' independence.

In their view, the Judicial Council mainly decides on technical issues, such as the transfer of judges, but doesn't sufficiently discuss the real problems that the judicial system has to deal with. They would like the Council to have a clear vision about the future of the judicial system and to be more proactive. Still in their opinion, the Council is mainly reactive, only voting on proposals submitted by the Minister of Justice, who according to them plays a leading role, the votes of the Council being seen as a kind of "*rubber stamping*" of the Minister of Justice's proposals.

The same representatives pointed out very openly that even if the appointment of judges, their evaluation and various other decisions related to the judges' career are part of the functions of the Judicial Council, this institution is rather focusing on influencing the law making processes which concern the judicial system in general, a certain emphasis being given to the interaction with the *Saeima* and its specialised committee.

However, the experts noted that the Judicial Council made proposals to the *Saeima* regarding an extension of its powers in matters of judges' career (see above) and instituted constitutional proceedings in order to remove the discrimination of wages levels which currently affects the judges in comparison with other employees (with commensurate qualification and responsibilities) working in the public sector.

The experts are not in a position to say if the critical statements mentioned above are accurate and if the Judicial Council should in fact review its priorities and agenda. However, it appears that representatives of the judges' associations are invited to and participate in the meetings of the judicial Council. They are included in the list of advisory bodies to the Council and, therefore, the matters of particular interest for these associations should be discussed within this frame.

Report on Improvement of the work of the Judicial Council by the Presidential Legal Enhancement Commission

On 23 September 2015, the President of the Republic of Latvia announced the establishment of the Legal Enhancement Commission (hereinafter – the Commission). The Commission was set up to support the implementation of the Presidential functions as defined by the Constitution of Latvia, and to promote the consolidation of democratic traditions in the country.

³⁴ The statements referred to in this section were made in the course of the first mission of the CEPEJ team to Riga, in July 2017. The amendments to the Law on the Judicial Power, adopted on 18 January 2018, may mitigate some of the problems exposed by representatives of judges' associations.

One of the first studies of the Commission was focused on the role of the judicial institutions. Particularly, the Commission developed a very comprehensive report, assessing the current institutional role, functions, composition, capacities and results of the Latvian Judicial Council, and put forward recommendations in view of improving its role and functioning, and increasing its effectiveness. This report was published and, at its hearing on 24 May 2016, the President of Latvia, Mr Raimonds Vējonis, mentioned: *“To enhance the legal certainty and the public trust in the judiciary, greater involvement of judges is needed in improving the quality of justice and in the organisation of the work in the judicial system”*³⁵.

Assessing the current work of the Judicial Council, the Legal Enhancement Commission concluded that it is necessary to strengthen its mandate, composition and governance, in order for the Council to be able to significantly influence the development of the judiciary and become a decisive player in the development of the policy and strategy of the judiciary. The Commission has called upon the judiciary itself to actively and openly discuss the problems of importance for it, as well as to inform the society regularly about the topical issues for the judicial power.

The report is the result of a comprehensive study and of an excellent knowledge of the judicial realities in Latvia, along with a profound understanding of the underlying social conditions. The CEPEJ team acknowledges that it would not be in the position to acquire, for the purpose of the present report, a similar in-depth knowledge and understanding of the situation on the ground. Furthermore, having in mind the references contained in the Commission’s report to the main Council of Europe documents and other relevant international recommendations, which may be regarded as standards of judicial organisation and self-governing, the CEPEJ team supports the main conclusions of the Presidential Legal Enhancement Commission and the recommendations contained in its report.

Supreme Court

The Supreme Court is the highest ordinary court in Latvia and deals mainly with appeals on points of law against judgments by the regional courts.

It is composed of 36 judges, headed by the Chief Justice and – regarding the judicial duties – is divided into the administrative, civil and criminal departments.

It also includes the Disciplinary Court, composed of 6 judges (2 judges of each department, elected by the Supreme Court plenum for 4 years). This court deals with the appeals against disciplinary decisions regarding judges and prosecutors (see below in regard to disciplinary proceedings).

The Supreme Court has its own administration, which in particular performs the financial management, takes care of material and technical facilities, deals with record keeping, organises staff management and training, etc.

³⁵ As published on http://www.president.lv/pk/content/?art_id=24109, visited in August 2017

The Supreme Court presents its budget priorities to the Judicial Council, where they have to be approved. Subsequently, the budget request is submitted to the Ministry of Finance, for guidance to the Cabinet of Ministers. A draft budget is then sent to the *Saeima* by the Government. Representatives of the Supreme Court, if invited, only participate in the sessions of the *Saeima* responsible committees. There is no discussion and direct defence of the budget demand by the Supreme Court. This might be reconsidered (see hereinabove on the role of the Judicial Council in the process of budgeting the courts).

The Supreme Court adopted a Strategy for the years 2017-2019, designed to strengthen the efficiency and quality of the administration of justice and of the authority of the Supreme Court (role as a cassation instance, transparency of the judicial work, legal education of the society, research and preservation of the history of the Supreme Court).

The representatives of the Supreme Court who met the experts expressed no concerns regarding the independence of their court and judges.

Public Prosecutors' Office

The Public Prosecutors' Office is a judicial authority, as mentioned in the Law on the Prosecution Office, and independent from the Ministry of Justice.

It is headed by the Prosecutor General, who is appointed by the *Saeima* upon the proposal by the Chief Justice of the Supreme Court coordinated with the Judicial Council. The regional prosecutors are nominated by the Prosecutor General, upon proposal by the Qualification Committee of Prosecutors. Except this involvement in the nomination of the candidate Prosecutor General and participation of the latter in the Judicial Council as an *ex officio* member, the Prosecution Office seems to be separated institutionally from the rest of the judiciary.

The representatives of the Public Prosecutors' Office who met the experts consider that thanks to this way of selection and appointment of the Prosecutor General and subordinated prosecutors, the prosecution system is immune from political influence. They expressed no concerns regarding the independence of their institution.

Commissions for the Selection of Candidates to the Office of a Judge

As already mentioned above, according to § 46 of the Recommendation on Judges, the authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of this authority should be judges chosen by their peers. Is it the case in Latvia? The answer is not straightforward, unfortunately. And this is because the process of selection and nomination of judges in Latvia is fragmented in many steps, handled by different authorities.

One authority involved initially and fundamentally, is the Commission for the Selection of Candidates to the Office of a Judge. It might be important to note that the Law on the Judicial Power does not mention expressly this authority. It was introduced through the Cabinet of

Ministers' Regulation No. 204 of 3 March 2009 on *"Procedures for the Selection, Apprenticeship and Taking of Qualification Examination of a Candidate to the Office of a Judge"*, on the basis of Section 54/1 the Law on the Judicial Power, which empowered the Cabinet to determine the procedures for the selection, apprenticeship and passing of qualification examination of candidates to the office of a regional court judge. The amendments of 18 January 2018 changed the situation. The new wording of Section 54/1, § (1) states that *"[t]he procedure for selection, traineeship and qualification examination for a judge of a district (city) court and a regional court shall be determined by the Judicial Council and published in the official newspaper Latvijas Vēstnesis."*

As the Law on the Judicial Power refers repeatedly to the Judicial Qualification Committee as a body involved in the process of examination and nomination of candidates for judicial appointments, it is questionable, in the opinion of CEPEJ experts, whether the legislator actually meant to delegate to the Cabinet of Ministers the authority to create the Commission for the Selection of Candidates to the Office of a Judge.

The Commission for the Selection of Candidates to the Office of a Judge performs the selection of successful judicial candidates on the basis of a structured interview and a test of the professional preparedness, and proposes their further apprenticeship, which will be followed by a qualification examination. The Judicial Qualification Committee certainly decides upon the apprenticeship and the results of the qualification examination, but the previous selection steps are handled by the Commission for the Selection of Candidates to the Office of a Judge.

Actually, this is not one commission, but many of them, composed on an *ad hoc* basis. This means that there are, in fact, such commissions composed of different persons nominated largely by the same institutions, on the occasion of selecting candidates for different courts.

At this point it will be probably enough to specify that the Commissions for the Selection of Candidates to the Office of a Judge are established by the Director of the Court Administration and consist of: 1 representative from the Ministry of Justice; 2 representatives from the Court Administration; 2 presidents of courts (depending on the courts for which vacancies are to be filled in with participation of the given commission) or their representatives. Also the Director of the Court Administration appoints the chairperson of the Commission.

Obviously, the Commissions for the Selection of Candidates to the Office of a Judge are not composed by at least half of members being judges chosen by their peers and it is not independent from the executive branch. To the extent to which the formal logic imposes that these commissions are decisively involved in the selection of judicial candidates, the situation is not compliant with the Recommendation on Judges.

The expert team acknowledges that the Kyiv Recommendations³⁶ provide in § 3: *"Unless there is another independent body entrusted with this task, a separate expert commission should be established to conduct written and oral examinations in the process of judicial selection (see also*

³⁶ ["Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia"](#), adopted at the Regional Expert Meeting on Judicial Independence organised and hosted by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) together with the Max Planck Institute for Comparative Public Law and International Law (MPI), Kyiv, 23-25 June 2010, p. 3

para 8). In this case the competence of the Judicial Council should be restricted to verifying that the correct procedures have been followed and to either appoint the candidates selected by the commission or recommend them to the appointing authority (for the recruitment process see paras 21-23.)". On the surface, the current approach adopted in Latvia may be regarded as a reflection of the Kyiv Recommendations, except that the composition and the way of appointing members of the Commissions for the Selection of Candidates to the Office of a Judge do not comply with a series of other provisions from the Kyiv Recommendations, including those contained at §§ 8 and 21³⁷.

The Commissions for the Selection of Candidates to the Office of a Judge cannot be regarded as bodies of judicial self-governance, as per the legislative framework. Nevertheless, having in mind their role in the selection of judges, which is an important element in the scheme of safeguards for judicial independence and impartiality, the CEPEJ expert team considered necessary to pay them appropriate attention. For some additional elements on the tasks and functioning of the Commissions for the Selection of Candidates to the Office of a Judge, and keeping in mind that the system of selection of judicial candidates is about to be overhauled as a consequence of the January 2018 amendments (see also the section *B.a.* on selection, appointment and career of judges, hereunder).

Judicial Qualification Committee³⁸

According to section 93 of the Law on the Judicial Power: "(1) *The Judicial Qualification Committee is a judicial self-governing institution which performs the evaluation of the professional work of judges.*" Exploring further the legal framework, we learn that the Judicial Qualification Committee is involved in decisions about the selection (although seriously limited by prior intervention of the Commissions for the Selection of Candidates to the Office and subsequent involvement of the Minister of Justice), promotion, transfer and evaluation of judges.

Its 9 members are all judges representing the three tiers of jurisdiction (3+3+3), elected by the Conference of Judges through a secret ballot. The members of the Judicial Qualification

³⁷ "8. *Members of special commissions for judicial selection (see para 3) should be appointed by the Judicial Council from the ranks of the legal profession, including members of the judiciary. Where Judicial Councils, Qualification Commissions or Qualification Collegia are responsible directly for judicial selection (see para 4), the members should be appointed to fixed terms of office. Apart from a substantial number of judicial members in this selection body, the inclusion of other professional groups is desirable (law professors, advocates) and should be decided on the basis of the relevant legal culture and experience. Its composition shall ensure that political considerations do not prevail over the qualifications of a candidate for judicial office (see para 21).*

[...]

21. *In order to ensure transparency in the selection process, the procedure and criteria for judicial selection must be clearly defined by law. The vacancy note, as well as the terms and conditions, should be publicly announced and widely disseminated. A list of all candidates applying (or at least a short list) should be publicly available. The selection body should be independent, representative and responsible towards the public (see paras 3-4). It should conduct an interview at least with the candidates who have reached the final round, provided that both the topic of the interview and its weight in the process of selection is predetermined.*"

³⁸ Also referred to in some English translations as the "Judicial Qualification Board"

Committee shall elect the chairperson and the deputy chairperson of the Committee. To ensure the necessary level of transparency in the work of the Qualification Committee, the law allows certain authorities (the Chairperson of the Judicial Committee of the *Saeima*, the Minister of Justice, the Prosecutor General, the Chief Justice of the Supreme Court and the Latvian Academy of Sciences), as well as judges' associations, the possibility to participate/delegate representatives to its meetings, with an advisory role.

It is understood that the members of the Judicial Qualification Committee are not delegated /detached from their judicial positions for the period of the membership in the Committee. In the best case, their workload as judges is reduced having in mind the duties they have to perform within the Committee. Whether this is a good solution depends on the actual volume of issues under the responsibility of the Committee. Immediately related to this and a factor of risks is the fact the Qualification Committee has no secretariat and its operation is ensured by the Court Administration.

The members and the Chairperson of the Judicial Qualification Committee are entitled to the same supplements to the salary as their counterparts in the Judicial Council (see above, together with the remark about this solution on the retribution for the work in judicial self-governing bodies).

The amendments approved in January 2018 would not have a direct serious impact on the competences and functioning of the Judicial Qualification Committee, with the exception that a favourable opinion of this body shall not be any more required for the appointment of judges in Departments of the Supreme Court (new reading of Section 49/1, § (4) on the Law on the Judicial Power), or, for example, that this Committee, and not the Judicial Council, will decide on the most suitable candidates for transfer when several judges request to be transferred to a vacant position (new reading of Section 73/1, § (3)). However, a major impact may have the new procedures for selection, traineeship and qualification examination for a candidate judge of a district (city) court and a regional court, to be determined by the Judicial Council (new reading of Section 54/1). Hopefully the Judicial Council will seize this opportunity to reinforce the judicial self-governance. For further details about the role this committee, see the section *B.a.* about selection, appointment and career of judges.

Judicial Ethics Committee³⁹

According to the Law on the Judicial Power (Section 91.1), the Judicial Ethics Committee is a collegial body the main objective of which shall be to provide opinions for the interpretation and violations of ethical standards, as well as to explain ethical standards of judges.

The Judicial Ethics Committee was established in 2008, after – according to its representatives met by the experts - a scandal hit Latvia, when it was disclosed that judges had held undue discussions with attorneys regarding specific cases. It is composed of 10 judges, elected by the Conference of Judges by a secret ballot (2 members from among the candidates nominated by the judges of the land registry offices, 3 – from among the candidates nominated by the judges

³⁹ Also referred to in some English translations as the “*Commission of Judicial Ethics*”

of district (city) courts, 3 – from among the candidates nominated by the judges of the regional courts, and 2 – from among the candidates nominated by the Supreme Court). It holds meetings about once a month.

The members and the Chairperson of the Judicial Ethics Committee are entitled to the same supplements to the salary as their counterparts in the Judicial Council (see above, together with the remark about this solution on the retribution for the work in judicial self-governing bodies).

The role of Judicial Ethics Committee consists in the interpretation of the Code of ethics, on the Committee's own initiative or upon request by a judge. The possibility for a judge to ask the Committee for an interpretation of the Code of Ethics perfectly answers § 74 of the Recommendation on Judges, which reads: "*Judges should be able to seek advice on ethics from a body within the judiciary*". The Committee also organises informal meetings at the courts, where judges can come and discuss matters of interest related to ethics.

The Judicial Ethics Committee is also in charge of the examination of possible violations of the Code of Ethics, upon request by the bodies who can initiate disciplinary proceedings (see below) or by other persons. It has no obligation to deal with requests submitted by private persons, but may deal with them, if it believes it is useful. If the Committee finds there is a violation of the Code of ethics, it can initiate disciplinary proceedings (see below) or, if the case is deemed not to be serious, just state that the behaviour of a judge was contrary to the Code of ethics, but leave the matter to that.

The main topics addressed by the Committee include issues regarding impartiality, recusal and relations between judges and court presidents (in particular, cases where a judge doesn't follow instructions issued to him by his court president), and the relations between judges and the society/media. For some further information, see the section *B.d.* on judicial discipline and ethics.

Judicial Disciplinary Committee⁴⁰

The Judicial Disciplinary Committee is regulated by the Law on Judicial Disciplinary Liability, of 27 October 1994 (as subsequently amended on several occasions). It is in charge of dealing with disciplinary matters regarding judges.

The Judicial Disciplinary Committee is composed of 11 members, judges elected by their peers: 5 judges from the Supreme Court, including the Chair of a Department of the Supreme Court; 2 presidents from regional courts; 2 presidents from district courts; and 2 heads from land registry offices. The members of the Judicial Disciplinary Committee are elected by secret ballot for a 4 year term at the Conference of Judges.

The Minister of Justice and the Prosecutor General, or persons authorised by them, as well as a person authorised by the Board of the Association of Judges⁴¹, may participate in the sittings of the Judicial Disciplinary Committee in an advisory capacity.

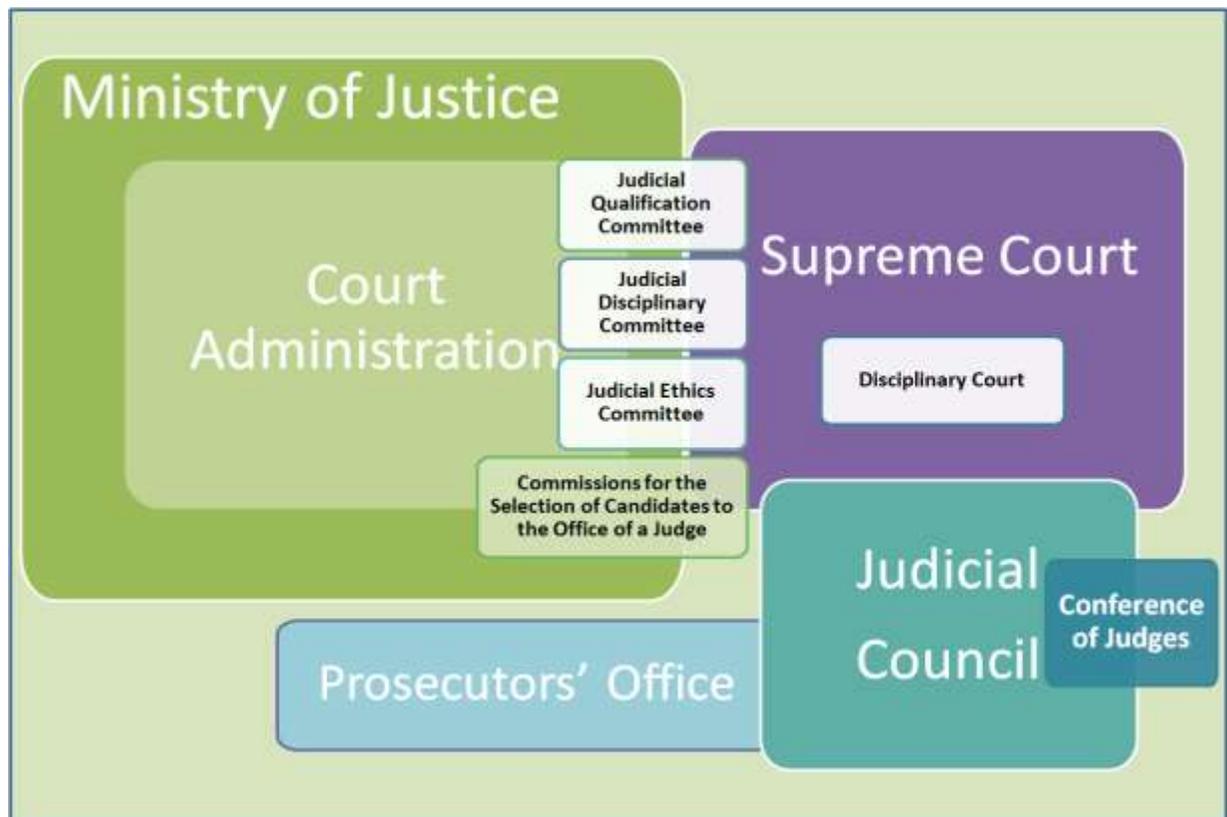
⁴⁰ Also referred to in some English translations as the "*Judicial Disciplinary Board*"

The members and the Chairperson of the Judicial Disciplinary Committee are entitled to the same supplements to the salary as their counterparts in the Judicial Council.

See below the section *B.d.* on judicial discipline and ethics more details in regard to disciplinary offences and the procedure.

In conclusion to this section of the report, it can be ascertained that the system of judicial governance in Latvia is complex and contains many interconnections, some of which play an important role of “*checks and balances*”. The number of involved bodies is rather high, but what raises certain concerns is the way in which the responsibilities, competences, and resources are distributed among these actors. In particular, it is felt that the Judicial Council is an institution far from its potential role of a leading judicial self-governing body. At least for now, in the opinion of the authors of this report, it has a weak institutional “*standing*” in the overall system of judicial governance. The *Figure 2* below is an attempt to depict, in a schematic and simple manner, the understanding of the system of Latvian judicial governance by the CEPEJ team of experts.

Figure 2: Authorities for Judicial Governance in Latvia (as of July 2017)



⁴¹ The law seems to refer to a concrete association of judges (probably the only one existing at the moment of the adoption of the law). As the CEPEJ team met, during their mission to Riga in July 2017, the representatives of two associations of Latvian judges, it would be good to make sure that any association of national judges (or those comprising a certain minimum number of judges) are entitled to delegate their representatives to the sittings of the Judicial Disciplinary Committee.

b. Levels of jurisdiction. Specialisation of courts and judges

➤ Levels of jurisdiction.

At present, Latvia's judicial system is undergoing a reform process of the judicial map and of the levels of jurisdiction of courts, which was initiated in 2015 and should be achieved by the end of 2018.

Latvia has an independent judiciary, with a three-tiered court system. The Constitution states that judicial power is vested in district and city courts, regional courts, the Supreme Court and the Constitutional Court. In the event of war or a state of emergency, also military courts may exercise judicial power.

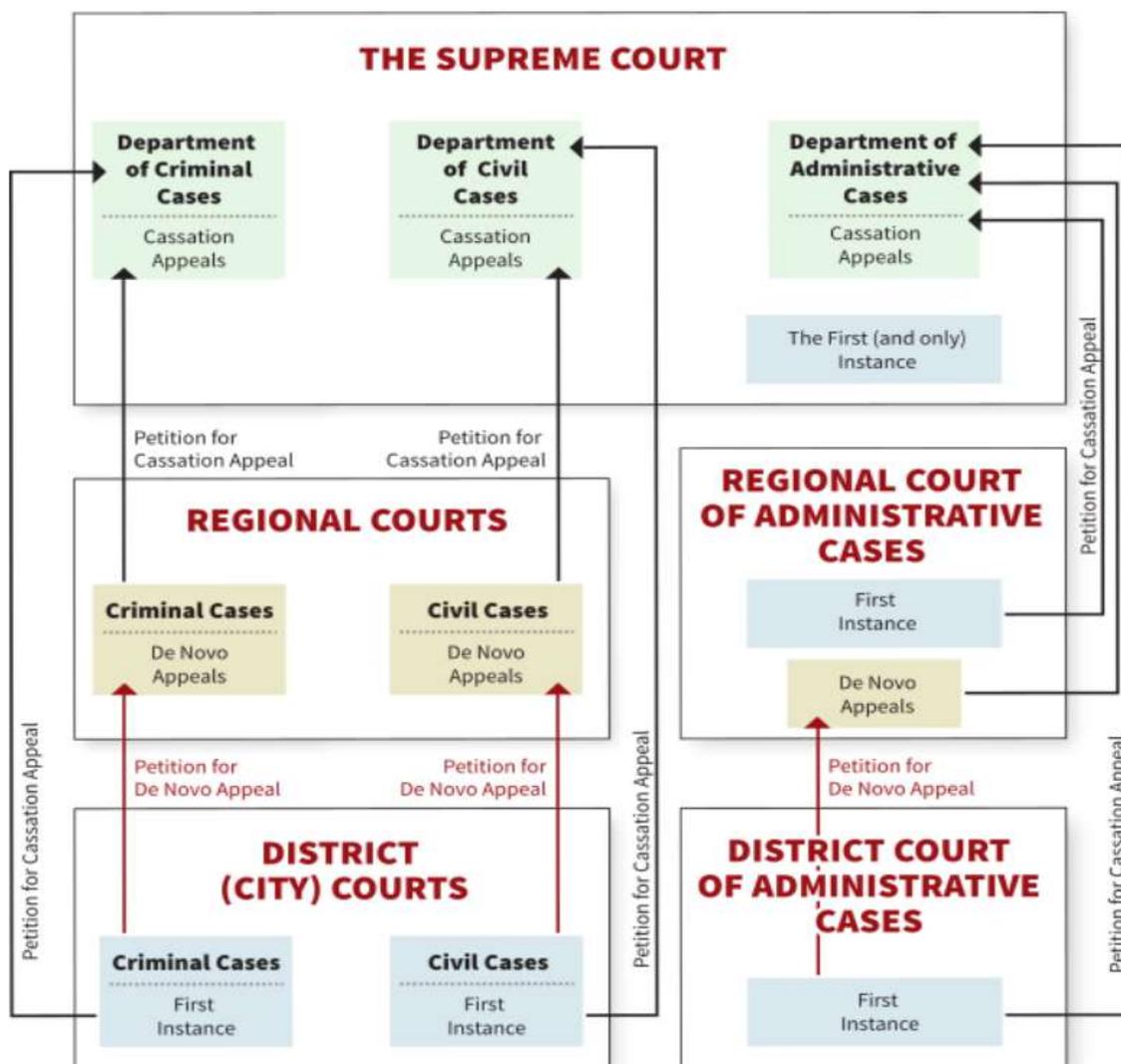
Before the judicial system's reform, Latvia had a wide network of first instance courts invested with jurisdiction over small parts of the territory. At the same time, those courts were of rather small size, 65 % of all district (city) courts were composed of less than 7 judges (3-7 judges). Another characteristic of the Latvian judicial system prior to the reform consisted in a rather intricate system of levels of jurisdiction assigned to various courts. For instance, a regional court was competent to examine particular categories of cases as the first instance court, the correspondent Chamber of the Supreme Court as the appeal jurisdiction instance and the competent Department of the Supreme Court's Senate as the cassation instance.

The on-going reform of the Latvian judicial system is a comprehensive reform which transforms the structure of the court's system, of the levels of jurisdiction and of the judicial map. The main goals of this reform are to: a) reduce and prevent unequal caseload distribution among courts; b) ensure random distribution of cases; c) enhance the specialisation of judges; d) increase the overall quality of court rulings and of judicial services; e) reduce the length of proceedings; f) optimise the allocation of court resources.

The reform already allowed for the creation of a "*clear three-level instance system*" of ordinary courts for civil and criminal law, with district (city) courts having jurisdiction as first instance courts, regional courts in charge of adjudicating appeals and the Supreme Court being competent to examine appeals on points of law (cassation complaints).

According to the information provided by the national counterparts, at the time of this reporting, Latvia's ordinary judicial system (general jurisdiction courts) is composed of 26 district (city) courts and 5 regional courts of general jurisdiction and one Supreme Court. The numbers above do not include the administrative courts, which follow the same levels of jurisdiction: a District Court for Administrative Cases (with 5 courthouses) and a Regional Court for Administrative Cases (see subsection *Specialisation of courts and judges*, hereunder).

Figure 3: The Supreme Court and the Latvian Court System⁴²



District (city) courts (*rajonu (pilsētu) tiesas*) are the courts of first instance in civil and criminal cases. A district (city) court may have structural units, i.e. courthouses located at various places within the territorial jurisdiction of the relevant district (city) and may also include a land registry office. Currently there are 23 land registry offices. A land registry office manages land registers (where items of immovable property and associated rights are recorded) and considers claims for undisputed enforcement, debt recovery orders and approval of statements of auction.

⁴² Source: the webpage of the Supreme Court of the Republic of Latvia (<http://at.gov.lv/en/par-augstako-tiesu/darbiba/vieta-tiesu-sistema>).

Regional courts (*apgabaltiesas*), as appellate courts, hear civil and criminal cases in a panel of three regional court judges. A regional court may have structural units, i.e. courthouses located at various places within the territorial jurisdiction of the relevant regional court.

It has to be underlined that, in the framework of the on-going reform process, several district courts are being merged in bigger courts. As a result, from 1 March 2018, there will be only 9 district courts; each of these courts will incorporate several of the former district courts as courthouses. Likewise, the land registry offices will be reduced to 7.

The Supreme Court (*Augstākā tiesa*) consists of three departments (*departamenti*) for Civil Cases, Criminal Cases and Administrative Cases, and hears appeals on points of law (*kasācijas instance*), unless the law provides otherwise. Until 31 December 2016 the Supreme Court had two chambers (Civil Cases Chamber and Criminal Cases Chamber) which used to examine appeals against judgments delivered by regional courts as first instance courts. Given that, as a result of the aforementioned reform, the regional courts no longer have jurisdiction as first instance courts, the Supreme Court's chambers have been eliminated and their members have been assigned either to regional courts or to departments of the Supreme Courts. The Plenary (*plēnums*) is the general assembly of judges of the Supreme Court. Its powers are ruled by Article 49 of the Law the Judicial Power. In addition to its tasks related to the election or the selection for nomination of candidates for several positions in the Latvian judiciary (presidents of the Supreme Court's departments, one member of the Judiciary Council, six members of the Disciplinary Court etc.), the Plenary formulates opinions in cases envisaged by law and discusses topical issues on interpretations of legal provisions.

Latvia also has a Constitutional Court (*Satversmes tiesa*) which is an independent judicial body and is not part of the judicial hierarchy. The Constitutional Court ensures that laws and regulations do not contradict with constitutional provisions.

In this instance, it is useful to recall the standards set by the ECHR and resulting from the case-law of the ECtHR with regard to levels of jurisdiction. If in the criminal field Article 2 of Protocol no. 7 to the ECHR ensures the right of appeal (two levels of jurisdiction)⁴³, the same does not apply in the civil field. Still, the right of appeal is not an absolute right and exceptions are allowed in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal. According to the case-law of the ECtHR, Article 6 § 1 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, a State which does institute such courts and provides for the possibility to introduce an appeal in civil matters, is required to ensure that persons amenable to the law enjoy before these courts the fundamental guarantees contained in Article 6 § 1⁴⁴.

In the light of the aforementioned, it can be affirmed that the Latvian judicial system offers the necessary standards of protection of rights in terms of levels of jurisdiction available to litigants

⁴³ Article 2 of Protocol no. 7 to the ECHR states that “everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal.”

⁴⁴ ECtHR, *Platakou v. Greece*, no. 38460/97, 11 January 2001, § 38.

in the criminal, civil and administrative field, with a newly reformed clear three-level system of courts recognising the right to exercise appeals and appeals on points of law. Bearing in mind that the experts did not have access to more detailed legislation in order to examine the situations where the Latvian law does not allow for an appeal, it can nevertheless be assumed that no particular issues call for attention from this perspective.

In general terms, at the present stage of the analysis, it can be affirmed that the reform of the Latvian judicial system allows for a more rational division of the three levels of jurisdiction and renders the entire system more easily understandable to court users, henceforth it enhances access to justice. The reorganisation of the judicial map, driven by the aim of reinforcing district (city) courts in each region by merging numerous small-sized courts, is a positive step towards a better distribution of the caseload and of resources throughout the judicial system of the country. Further analysis on this issue is to be corroborated with the analysis concerning the judicial map (see section *A.c. Court mapping*, hereunder).

➤ **Specialisation of courts and judges**

The more complex our society becomes, the greater is the need for States to provide its citizens with complex judicial services, to cope with the variety of social relations and the disputes generated thereof. The high complexity of judicial disputes requires a more specialised judicial system in order to ensure the best level of quality of justice to citizens. Two main developments can be observed in the judicial systems of European states: on the one side, the creation of specialised courts competent to adjudicate legal disputes in a specific legal branch, with jurisdiction over a region or the entire country (specialisation of courts); on the other side, the possibility for judges within general courts to become specialised in disputes of a legal branch.

Latvia's judicial system follows both these trends.

● ***Specialisation of courts***

Firstly, since February 2004, there is a fully-fledged specialised system of courts in the administrative field, composed of one District Court for Administrative Cases which has 5 courthouses located in different cities of the country, namely in Riga, Jelgava, Liepāja, Rēzekne and Valmier, one Regional Court for Administrative Cases, and the competent department of the Supreme Court (the Administrative Law Department). The administrative district and regional courts review the legality and validity of administrative acts and actions of administrative authorities or institutions. It is worth mentioning that the CEPEJ expert team received positive feedback from the representatives of sworn attorneys in regard to the judicial activity and the quality of the decisions delivered by the judges of administrative courts.

Secondly, according to the Law on the Judicial Power, military courts may operate in a state of war or emergency, consisting of one or several military courts of first instance and a military court of appeal. Pursuant to the Law on military courts, the order that military courts are to begin operating is given by the Minister of Justice.

Thirdly, as results from the information provided to the experts by the Ministry of Justice, in the past five years, Latvia also chose to further the specialisation of a few courts, entrusting them with nation-wide jurisdiction over specific types of legal disputes. It is the situation of Jelgava City Court which is competent to examine applications regarding the validity of decisions

adopted by the shareholders' assembly (as of 1 July 2013), of the City of Riga Vidzeme District Court competent to hear applications concerning industrial property rights (as of 1 January 2015), and of the City of Riga Northern District Court which has been given the jurisdiction over cases regarding international child abduction (as of 1 March 2015).

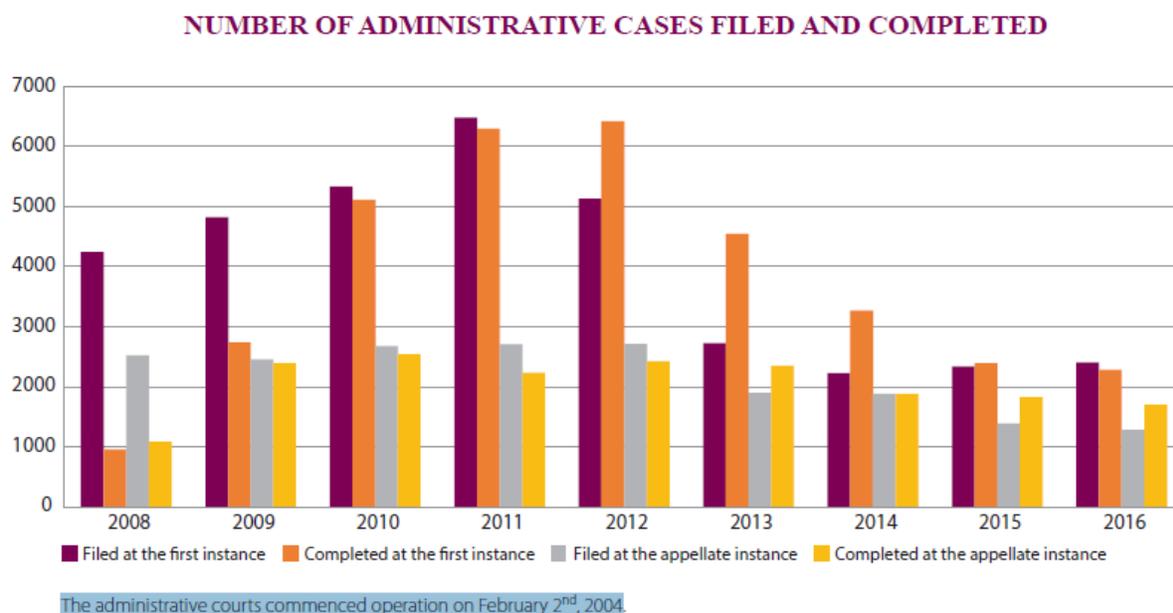
Lastly, 23 of the district (city) courts also include a specialised office tasked to deal with land registry issues – the land registry office. As of 1 March 2018 and the advancement of the reform of the judicial map, there should be 7 such offices in the total of 9 district (city) courts.

According to the Law on the Judicial Power, the land registry offices are incorporated in district (city) courts, i.e. the land registry office is a part of a district (city) court. Each land registry office has its own team, composed of judges, assistants to judges, court consultants and support staff. In 2017, reportedly, there were a total of 77 Judges and 198 court staff, therefore 275 people employed for land registry offices. Land registry offices have the competences of a first instance court in respect of the registration of immovable property and related titles in the land registers, as well as considering claims for undisputed enforcement, debt recovery orders, and approval of statements of auction. In second instance, regional courts are competent to review land registry offices' cases.

A general remark should be made with regard to specialisation of courts and, more precisely, to the risks related to the functioning of specialised courts. A valuable assessment of such risks has been detailed in the [Good practice guide to improve the functioning of justice](#) (CEPEJ (2016)14). Hence, given that specialised courts generally deal with rather sensitive areas of law, the risk that their interpretation and application of the law might appear to be influenced by considerations of political expediency or budgetary affordability cannot be ruled out. Also, in the absence of any arrangements for rotation or alternation, a judge's permanent assignment to the same specialised court or division could determine establishing an undue familiarity with a limited circle of lawyers and experts. It is, therefore, essential to consolidate the independence and impartiality of such specialised courts and judges.

Coming to a more specific analysis of the Latvian system, the CEPEJ team of experts takes note of the positive development of justice in the administrative field since the creation of the specialised administrative courts, and of the efficiency of their performance. In the view of this evolution and also based on an analysis of the trends in this field of litigation, it might be envisaged to readjust either the number of specialised administrative courts (more precisely of the courthouses) or the size of their human resources, in order to better adapt them to the actual need for justice in this field (observe in *Figure 4* below the substantial decrease of the number of administrative cases since 2011-2012). Nevertheless, in the process of developing the present report, it has been pointed out that specialised administrative courts deal with generally complex cases (such as tax disputes), are highly involved in the case processing (given the *ex officio* investigation principle which inspires such proceedings) and do not follow a simplified procedure. Therefore, the caseload and efficiency of administrative judges should not be considered as fully comparable to those of judges performing in courts of general jurisdiction. These aspects should also be duly considered before any readjustment or further reform.

Figure 4: Number of Administrative cases filed and completed between 2008 and 2016⁴⁵



Another particular remark shall be made in regard to the situation of specialised courts that have nation-wide jurisdiction over a very specific category of legal disputes. The expert team has learned that this kind of specialisation (and the judicial work of these courts) is generally appreciated in Latvia. However, attention should be paid to the fact that the area of law in question may be of such a nature as to bring forth applications throughout the entire territory of the country, not only in the region where the court having nation-wide jurisdiction is seated. For example, disputes concerning the validity of shareholders' assembly decisions can arise in any town where trade companies are seated. Such a choice of specialisation of courts (and implicitly of designing the courts' map) could entail some difficulties for access to court, if the towns where the concerned district (city) courts are seated are not easily accessible from all parts of the country. If this problem can be partially tackled by the use of an online application system or videoconferences, not all critical aspects can be dispelled.

Lastly, it could be worth mentioning that one of the Council of Europe's area of intervention aimed at preventing and reducing the excessive workload of courts⁴⁶. Since a long time, the Council of Europe envisaged the reassignment of the courts' non-contentious work (such as the management of business and land registers, the registration and certification of certain documents and the issuing of certain certificates) to other administrative authorities, notaries or other professionals. Such an alternative could be considered in regard to Latvian land registry offices, even if it cannot be neglected that their number is being consistently reduced (from 23 to 7) as from 1 March 2018.

⁴⁵ The brochure of the Court Administration "Progress = Employees + Innovations + Unity".

⁴⁶ See, in this sense, item II of the recommendation R(86)12 of the Committee of Ministers concerning measures to prevent and reduce the excessive workload in the courts, adopted on 16 September 1986.

Specialisation of judges

In the first stage of the evaluation process, it has been brought to the attention of the CEPEJ expert team that there is little specialisation amongst Latvian judges within the ordinary courts system, excluding the judges serving in the administrative courts and the land registry offices⁴⁷. This situation is mainly due to the fact that the court system of Latvia was formed of numerous small district (city) courts composed of few (3 to 7) judges who had to adjudicate a wide variety of cases. Therefore, in most of the first instance courts it was not feasible to have judges specialised in a typology of legal disputes or more.

During the meeting with the Court Administration and the President of the Regional Court of Riga (which is composed of 63 judges), the CEPEJ delegation learned that a minimum level of specialisation is possible in district or regional courts, depending on the number of judges serving in each of these courts, and based on a decision of the president of the court. However, the only level of specialisation mentioned was the dichotomy of civil and criminal law. With reference to this issue, the President of Riga Regional Court expressed the intention to specialise in “*commercial cases*” some judges appointed to the department of civil cases of this court.

During the meetings, the experts have also received valuable input from the representatives of prosecutors. It resulted that prosecutors are specialised in different fields of criminal law (such as cybercrime, financial crime, money laundering, etc.). Their opinion is that judges should also follow a similar specialisation in those fields for a better quality of justice.

Subsequently, the experts learned that the situation is evolving since the implementation of the reform of the judicial map has begun, as bigger district (city) courts are created by merging several smaller courts of first instance. According to the Ministry of Justice, one of the main goals of the on-going reform is to enhance the specialisation of judges within courts, which is equally encouraged by the Judicial Council (see the Decision n. 66, adopted on 17 October 2016, where specialisation in several detailed branches of civil, criminal and administrative law, listed in an annex, is considered as a mean to ensure an efficient case processing).

In the opinion of presidents of district (city) courts and regional courts (as they were consulted by Ministry of Justice), the main goals of the reform and an adequate level of specialisation may be achieved if each court is composed of approximately 30 judges.

Indeed, the medium-sized courts allow judges to enhance their specialisation, not only between the classical branches of civil and criminal law, but also in more specific branches, such as family law, labour law, company law and insolvency proceedings etc. In this regard, judges should be given the possibility, up to a certain extent, to choose the field in which they wish to specialise and further be able to attend appropriate specialisation trainings. The aforementioned Judicial Council’s Decision n. 66 affirms that specialisation of a judge is determined taking into account

⁴⁷ A certain temporary specialisation may be considered the case of “*investigating judges*”. The president of a regional court shall determine the district (city) courts in the territory of operation of his regional court in which an investigating judge must be appointed (for a period of 3 years), as well as the work schedule of investigating judges in the territory of operation of the regional court. A judge cannot review criminal matters concurrently with the performance of the duties of an investigating judge.

the organisation of the court as well as his working experience and specific knowledge. The role of the Court Administration and of the president of each court should be essential for a better coordination of the specialisation process, upon consultation with the judges concerned.

As a rule, the specialisation of judges, by enabling them to gain greater experience of certain areas of law and the litigation typically associated with them, can contribute to enhancing both the quality and speed of justice. However, a very rigid specialisation could determine some counter effects for the efficiency of a judicial system as well as for its impartiality (for the latter aspect, see for example the risks highlighted with regard to specialisation of courts, hereinabove). The case might be that the number of cases in a given specialisation is insufficient to justify the existence of specialised judges in that particular field. A solution to consider is that of assigning mixed agendas to the specialised judges, namely, also assigning them a certain number of “ordinary” cases if the incoming “specialised” cases were not enough to attain a balanced caseload per judge.

In this regard, a positive example of such a mixed agenda worth mentioning is the one functioning in Italy. Pursuant to the Legislative decree n. 168 of 2003, sections specialised on disputes related to industrial and intellectual property were created in several district courts (*tribunali*). Later on, the Legislative decree n. 1 of 2012 (ratified by the Law no. 27 of 2012) extended the jurisdiction of these sections (renamed “*district courts for companies*”) to disputes related to competition law, corporate law etc. Similar specialised sections operate at the level of courts of appeal. Despite the broader area of competence, these sections can also adjudicate “ordinary cases” upon the decision of the court president, as far as this assignment does not prejudice the speedy case-processing in the specialised areas.

c. Court mapping

As detailed above, there is a three-tiered court system in Latvia, adjudicating cases in civil and criminal matters (courts of general jurisdiction) and administrative matters (specialised jurisdiction): district (city) courts serve as the first instance courts; regional courts as appellate jurisdictions and the Supreme Court as the cassation instance.

As already mentioned, at the time of the first mission of the CEPEJ expert team for the purposes of this reporting (July 2017), in Latvia there are 27 district (city) courts, 6 regional courts and the Supreme Court. 26 district (city) courts are courts of general jurisdiction, 1 district court (consisting of 5 courthouses located in different regions of the country) has jurisdiction over administrative cases. Accordingly, 5 regional courts are courts of general jurisdiction, and 1 regional court has jurisdiction over administrative cases.

The composition of a district (city) court usually includes a land registry office the territory of operation of which corresponds to the territory of operation of the district (city) court. A district (city) court may also have divisions - courthouses, located within the territory of operation of the relevant district (city) court.

The Cabinet of Ministers decides on the territory of operation of district (city) courts, the relevant courthouses and land registry offices. Such decisions are taken in consultation with the

Judicial Council. Moreover, the CEPEJ team was informed that a district (city) court may be merged with another district (city) court only if the Judicial Council agrees to it.

Latvia is carrying out the reform of the judicial map by a transformation per regions, consisting in the unification of the jurisdictions of several smaller district (city) courts within the same region. Prior to the reform 65 % of all district (city) courts were particularly small and had 3-7 judges. 26 % of district (city) courts had 8-14 judges, and there were only three district (city) courts with more than 14 judges. Therefore, Latvia had a wide network of first instance courts in a rather small territory of the state. At the same time, those courts were rather small.

Another problem seems to be the uneven workload of courts/judge and, in particular, the overloading of Riga's city courts (both district and regional). According to the Ministry of Justice, 40 % of all civil cases in Latvia are in the jurisdiction of Riga city courts. A same situation has been underlined by the President of Regional Court of Riga. In this regard the Ministry of Justice increased from 2014 by 10 units the number of judges in the district courts of Riga. However, currently the main tool used to tackle the overload of Riga courts seems to be the transfer of cases from Riga jurisdictions to the district and regional courts of other regions.

The reform of the court map is being implemented gradually. Every next step is based on an overall analysis of the results of previous steps. The decision-making process involves inter-institutional coordination and individual assessment of specific courts to be reorganised. The geographical location of courts and land registry offices, density of the population, public transportation infrastructure, as well as other significant circumstances are taken into account. For example, the concentration of competences (court hearings) in criminal matters in a particular location (courthouse) depends on the location of most commonly involved law enforcement authorities – police and prosecutors.

From 1 May 2015, the City of Riga Central District Court was reorganised and merged with the City of Riga Vidzeme District Court. Likewise, Sigulda court and Jurmala Court were merged with the Riga District Court. Thus, the number of district courts in the territory of Regional Court of Riga was decreased from 10 to 7.

From 1 February 2016, the reform was introduced in the Latgale administrative region of Latvia. The number of district courts in the territory of the regional court of Latgale was decreased from 6 to 2.

From 1 February 2017, the City of Rīga Zemgale District Court was reorganised and merged with the City of Rīga Kurzeme District Court. The name of the resulting court is City of Rīga Pārdaugavas Court.

Starting from 15 January 2018, the City of Riga Northern District Court will be reorganised by joining it to the City of Riga Vidzeme District Court (which, in 2015 already merged with the City of Riga Central District Court).

From 1 February 2018, 4 courts and their land registry offices, namely Talsi District Court, Kuldīga District Court, Saldus District Court, and Ventspils Court will be absorbed by the Liepāja Court and its Land Registry Office, changing the name of the court to Kurzeme District Court and, accordingly, the Land Registry Office of Kurzeme District Court.

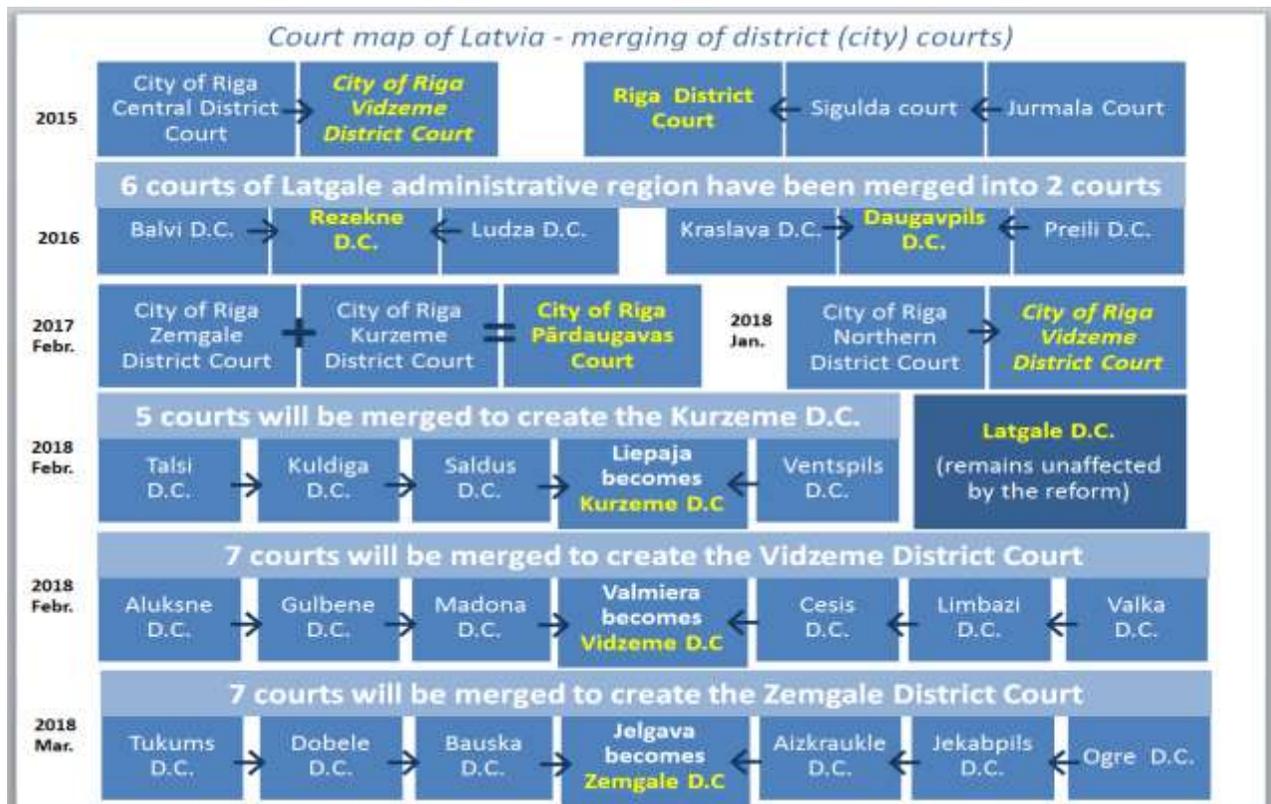
As from 15 February 2018, 6 courts and their land registry offices, namely Aluksne District Court, Gulbene District Court, Madona District, Cesis District Court, Limbazi District Court, and Valka District Court will be reorganised by joining the Valmiera District Court and Land Registry Office, and changing the name of the court to Vidzeme District Court and, accordingly, the Land Registry Office of Vidzeme District Court.

From 1 March 2018, other 6 courts and their land registry offices, namely Tukums District Court, Dobele District Court, Bauska District Court, Aizkraukle District Court, Jekabpils District Court, and Ogre District Court will be reorganised by joining the Jelgava Court and Land Registry Office, and changing the name of the court to Zemgale District Court and, accordingly, Land Registry Office of Zemgale District Court.

Therefore, it is planned to create one “parental” court in each enlarged court district, except in Riga, ensuring the functioning of this court in all locations of the former courts of the enlarged district. A similar solution is provided for the land registry offices – one land registry office, ensuring its operation in all locations of previous land registry offices of the enlarged district. Riga district will have four district courts – City of Riga Pārdaugava Court, City of Riga Vidzeme District Court, City of Riga Latgale District Court and Riga District Court. The City of Riga Vidzeme District Court is involved in the reorganisation twice, in 2015 and in 2017, while the Latgale District Court will not be affected by the reorganisation.

The project is led by the Ministry of Justice, according to which the mapping reform of courts in Latvia will be completed in 2018. As a result, 34 district courts which existed in 2015 will be gradually reorganised into 9 district courts (see the *Figure 5* below).

Figure 5: Progress of court map reform since 2015 (district courts of general jurisdiction)



Concluding remarks on the judicial system and court organisation

In general

1. The judicial system of Latvia offers, within the reformed three-tier system of courts, the necessary standards of protection of rights, recognising the right to exercise appeals and appeals on points of law.
2. Underlying challenges to judicial independence and high expectations by the Latvian society in regard to the judiciary drive towards further improvements in the organisation and functioning of the judiciary. The current situation should be carefully analysed in order to identify areas in which legislative, institutional, organisational and other possible measures may lead to improved judicial independence and impartiality, to more efficient courts and better access to justice overall.
3. In this regard, the CEPEJ team supports the approach to inclusive consultations in designing proposals for future policies, taken by the Presidential Legal Enhancement Commission, and the recommendations contained in its report *“On improvement of the work of the Council for the Judiciary”*.
4. Where the Minister or the Ministry of Justice currently exercise the role of an *“intermediary”* between the Judicial Council or other judicial self-governing bodies, on the one hand, and the *Saeima* or other public authorities, on the other hand, this role should be carefully re-evaluated. If the Minister/Ministry does not have any discretionary power, and in many related issues it should not have, its involvement may raise misunderstandings and suspicions of interference with judicial independence.

Judicial Council

5. The Ministry of Justice has developed amendments to assign new competences to the Judicial Council, in order to strengthen the independence of the judiciary and reduce the influence of the executive and legislative powers on the career of judges. The experts believe that the adoption of such amendments would significantly improve the situation regarding the independence of judges. During the process, it will certainly be useful to seek inspiration from the provisions of the CCJE Opinion n°10 (2007) on Council for the Judiciary in the service of society.
6. The composition of the Judicial Council is not fully in compliance with Council of Europe recommendations. The number of *ex officio* members of the Judicial Council is too high and can be reviewed in favour increasing the share of judges elected by their peers.
7. Selection/evaluation of candidates for judicial offices, and evaluation of judges, should be matters of judicial self-governance. To handle them properly, the Judicial Council and other bodies involved should have appropriate resources and administrative support.

8. To increase the independence of the judiciary, one might consider the possibility that the Judicial Council is entitled to be represented and heard during the discussions with the *Saeima's* finance committee, if it is not the case yet.
9. It might be useful for the Judicial Council to sit with representatives of the judges' associations and discuss the priorities of the judicial community and the matters which are of particular interest for these associations.

Commissions for the Selection of Candidates to the Office of a Judge

10. The status, composition, and the way of appointing members of the Commissions for the Selection of Candidates to the Office of a Judge do not comply with Council of Europe recommendations. The matter is under revision and the reform of the system of selection, training, evaluation and appointment of judges is underway.

Specialised courts

11. In line with the European trend, specialised courts operate in Latvia's judicial system. A particularly positive feedback has been provided in regard to the judicial activity and the quality of the decisions delivered by administrative courts.
12. Given the risk that interpretation and application of the law by specialised courts might appear to be influenced by considerations of political expediency or budgetary affordability, it is essential to consolidate their independence and impartiality.
13. The specialisation process should take into account the preferences of judges and the need for appropriate trainings. In assigning judges to a specialised branch/section in a court, appropriate measure should be adopted in order to secure their independence. In the absence of any arrangements for rotation or alternation, measures should be taken in order to prevent that a judge's permanent assignment to the same specialised court or division undermines his impartiality.
14. With reference to specialised courts with nation-wide jurisdiction over a very specific category of legal disputes, attention should be paid to ensure accessibility to these courts, bearing in mind their geographical location in the country.

Reorganisation of the judicial map

15. The reorganisation of the judicial map is a positive step towards a better distribution of the workload and resources throughout the judicial system of the country. The on-going reform of the judicial map and in particular, the creation of medium-sized courts, should allow a deeper specialisation of judges. The CEPEJ experts appreciate positively the policy of step-by-step reorganisation of courts, adopted by the Latvian authorities.

B. Judges and judicial staff

The CEPEJ team would like to start this chapter by emphasising once more that judicial independence is a pre-requisite for safeguarding the rule of law and the fundamental guarantee of a fair trial. The CCJE perceptively indicated in its opinions that judicial independence can be compromised by various matters which may have an adverse impact on the administration of justice⁴⁸, such as problems concerning the selection and appointment⁴⁹, initial and in-service training of judges⁵⁰, unsatisfactory elements regarding the organisation of the judiciary and the possible civil and criminal liability of judges⁵¹, but also the lack of financial resources⁵². As already mentioned in this report, the independence of individual judges is safeguarded by the independence of the judiciary as a whole⁵³. Therefore, the part of this report dedicated to guarantees for judges' independence and impartiality shall be read in conjunction with the considerations on the institutional independence of the judiciary, as commented in section A.a. above or other parts of the report.

Statistical data

In 2014, in Latvia there were 488 professional judges, or 24.38 judges per 100'000 inhabitants (they were around 21 in 2010), while the European median was of 18.45 judges. The non-judge staff rate, including assistants, secretaries and technical employees – and also the specific sections of the Supreme Court e.g. in charge of compilation, analysis and publication of court opinions – was of 78.84 per 100'000 inhabitants (71.8 in 2010), while the European median was of 55.33. Non-judge staff per judge: 3,4 in 2010, 3,4 in 2012, and 3,5 in 2014, quite equal to European average.⁵⁴

In comparison with other European countries, there seems to be no shortage of judges and support staff in the Latvian judicial system.⁵⁵

a. Selection, appointment and career of judges

As the Venice Commission emphasised in its *“Report on the independence of the judicial system. Part I: The independence of judges”*⁵⁶:

⁴⁸ See the CCJE Magna Carta of Judges (2010), §§ 3 and 4.

⁴⁹ See the CCJE Opinion No. 1(2001) on standards concerning the independence of the judiciary and the irremovability of judges, §§ 20, 25, 37, 45 etc.

⁵⁰ See the CCJE Opinion No. 4(2003) on training for judges, §§ 4, 8, 14 and 23-37.

⁵¹ See the CCJE Opinion No. 3(2002) on ethics and liability of judges, § 51.

⁵² See the CCJE Opinion No. 2(2001) on the funding and management of courts, § 2.

⁵³ See the [Council of Europe Recommendation CM/Rec\(2010\)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities](#), p. 4

⁵⁴ See the CEPEJ-STAT Database, <https://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/STAT/default.asp>

⁵⁵ In comparing the number of judges in Latvia with other European countries, the specificity of Latvian land registry offices belonging to the court system should be taken into consideration, as well as the special category of judges working in these offices.

⁵⁶ *“Report on the independence of the judicial system. Part I: The independence of judges”*, adopted by the Venice Commission on 16 March 2010, pp. 7-8.

“7. The independence of the judges and – as a consequence – the reputation of the judiciary in a given society depends on many factors. In addition to the institutional rules guaranteeing independence, the personal character and the professional quality of the individual judge deciding a case are of major importance. The legal culture as a whole is also important.

8. Institutional rules have to be designed in such a way as to guarantee the selection of highly qualified and personally reliable judges and to define settings in which judges can work without being unduly subjected to external influence.”

According to the Report *“Challenges for judicial independence and impartiality in the member states of the Council of Europe”*⁵⁷, there are different appointment (including selection) procedures of judges and prosecutors in the Council of Europe member states. These include, for example: appointment by a Council for the Judiciary or another independent body, election by parliament and appointment by the executive. Each system has its advantages and disadvantages. The report shows that formal rules and Councils for the Judiciary have been introduced in the member states to safeguard the independence of judges and prosecutors. As welcome as such developments are, formal rules alone do not guarantee that appointment decisions are taken impartially, according to objective criteria and free from political influence. The influence of the executive and legislative on appointment decisions should be limited in order to prevent appointments for political reasons. Elections by parliament carry the risk of a politicisation of judges and prosecutors.

Section 51 *“Nomination Requirements for a Judge”* of the Law on the Judicial Power evokes the principles of the procedure of selection of candidates to judicial offices, as well as the main requirements towards the candidates. It refers to such principles as non-discrimination and competitive selection procedure.

After being amended on 18 January 2018, Section 51, § (1) enumerates the following general conditions to which a judicial candidate shall correspond:

“(1) As a judge of a district (city) court may be appointed a person who meets the following minimum requirements:

- 1) is a Latvian citizen;*
- 2) is fluent in the official language at the highest level;*
- 3) has acquired a higher vocational or academic education (except the first level vocational education) and a lawyer qualification, as well as a Master or Doctor degree;*
- 4) has an excellent reputation;*
- 5) has attained at least 30 years of age.*

Further on, Section 52 sets additional conditions for becoming a judge of a district (city) court:

“As a judge of a district (city) court may be appointed a person who:

⁵⁷ [Report “Challenges for judicial independence and impartiality in the member states of the Council of Europe”](#), prepared jointly by the Bureau of the CCJE and the Bureau of the CCPE for the attention of the Secretary General of the Council of Europe, 24 March 2016 (SG/Inf(2016)3rev), p. 9

- 1) *has at least five years length of service in a legal specialty after acquiring a lawyer qualification or has been working in position of assistant to a president of court or assistant to a judge for at least five years;*
- 2) *passed a qualification examination;*
- 3) *meets the requirements of paragraph one of Section 51 of this Law."*

At the same time, Section 55 *"Persons who may not become candidates for a position of a judge"*, on the contrary, provides for the exclusion criteria (also amended on 18 January 2018);

"A candidate for a judge may not be a person:

- 1) *who has been previously convicted of committing a criminal offence (irrespective of whether the conviction has been extinguished or set aside);*
- 2) *who has previously committed a criminal offence, but has been released from serving the sentence in connection with the expiration of a limitation period, amnesty, or clemency;*
- 3) *against whom the criminal proceedings have been terminated on a non-rehabilitative basis;*
- 4) *against whom a criminal prosecution has been commenced;*
- 5) *who has been declared insolvent as a natural person and five years have elapsed since the date of termination thereof;*
- 6) *who has acquired the status of a debtor in accordance to the Law on the Guarantee Fund;*
- 7) *who is or have been employed in staff positions or as supernumeraries of the State Security Committee of the USSR or the Latvian S.S.R., the Ministry of Defence of the USSR, or the state security service, army intelligence service or counter-intelligence service of a foreign country, or as an agent, resident or safehouse keeper of the aforementioned institutions;*
- 8) *who is or have been a participant (member) of organisations which are prohibited by the laws of the Republic of Latvia, decisions of the Supreme Council, or adjudications of a court, after the prohibition of such organisations;*
- 9) *who have been removed from the office of a judge, sworn bailiff, assistant of sworn bailiff, sworn notary, assistant of a sworn notary, excluded from the number of sworn advocates or assistants of sworn advocates or dismissed from the position of a prosecutor on the basis of a decision in a disciplinary matter and five years have not been passed from the coming into force of the decision taken in a disciplinary matter."*

In the CEPEJ experts' opinion, there are obviously good reasons to avoid that those persons who have been recognised guilty of criminal offences can become judges. The experts are not familiar with the Latvian criminal law, in particular with the classification of offences under this law and what offences are deemed *"criminal"* or are attributed to other categories, such as administrative offences. But, if the provisions in §§ 1-3 of Section 55 would prevent persons who, in their young age, for example, have been proven guilty of some minor offences, from a career in the judiciary for just this reason, then they might possibly be considered as unnecessarily harsh. With regard to the exclusion of persons against whom a criminal prosecution has been commenced (§ 4), one may ask if it would not be reasonable to consider the matter in a case-by-case approach. Quite obviously, some criminal proceedings end with the case being dropped or with an acquittal in court; it also happens that prosecutions take time before a person can

finally be cleared.⁵⁸ Therefore, it is possible that a candidate is in fact under investigation, but a clearance is in sight. Should that prevent this candidate from being considered? The CEPEJ experts are aware that these are difficult issues and that there is an important public interest for the judges to be and to be regarded as persons beyond reproach, but these specific provisions are perceived as too rigid and, maybe, they could be reconsidered.

The Law on the Judicial Power says, in its Section 57, that *“The Minister of Justice shall nominate candidates to be appointed to or confirmed in the office of a judge of the district (city) court or of a judge of a regional court on the basis of the opinion of the Judicial Qualification Committee”*. It is also recognised that, at the moment of the assessment, the selection proceedings are conducted by the Commissions for the Selection of Candidates to the Office of a Judge.

According to § 3 in Section 51, *“Pursuant to the recommendation of the Minister of Justice and the Chief Justice of the Supreme Court, the Judicial Council shall approve the competition by-law”*. In the § 4 of Section 52, under the wording before amendments of 18 January 2018, it was stated that *“The Cabinet shall determine the procedures by which candidates for the position of a judge shall be selected, apprentice and take qualification examinations”*. When assessing these provisions, it was hard for the CEPEJ expert team to understand why the legislator entrusted to the Judicial Council to approve the *“competition by-law”* and to the Cabinet to adopt the *“procedures by which candidates for the position of a judge shall be selected”*. The expert team had access to the English translation of the Cabinet of Ministers’ Regulation No. 204 of 3 March 2009 *“Procedures for the Selection, Apprenticeship and Taking of Qualification Examination of a Candidate to the Office of a Judge”* (Regulation no. 204). In addition, it was informed of the *Regulation on the Competition for Selection of a Judge of a District (City) Court and a Regional Court* (of 10 January 2012) and the *Regulation on the Open Competition for Selection of Candidates to the Office of a Judge of the Supreme Court* (of 27 September 2011), both approved by the Judicial Council⁵⁹.

Now the provisions cited in the paragraph above have been replaced by the wording of §§ (1) of Sections 54/1 and 54/2, which give to the Judicial Council to authority to determine the procedure for selection, traineeship and qualification examinations for a candidate judge of a district (city) court, regional court, and Supreme Court. It seems that the latest amendments will lead to the replacement of the Cabinet of Ministers’ Regulation no. 204 by regulations to be adopted by the Judicial Council, which may be viewed as a positive development by the CEPEJ team. If this will be the case, the observations below on the regulation in force at the moment of the assessment and its implementation may be useful to the Judicial Council when adopting the new regulations.

The Regulation no. 204 starts by *“General Provisions”* in which it states:

⁵⁸ See also the reasons, explained in *Section B.b.*, for not allowing an automatic suspension of judges in case they become subject of the *“right to defence in criminal proceedings”*, meaning that a criminal prosecution was commenced in their regard.

⁵⁹ These two regulations provide for the rules of competition between judges for filling in vacant positions in district (city), regional courts, and the Supreme Court. They are available in Latvian language on www.at.gov.lv

“1. The Regulation prescribes the procedures for the selection, apprenticeship and taking of qualification examination of a candidate nominated for the first time to the office of a regional court, district (city) court and land registry office judge (hereinafter – candidate to the office of a judge).

2. The Court Administration (hereinafter – the Administration) shall ensure the course of selection and apprenticeship of a candidate to the office of a judge.”

In this Regulation the procedure is prescribed in detail. This promotes the equal treatment of all candidates and reduces the risk of unfairness, but makes the procedure complex, lengthy and somehow inflexible.

The procedure is extensive and therefore lengthy. It consists of:

1. a structured interview evaluating the following skills of the candidates (§ 20):

“20.1. to obtain and analyse information in order to make justified conclusions;

20.2. to take decisions, assessing the information and using different approaches for resolving a problem;

20.3. to explain and convince of own opinion;

20.4. to analyse own actions and listen to criticism;

20.5. to find a compromise in problem situations;

20.6. to maintain emotional balance in stressful situations.”

2. a professional preparedness test (§ 26), taken in writing and consisting of a test (30 questions) and presentation/presentation of an essay (max. 3 pages, on the topic determined by the Commission). Tested is, in respect of the candidate of the office of a judge (§ 30):

“30.1. general erudition and legal logics;

30.2. basic knowledge in the following fields:

30.2.1. administrative law;

30.2.2. European Union law;

30.2.3. theory of law;

30.2.4. judicial system.”

3. an apprenticeship in a State administration institution, a court or a land registry office (§ 58);

4. a qualification examination (§ 68) *“during which the knowledge of the candidate to the office of a judge in respect of laws and regulations governing administrative proceedings, civil proceedings, criminal proceedings or the functioning of the land registry offices shall be tested, according to the office of a judge the candidate is applying for.”*

The CEPEJ expert team has no indications that the procedure does not meet the requirements of the CoE Recommendation on Judges, in particular those of § 44: *“Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.”* It seems that usually there are as many as ten candidates for each announced vacancy.

Whether in practice the concrete selection procedures and qualification examinations of candidates follow objective criteria and are based on the same standards of professional

competence or other relevant merits is to be judged by the Latvian society. The experts could not draw a clear conclusion based on the fact that the “*evaluation commissions*” which perform the selection of successful judicial candidates and propose their further nomination, are composed on an *ad hoc* basis. This means that there are, in fact, many such commissions, composed by different persons nominated by the same institutions, but on the occasion of selecting candidates for different courts, or, in other words, there are different compositions examining candidates for different courts. It may be supposed that, for the objective reason of comprising different members, the commissions may possibly not apply exactly the same exigencies and evaluation standards to all the candidates for judicial offices, but, at least, all candidates for the same judicial office shall be evaluated by the same commission.

It is of the utmost importance to be able to attract suitable candidates. The procedure should not deter them. The length of the procedure applied in Latvia is a factor that may discourage candidates from applying for the office of a judge. Until the very end of the procedure it is uncertain whether the candidate will indeed be appointed or not.

Of course, many aspects influence whether or not it is attractive to apply for the office of a judge, like the salary, the location, the quality of the staff and working conditions in general. The expert team was informed that the salary of a Latvian judge is quite low, also in comparison with the salaries of civil servants outside the judiciary, and that quality of the staff – speaking in particular of judges’ assistants – is not always as good as it should be. In the replies provided by judges to the Questionnaire “*Ensuring the independence of the judiciary and impartiality of judges in Latvia*”, 90 % of respondents were of the opinion that the remuneration of judges is not commensurate with their profession and responsibilities and does not guarantee judges’ independence, nor shield them from inducement to corruption. The remaining 10 % of respondents believed that the current remuneration is only partially “*commensurate*”. Relevant may be that some comments referred to the fact that low remuneration is impacting in particular the male population, and that such wages will lead to “*a complete withdrawal of men from the judicial system*”. Obviously the CEPEJ expert team would like to warn against gender-based discrimination in admission to judicial positions, career or remuneration, but, at the same time, any serious gender disbalance has to be observed and addressed, taking into account specific circumstances. Although these topics are outside the scope of the present evaluation, they should be analysed and proper conclusions should be drawn.

The length of the selection and appointment procedure (it has been reported that it takes about a year) is also detrimental to the courts and the land registry offices, especially since the procedure starts only after a vacancy has materialised. Therefore it takes a long time before a vacancy is fulfilled.

In the judiciary there will certainly be a number of judges leaving office every year. Therefore it is foreseeable that a number of vacancies will materialise. We advise to set up a new system which ensures that vacancies are filled in as soon as possible, without unnecessary delays. This will promote a smooth operation of the courts. Under this new system a sufficient number of candidate judges should be selected (and trained, if deemed necessary) each year to fill in the upcoming vacancies. Statistical data should be available in order to determine approximately the number of judges that will have to be replaced. This means that candidates should be able

to enter the procedure before having applied for a certain office of a judge. And, to the extent possible, the procedure should be streamlined and be as compact as possible.

If the candidate passes the selection procedure successfully, the *Saeima* decides on the appointment of the candidate. As long as this is not a politically inspired decision, the involvement of the *Saeima* raises no concerns.

According to the representatives of judges' associations, too many representatives of the executive power are participating in the selection of judges. Despite the fact that several bodies participate in this process, the representatives of judges' associations underlined that the crucial role is played by the Commissions for the selection of candidates, which are established by the Director of Court Administration, who also appoints the chairpersons of these Commissions.

Furthermore, several judges met by the CEPEJ expert team doubted the qualification and skills of the public servants (other than judges) sitting in these Commissions. According to them, there may be situations when someone who used to be a judge's assistant was later employed by the Court Administration/Ministry of Justice and became member of the Selection Commission. Such a situation would not automatically raise doubts as to the qualification of a member of the Selection Commission, but the opinion of judges in such a sensitive matter as their selection and appointment must be given proper consideration.

To summarise, the outline of judges' selection process looks as follows:

- the vacancy is announced the official Gazette of the Government of Latvia and on the Internet (not per each court, but nationally);
- the candidates who meet the requirements prescribed by law are admitted to the competition;
- the candidates pass a structured interview and a test of the professional preparedness, carried out by the Commission for evaluation, aiming at evaluating the conformity of their skills with fulfilment of the duties of the office of a judge and the professional knowledge of the candidates. The subjects are based on civil, criminal, and administrative law, European Union law, theory of law and judicial organisation;
- as a result of the test and interview, the Commission for evaluation establishes the candidate who has acquired the top score in the selection, as well as a list of candidates⁶⁰ which scored a certain minimum of points and are apt to the judicial office ("*qualified candidates*") and submits the results to the Judicial Qualification Committee;
- the candidate who has acquired the top score has to undergo a period of compulsory apprenticeship (either within a court or another public administration), upon the proposal of the Judicial Qualification Committee;
- at the end of this apprenticeship, the candidate is evaluated by the Judicial Qualification Committee, through the qualification examination (an oral examination) which consists of two specific questions and the discussion of a judicial case. During the qualification examination, the knowledge of the candidate in respect of laws and regulations governing

⁶⁰ The "*function*" of this list is not totally clear, as only the best candidate is entering the next phase of training/apprenticeship.

administrative proceedings, civil proceedings, criminal proceedings or the functioning of land registry offices shall be tested, according to the office of a judge the candidate is applying for. The candidate has no less than one hour to prepare his presentation;

- the candidates who are positively evaluated are submitted to the Minister of Justice, together with the opinion of the Judicial Qualification Committee in respect of their professional preparedness;
- the candidates are finally appointed by the *Saeima*, upon a proposal submitted by the Minister of Justice;
- the Judicial Council determines the specific court or courthouse in which the newly appointed judge will sit.

As the judges of district (city) courts are initially appointed for a 3-year term, at the end of this period their work is evaluated by the Judicial Qualifications Committee. The *Saeima*, upon the proposal of the Minister of Justice and on the basis of the opinion of the Judicial Qualification Committee on the professional work of the judge, shall confirm him in office for an unlimited term, or shall re-appoint him to office for a period of up to two years.

The Law on the Judicial Power provides for a number of special requirements towards the candidates to appointment as judges of regional courts (Section 53) and as judges of the Supreme Court (Section 54). It is worth mentioning that to the office of a judge of regional courts or of the Supreme Court may also apply, exceptionally, persons who do not have previous experience in the office of a judge, but have an important professional experience (10-15 years) as an academic personnel or in other legal professions expressly specified, and have passed the qualification examination.

The judges to regional courts shall be appointed to or confirmed in the office by the *Saeima*, upon a proposal of the Minister of Justice, on the basis of the opinion of the Judicial Qualification Committee, for an unlimited term of office (Section 57 and 61). On the basis of the decision by the *Saeima* regarding the confirmation of a judge to the office of a regional court, the Judicial Council shall determine the specific regional court or courthouse in which the duties of a judge are to be performed.

Judges of the Supreme Court shall be confirmed in office for an unlimited term by the *Saeima*, upon the proposal of the Chief Justice of the Supreme Court, on the basis of an opinion of the relevant Department of the Supreme Court – before the amendments of 18 January 2018, this opinion was issued by the Judicial Qualification Committee (Section 59 and 62).

In general, the procedure of selection and appointment of judges raises several questions. The first question is related to the mere approach to judicial appointments for an initial “probationary” term. European practice is generally to make full-time appointments until the legal retirement age. This is the approach least problematic from the viewpoint of independence. Nevertheless, the UN basic principles on the independence of the judiciary (1985), the Recommendation on Judges and the European Charter on the statute for judges (1998) all refer to the possibility of appointment for a fixed legal term, rather than until a legal retirement age. This solution is often applied in countries with relatively new judicial systems, where there might be a practical need to first ascertain whether a judge is really able to carry out his functions effectively before permanent appointment. If probationary appointments are

considered indispensable, a refusal to confirm the judge in office should be made according to objective criteria and with the same procedural safeguards as those which apply in cases where a judge is to be removed from office.⁶¹

The second concern is related to the possibility to further extend the probationary period for another 2-year term. This possibility enhances the risks, if not of political interference *per se*, at least of the perception of its expression. The CEPEJ expert team was not informed whether such cases existed in the practice of judicial appointments of Latvia. It might well be an embarrassing situation for the judiciary and the concerned judge, as well as for the *Saeima* which would have to take such a decision.

The third concern and question is why the Minister of Justice should act as an “*intermediary*” between the *Saeima* and the Judicial Qualifications Committee in the procedure of nomination and confirmation of the judicial appointments. Can the Minister refuse the referral of the opinion of the Committee to the *Saeima* or make a separate opinion on the merits of judicial candidates, or on the qualification and work of the judge to be reappointed? If the answer is “yes”, this situation may lead to an interference of the executive, which would hardly be acceptable.

The Law on the Judicial Power regulates also the procedures of appointment of presidents and deputy presidents of courts/courthouses and land registry offices, and of suspension, transfers and substitution of judges of different levels, including those in managing positions.

Before the amendments of 18 January 2018, the presidents and deputy presidents of district (city) courts and of regional courts, the presidents of courthouses, the heads and deputy heads of land registry offices were all appointed by the Minister of Justice, for 5-year term (renewable only once). In the same way, the Minister of Justice may have revoked the above mentioned court officials from the managerial positions, before the end of the term, pursuant to their own request, or if they had committed flagrant violations during the performance of their duties of office, or are unable to ensure the qualitative management of the administrative work of the court. According to the new wording of Sections 33 § (2), and 40 § (2) of the Law on the Judicial Power, it is now the Judicial Council which, (still) acting upon a proposal of the Minister of Justice, shall appoint for 5 years the above mentioned court officials, or may revoke them for reasons already cited.

Chapter 11 of the Law on the Judicial Power regulates the “*Procedures for the Transfer and Substitution of Judges*”. The transfer of judges may be operated between courts or courthouses of the same level (Section 73/1, § (1)), to a court or courthouse of a higher level (Section 73/1, § (2), or to a court of a lower level (Section 73/1, § (2/1)).

Upon a proposal by the Minister of Justice and on the basis of a favourable opinion from the Judicial Qualification Committee, the Judicial Council shall decide regarding the transfer of a judge to a court or courthouse of the same level. As the on-going reform of the judicial map resulted in emerging of courts with several courthouses – separate place of performance of the

⁶¹ [Report on “Judicial appointments”, adopted by the Venice Commission at its 70th Plenary Session](#), 16-17 March 2007, pp. 41

judicial function, a new Section 73/3 “*Transfer of a judge within the jurisdiction of the court*” was introduced in the Law, with the following wording: “*The Council of Justice, upon a proposal from the Minister of Justice, decides on the transfer of a judge to another place of performance of a judge's position within the territory of the court, if the judge gave his consent.*”

The amendments of 18 January 2018 gave to the Judicial Council also the power to decide (before it only made proposals to the *Saeima*), on the basis of a favourable opinion from the Judicial Qualification Committee, on the transfer of a judge to a court or courthouse of a higher level (Section 73/1, § (2)). This may be a significant step in increasing the judicial independence and self-governing, but a question may be raised as to the coordination between this provision and those of Section 57, 59 and 61-62 of the Law on the Judicial Power.

In both cases described above (transfer to courts/courthouses of the same level or of a higher level), the law enumerates the situations when, prior to the provision of an opinion on the transfer, the Judicial Qualification Committee shall perform the extraordinary evaluation of the professional work of judges proposed for transfer. Except there is a problem of translation in the English version of the Law on the Judicial Power available to the expert, the specification of cases when the Judicial Qualification Committee shall conduct an extraordinary evaluation of judges intended for transfer to a court of a higher level seems inadequate, as it is hard to imagine when and why the Committee would give such an opinion on the transfer to a higher court without conducting the extraordinary evaluation of the candidate. Another inconsistency seems to appear after the law was amended recently. As a consequence, on the transfer of judges between the court of the same level the Judicial Council shall act upon a proposal by the Minister of Justice, while on transfers to courts of higher (or lower⁶²) level, the Judicial Council does not need a proposal from the Minister. One can imagine that the intention was to leave all the decisions on transfers exclusively to the Judicial Council and the Judicial Qualification Committee.

During the evaluation exercise and related meetings, the CEPEJ team indicated on the inconsistency of the procedure when the *Saeima* had to intervene with a formal decision in case of a voluntary transfer of a judge to a lower court. Notably, this issue has been eliminated by the amendments of January 2018

An important role in the transfer of judges is played by the Judicial Qualification Committee, which conducts the extraordinary evaluation of the professional work of the judge to be transferred to a court or courthouse of the same level or a higher court, taking into account his performance (also as concerns the quality of the judgements) and the results of a written examination. The Judicial Qualification Committee's representatives explained that the candidates shall draft a paper on an assigned topic and present it to the Committee. If several candidates who have received a favourable opinion of the Judicial Qualification Committee for transfer apply for the same vacant position, the Judicial Qualification Committee shall take a reasoned decision and choose the most suitable candidate. Before the latest amendments, the committee's representatives mentioned that the committee's proposals to the Judicial Council

⁶² According to the amended Section 73/1, § (2/1) of the Law on the Judicial Power, the transfer of a judge to a court of a lower level, if he has given a written consent, will also be decided by the Judicial Council.

were not reasoned and that the final decision had to be adopted by Judicial Council. The decisions of the Judicial Council in this field were not subjected to a judicial review. Once more, the situation changed as a result of the January 2018 amendments, as any judge who is subject of a decision of the Judicial Council on the nomination for appointment, promotion, transfer or dismissal from the office can appeal this decision to the Disciplinary Court (new Section 89/12 of the Law on the Judicial Power).

During the time of a temporary absence (illness, vacation or other) of a president of a district (city) court (courthouse, land registry office), the deputy president shall substitute for him. If a deputy president of court or a deputy head of a land registry office has not been appointed, or the concerned person is also temporarily absent, one of the judges of this court/land registry office shall be assigned by an order of the Minister for Justice, to substitute for the president of the court or head of the land registry office (Section 74 § (2)). At the level of the Supreme Court and of regional courts, this substitution is decided by the Chief Justice of the Supreme Court and the presidents of the regional courts, respectively (Sections 76 § (2) and 78§ (2)).

Sections 75, 77 and 79 regulate the procedure of substitution, in cases of vacancy or temporary absence of judges, by assigning for a period not exceeding 2 years judges from other courts, upon their written consent. Under this procedure, judges may temporarily substitute even their colleagues from higher courts (within the limit of one step of jurisdiction). This procedure probably gives some flexibility to the court management in view of helping the courts overburdened as a result of temporary, but still pressing, absence of some judges.

In concluding this part of the analysis of the status of judges, it should be mentioned that Section 84 of the Law on the Judicial Power regulates the suspension of a judge from the office. In case of disciplinary proceedings initiated against district (city) court and regional court judges, the decision on their suspension is taken by the Minister of Justice, while in case of Supreme Court judges the Chief Justice will decide. In both situations such a decision can be taken only upon the receipt of a proposal from the Judicial Disciplinary Committee.

Apparently, if a judge receives the procedural status of “*a person who has the right to defence in criminal proceedings*”, the suspension from the office is automatic. At least, this is how the experts interpret § (3) of Section 84. If this is so, it is recommend to review this rule and to allow a case-by-case consideration, preferably by a judicial self-governing body, of the concrete circumstances and the adequacy of the reasons for suspending a judge from the office. This would be a good safeguard because, unfortunately, cases are being signalled in some Council of Europe member states when criminal proceedings are misused and even convictions are passed under suspicious circumstances, often in order to interfere with judicial independence and impartiality, with professional or political careers, or to otherwise damage the reputation of a person.⁶³

⁶³ See, for example, pp. 210 301, 302 of the [Report “Challenges for judicial independence and impartiality in the member states of the Council of Europe”](#), p. 45 of the [Explanatory memorandum](#) to the Resolution 2188 (2017) of the Parliamentary Assembly of the Council of Europe [“New threats to the rule of law in Council of Europe member](#)

The procedures of appointment of court leadership, of transfer/substitution and suspension of judges do not raise serious concerns. At the same time, having in mind the presence and the competences of judicial self-governing bodies, especially of the Judicial Qualification Committee and the Judicial Council, and even though the amendments of January 2018 already excluded many of previous concerns and increased the role of judicial self-governing, it is still not totally clear why the Minister of Justice is left with the role of an “intermediary” between them (see, for example, §§ (1) and (3) of Section 73/1, Sections 75 § (1), 77 §§ (1) and (2) etc.), or even of a formal decision maker (see, for example, Section 74 § (2), or Section 84 § (1) of the Law on the Judicial Power).

b. Initial and continuous training of judges

Training of judges is important to maintain and improve the quality of the judiciary. Training is also one of the elements to support the efficiency of courts, along with other factors. According to the Recommendation on Judges, §§ 56 and 57:

“56. Judges should be provided with theoretical and practical initial and in-service training, entirely funded by the state. This should include economic, social and cultural issues related to the exercise of judicial functions. The intensity and duration of such training should be determined in the light of previous professional experience.

57. An independent authority should ensure, in full compliance with educational autonomy, that initial and in-service training programmes meet the requirements of openness, competence and impartiality inherent in judicial office.”

The Latvian Judicial Training Centre (LJTC)⁶⁴ was founded in 1995 by the Latvian Association of Judges, Riga Graduate School of Law, UNDP and Soros Foundation Latvia. The Judicial Training Centre is not a public institution. It has the status of a foundation (non-profit organisation)⁶⁵ and is led by a Council of 7 members. Currently these are the representatives of the founders – Open Society DOTS (previously Soros Foundation – Latvia) and Riga Graduate School of Law –, representatives of the Court Administration (Director) and of the Ministry of Justice (Deputy State Secretary for Judicial Matters), and 3 judges (from the Supreme Court, Riga City Latgale District Court and one delegate from the Latvian Association of Judges). It can be noticed that judges are not holding a majority vote in the Judicial Training Centre’s Council. Besides, the question of a possible conflict of interests may be raised, if one remembers that the Court

states: selected examples”, and pp. 36, 39, 41 and 48 of the CCJE *“Situation Report on the judiciary and judges in the Council of Europe member states”* (CCJE(2015)3).

⁶⁴ See the webpage of the Latvian Judicial Training Centre, <https://www.ltmc.lv/en/about-us>

⁶⁵ According to the Director of the LJTC, Ms Ilona Kronberga, the legal status of the LJTC has been formed historically and, in general, it gives a number of advantages to the independence of the judiciary’s teaching process and the influence of the executive in this process. Also according to Ms Kronberga, the current status of the LJTC:

- (a) is in accordance with the procedures for participation in the Law on State Administration Structure;
- (b) provides flexibility in the organisation of the teaching process;
- (c) enables the public administration to attract various service providers, thus ensuring the diversity and quality of the teaching process.

Administration and the Ministry of Justice, being represented in the Council, provide the budget for implementation of the programme for training of judges and court staff.

In accordance with the statutory provisions, the Centre has an advisory body called the Curriculum Development Working Group (CDWG), the composition of which is reviewed and approved annually by the Centre's Council, before the development of the new programme. Currently the CDWG is composed of three sub-groups (civil law, criminal law and administrative law) the members of which are judges. It is assumed that this Curriculum Development Working Group, being composed of judges, bears the responsibility for developing and "*defending*" the training programme, which is a positive thing. It was mentioned that the CDWG, developing the new programmes, *de facto* adopts the content of programmes.

If financing for implementation of judicial training programmes comes mainly from the state budget and the executive should have a say in how the public money is going to be spent, the approval of training programmes for judges and court staff should be in the competence of judicial self-governing. Appreciably, after amendments of 18 January 2018, the Judicial Council approves the content of the training programme for judges, courts' and land registries' staff, upon the proposal of the Chief Justice of the Supreme Court or the Minister of Justice (Section 89/11, § (9/2)). According to the Director of the Centre, "*there is no doubt that the fact that the curriculum will be approved by the Council of Justice will increase the independence of the judiciary's training process from the executive*".

At the moment of the first visit of the CEPEJ team to Latvia, the staff of the Centre was composed of: two legal program directors, one non-legal (soft skills) program director, an administrator, a financial manager and a director.⁶⁶ These human resources seemed to be very modest, having in mind that the Centre is tasked to provide training to 528 judges and about 1700 court staff, and is actually engaged in providing training, based on separate agreements, also to prosecutors and practicing lawyers. At the same time, the Judicial Training Centre seems to have the monopoly on providing training to judges and court employees of Latvia. In this situation, the major question is whether the Judicial Training Centre, with its resources, is able to provide the initial and continuous training required by its main target groups, having in mind that judges have a right to training and the high legal standard at which this right should be guaranteed. To this question the Director of the LJTC, Ms Ilona Kronberga, pointed out that the number of employees is not always an indicator to judge the efficiency: "*with efficient forms of work organisation and the efficient use of working time, the number of employees is one of the cost positions where optimisation is possible*".

According to p. 11 of [CCJE Opinion No. 4 \(2003\) on appropriate initial and in-service training for judges at national and European levels](#) "*The State has a duty to provide the judiciary or other independent body responsible for organising and supervising training with the necessary means, and to meet the costs incurred by judges and others involved.*" In Latvia, this obligation is carried out on the basis of annual agreements between the Court Administration and the Judicial

⁶⁶ According to comments provided by the Director of the LJTC to a draft of the present report, "*since the implementation of contracts concluded within the European Social Fund has been launched on good governance and alternative dispute resolution methods for courts and law enforcement agencies, the number of employees raised to 9 (+2) persons*". See also <https://www.ltmc.lv/en/employees>

Training Centre. Nevertheless, it was recognised that training activities for judges and court staff are financed by the State only to the level of 25 %. To improve accessibility and carry out a larger array of training activities, the Judicial Training Centre has to look for external funding (ERA, ETJN etc.).

The Judicial Training Centre provides not only training of knowledge; also training of judicial skills is offered.⁶⁷ Specific training on court management (for presidents of courts, for example) is also facilitated. All seminars are organised in Riga. Some of the courses are implemented as e-learning courses.⁶⁸

Candidate judges get an initial training during 48 days, for the most part after their appointment.

For judges, training is voluntary, although highly recommended and expected. According to the information of the Judicial Training Centre judges can have training during 4 or 5 days a year. But many judges participate in training seminars only for one day in a year. The representatives of judges' associations said that it is possible to choose a maximum of 3 courses per year. They consider the quality of the courses in general as good. But, in their view, there are not enough courses in specific fields of law and judicial practice. If participants would be able to evaluate the courses, this could only improve the quality.

It has to be underlined that training is generally provided by experienced judges. University teachers and/or practicing lawyers apparently do not contribute to the training activities of the Center. The Director of the Centre mentioned that the cooperation with the University of Latvia did not prove to be economically convenient. In the CEPEJ experts' opinion, the issue is not only a matter of economic convenience.

Not all judges follow courses at the Judicial Training Centre and this does not seem to be related to a limited or irrelevant offer. The CCJE underlined that independence of the judiciary confers rights on judges of all levels and jurisdictions, but also imposes ethical duties. The latter include the duty to perform judicial work professionally and diligently, which implies that judges should

⁶⁷ According to comments provided by the Director of the LJTC, Ms Ilona Kronberga, the annual training program for judges is developed on the basis of the recommendations of judges, as well as the interests and current affairs. For this reason, the curriculum is developed through sub-sectors (Criminal Law + Process / Civil Law + Process / Administrative Violations / Administrative Process, etc.), where judges are assigned to study groups in accordance with the scope of their practical work, with the aim of a content not just academic or theoretical, but fit to the needs of the target group in the practical work.

In November 2017, on the webpage of the Latvian Judicial Training Centre (<https://mis.ltmc.lv/macibu-programma>) there were announced the following available seminars by the end of the year:

11/24/2017 Interdisciplinary seminar *"Current issues of management"*

12/01/2017 Interdisciplinary seminar *"Topicalities of Public Procurement"*

12/08/2017 Interdisciplinary Seminar *"Speaking Skills"*

⁶⁸ According to comments of the Director of the LJTC, the e-learning method is being introduced in the framework of the ESF Good Governance Project for young court staff. The said e-learning platform is further planned as an approved basis for the creation of an e-learning system for judges and other law enforcement specialists. E-learning is, in essence, an interactive and purposefully organised e-environment for the target group to acquire certain knowledge remotely. An e-learning tool developed by the EJTN, which will also be available to target groups in the member states, is currently being screened.

have great professional ability, acquired, maintained and enhanced by the training which they have a duty, as well as a right, to undergo. Therefore, to improve the quality of the judiciary, it might be advisable to make it obligatory for judges to undergo a minimum number of hours of training each year. Such a solution was adopted in a number of Council of Europe member states. In addition, completed training activities should always be a criteria in the framework of the evaluation of the judge.

The Judicial Training Centre implements an advanced Training Information System, which allows disseminating the information on the training offer, communication, registration, sharing of training materials and feedback, evaluation of the satisfaction with the quality of provided services, etc. Through this system judges have access to e-learning modules, to all training materials and audio recorded seminar sessions, which must be appreciated.

c. Evaluation of judges

The fundamental rule for any individual evaluation of judges must be that it maintains total respect for judicial independence. Furthermore, two key requirements of any judicial system must be to produce justice of the highest quality and proper accountability in a democratic society. The CCJE, in its [Opinion No. 17 \(2014\) on the evaluation of judges' work, the quality of justice and respect for judicial independence](#), provides valuable recommendations on how to reconcile the underlying judicial independence with the objectives of ensuring high quality and accountability through evaluation of judges' work. The main idea is to exclude the factors that could challenge the impartiality of judges: *"despite the laudable aim of ensuring high standards through a system of evaluation, it is notoriously difficult to reconcile the independence of the judge with a system of performance appraisal. If one must choose between the two, judicial independence is the crucial value."*⁶⁹

Latvian judges are evaluated for the first time as part of the procedure for their permanent accession to the profession, after the initial 3-year term in office (see subsection Selection, appointment and career of judges, above). Besides this initial evaluation, judges are regularly evaluated, every five years, by the Judicial Qualification Committee. If a judge wants to move to a higher court, an extraordinary evaluation is held. If there are more candidates than vacancies, the Judicial Qualification Committee will advise which candidates are suitable, but it will make no grading. Subsequently, the Judicial Council will take the decision on which judge will be appointed.

The task of the Judicial Qualification Committee regarding the evaluation of judges is described in section 94 of the Law on the Judicial Power, which specifies the objective of the evaluation process, the criteria for formal evaluation and the assessment to be formulated by the Judicial Qualifications Committee.

In the process of evaluation of each and every individual judge, a lot of information is collected and analysed. In performing this task, the Judicial Qualifications Committee is assisted by the

⁶⁹ [Report "Judicial appointments", adopted by the Venice Commission at its 70th Plenary Session](#), 16-17 March 2007, pp. 42

president of the court in which the evaluated judge performs his office and of the higher instance court (regional court or Supreme Court, as the case may be). The concerned judge shall submit a self-appraisal of his own professional work (a standard form is provided). In addition, the Chairperson of the Judicial Qualification Committee may appoint any of the Committee’s members to become acquainted (by random selection) with decisions made and procedures managed by a judge (also with the recordings of the procedures). Finally, if the references received do not provide sufficient information for the evaluation of the professional work of a judge, the Judicial Qualification Committee may request the Court Administration to compile references from the judges and employees of the relevant court regarding the work of the judge, and even performing a survey among participants in the proceedings conducted by the judge.

The first complete cycle of evaluation of all Latvian judges took place between 2013 and 2016.⁷⁰ As a result, it was reported that 498 judges were evaluated and 6 of them received unfavourable opinions from the Judicial Qualification Committee. Subsequently, two of these judges received a favourable opinion during the re-evaluation procedure. The *Saeima* dismissed two judges from the position of judge at their own will and one judge as the result of receiving repeatedly an unfavourable opinion from the Judicial Qualification Committee. The *Saeima* also dismissed one of those six judges on the basis of a decision taken in disciplinary proceedings.

Table 1: Evaluation of Latvian judges between 2013 and 2016

Year	The number of evaluated judges	Number of judges who have received an unfavourable opinion in the evaluation of his professional work
2013	145	2
2014	187	4
2015	166	-
Total:	498	6

If the outcome of the evaluation is positive, the judge continues to exercise the judicial office. If a judge has received an unfavourable opinion in the evaluation, a re-evaluation shall be performed within the time period specified by the Judicial Qualification Committee, however, not later than within two years since the previous evaluation. If a judge has received an unfavourable opinion in the re-evaluation of his professional work, he shall be dismissed from office (Section 94.4 Law on the Judicial Power).

According to Section 93.1 of the Law on the Judicial Power, a judge may appeal an opinion of the Judicial Qualification Committee at the Disciplinary Court. The Disciplinary Court may reject the complaint or revoke the opinion of the Judicial Qualification Committee and send the materials for re-examination to the Judicial Qualification Committee. Having in mind these

⁷⁰ See the news published on the webpage of the Judicial Council [“Assessment of professional activity of judges urges judges to improve themselves”](#), 26 April 2016

options, the Disciplinary Court, unlike in the cases when it examines complaints against the decisions of the Judicial Disciplinary Committee, will examine complaints against opinions of the Judicial Qualification Committee only on points of law (i.e. whether the evaluation procedure was respected).

The regulation and implementation of judges' evaluation procedure in Latvia do not raise serious concerns on the part of the CEPEJ expert team. A doubt may be reported as to the capacities of the Judicial Qualifications Committee to perform its functions, as none of the members of this Committee are delegated to permanently carry out the respective duties, despite their importance and an workload which appears to be significant. It seems that the Court Administration is involved in the evaluation process, but the CEPEJ experts' understanding is that it is not a major actor (apparently it only gathers the opinions of other judges, court staff and court users), therefore this solution does not raise doubts.

In conclusion, no one can object to the encouragement of the continuous professional evolution of a judge through evaluation systems. At the same time, the regular evaluation of (the work of) a judge can threaten his independence. This depends to a large extent of the way the evaluation is performed and on the authority in charge. Having a clear regulation and transparent evaluation procedures is a must. Missing those, a certain balance or the appearance thereof may be preserved, even for long periods of time, but the question is whether proper safeguards exist for times of crises and of excesses.

To the extent to which the CEPEJ expert team is limited in time and by the large scope of this report, in view of a more thorough assessment of the particularities of judicial evaluation, and having in mind that the CCJE Opinion No 17 (2014) was adopted after the enforcement of the current system of evaluation of judges in Latvia, the national justice stakeholders are invited to analyse to which extent the provisions of this Opinion are already implemented in Latvia and whether it contains recommendations which may contribute to further improvement of the current system.

d. Judicial discipline and ethics

Scholars tend to separate ethics from disciplinary rules. In their view ethics should be that branch of moral science which treats of the moral and professional duties a judge owes the public, the lawyers and his professional brethren. Of course this definition also applies to discipline, but ethics should conform to values, rather than only to written rules. The latter should define the discipline. Moreover, ethics should guide conduct which is less felt to be compulsory, than suitable or convenient. Discipline, on the contrary, should rest upon firm and mandatory rules. Therefore, judicial codes of ethics should be drawn up by the representatives of judges' associations and their provisions cannot have a value equal to provisions of law. On the other hand, the members of a legal – and not philosophical or religious – profession experience difficulties attributing to judicial ethics a meaning other than the one which results from the principles of judicial discipline contained in the statutes regulating this matter. As a consequence, in the judicial scenery a kind of amalgamation can often be witnessed between ethical standards and disciplinary exigencies as, for example, often a repeated or serious breach of a code of ethics will be regarded and sanctioned as a disciplinary offence.

Public trust in the judiciary is acknowledged as rather low in Latvia. Therefore, the credibility of the judicial system seems to be a problem. Performing according to high standards of judicial discipline and ethics can improve the functioning of the judiciary and is thus an important element in view of improving public trust.

Ethics

According to § 72 of the Recommendation on Judges, “[j]udges should be guided in their activities by ethical principles of professional conduct. These principles not only include duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves”.

Judges’ Code of Ethics

A Code of Ethics was adopted in 1995 by the Conference of Judges. The representatives of the Judicial Ethics Committee, with whom the CEPEJ expert team met, mentioned that this Code is more detailed than the [Bangalore Principles on Judicial Conduct](#), adopted in 2002 by the Conference of the Chief Justices under the auspices of the United Nations, but also includes general principles of judicial conduct.

This is consistent with § 73 of the Recommendation on Judges, which states that the ethical principles “*should be laid down in codes of judicial ethics which should inspire public confidence in judges and the judiciary. Judges should play a leading role in the development of such codes*”. Judicial ethics cannot be regulated only by detailed provisions and the experts don’t believe that the existence of general provisions in the Code of Ethics may be used in ways that would not be appropriate. Nobody expressed any concern about this situation.

It is not surprising that Latvian judges adopted their Code of Ethics in 1995 and it still serves well its purpose. The challenges which judges have to face change as the society is evolving. Nevertheless, the principles of judicial behaviour remain stable, are universal and common for all judicial systems. Anyway, as a matter of awareness raising and keeping an active dialogue on judicial ethics, it is recommended that the Judicial Ethics Committee organises a discussion on the compliance of the Code of Ethics with more recent international standard-setting documents, such as the United Nations Basic Principles on the independence of the judiciary; [CCJE Magna Carta of Judges](#) (Fundamental Principles), the CCJE [Opinion No. 3 \(2002\) “On the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behaviour and impartiality”](#), and the already mentioned [Bangalore Principles of Judicial Conduct](#). It is not excluded that such reviews of the Code of Ethics in the light of international documents has been organised already.

The anonymised Judicial Ethics Committee’s opinions are published and available on the internet. The Committee also published a book referring to its opinions.

The CEPEJ experts consider that the system in place in Latvia – i.e. a Code of Ethics adopted by the Conference of Judges, existence of the Judicial Ethics Committee composed of judges and its attributions, the possibility for judges to receive an interpretation of the principles of ethical behaviour and their applicability to specific circumstances - is proper and able to deal with the ethical issues regarding judges and the safeguards of judicial independence. In addition, the

publication of the Committee's opinions can enhance the trust of the public towards the judiciary and the judges.

Discipline

Recommendation on Judges in § 69 reads as follows: *"Disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner. Such proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction. Disciplinary sanctions should be proportionate"*.

Disciplinary offences

According to the Judicial Disciplinary Liability Law, a judge may be subjected to disciplinary liability for:

- 1) intentional violation of law during the adjudication of a matter in court;
- 2) failure to perform judge's office duties or allowing gross negligence in the adjudication of a matter;
- 3) dishonourable actions or gross violation of the norms of the Judges Code of Ethics;
- 4) committing an administrative offence;
- 5) refusal to discontinue the membership in parties or political organisations;
- 6) failure to observe the restrictions and prohibitions provided for in the Law On Prevention of Conflict of Interest in Activities of Public Officials.

A rather unusual situation results from the above. The members of the judiciary enjoy immunity from administrative liability, but an administrative offence, for example the violation of road traffic rules (not as aggravated as to lead to criminal liability) by a judge, may lead to disciplinary proceedings and sanctions. This arrangement clearly results from § (4) of Section 13 *"Immunity of Judges"* of the Law on the Judicial Power.

From this, as reported by interlocutors of the CEPEJ expert team, it results that a judge stopped for a traffic violation by the police has to declare his status as a judge. As a consequence, the traffic police will report the offence to the Judicial Disciplinary Committee (apparently the judge is also supposed to report the case to the Committee or to the persons entitled to initiate disciplinary proceedings, but this is not totally clear to the experts), which will decide about the possible initiation of disciplinary proceedings. The experts have been informed that the Committee usually renounces to initiating such proceedings, except for cases of serious offences or repeated misconduct. As a result, the administrative responsibility is excluded, but the judge may – in serious cases – be subjected to a disciplinary sanction. This state of play dissatisfies judges themselves, even though it is obviously designed to protect them.

Also from the experts' point of view, this system may be seriously questioned. § 71 of the Recommendation on Judges provides that *"[w]hen not exercising judicial functions, judges are liable under civil, criminal and administrative law in the same way as any other citizen"*. On one hand, in the example above, immunity can be seen as a way to protect the judges' independence, in that sense that it prevents the police from eventually harassing or putting pressure on judges, and offers a guarantee to the judges that their case will be examined by their peers and out of court. On the other hand, this protection may be deemed by ordinary

citizen as an undue privilege. After all, the judges are also citizen and should answer for their offences and not be seen to be above the law. It is indisputable that judges have to be protected against undue external influence. To this end they should enjoy functional – but only functional – immunity (immunity from prosecution for acts performed in the exercise of their functions, with the exception of intentional crimes, e.g. taking bribes)⁷¹.

The representatives of the Judicial Disciplinary Committee met by the experts pointed out that judges may be tempted to pay the administrative fines without disclosing their status to the police, instead of reporting the offence to the Committee, in order to escape disciplinary consequences for administrative offences. This is not a proper “*solution*” for several reasons, including the one mentioned above in regard to the system of functional immunity for judges.

There are discussions within the judiciary about a change in the related regulations, that would introduce the possibility for the judge to “*accept*” the administrative sanction, without involving the Disciplinary Committee. The CEPEJ experts would recommend that the immunity for administrative offences is lifted. For the petty administrative offences (e.g. those only sanctioned with a fine not exceeding 100 or 200 Euros), the judges could answer to the administrative bodies only, these offences not being reported to the Disciplinary Committee. For the more severe administrative offences (e.g. those leading to a fine over 100 or 200 Euros or a jail term), the offender could be sanctioned by the administrative bodies and these bodies would also have to report the case to the Disciplinary Committee, for them to decide if disciplinary sanctions should be considered against the judge, in addition to the administrative sanction.

Returning to Section 13 “*Immunity of Judges*” of the Law on the Judicial Power, its other provisions are regarded by the CEPEJ team of experts as reasonable. A matter on which different solutions are adopted in Council of Europe member states⁷² is regulated under § 5 of this Section “*A judge is not financially liable for the damages incurred by a person who participates in a matter as a result of an unlawful or unfounded judgment of the court. In the cases provided for by law, damages shall be paid by the State.*” This safeguard goes further than strictly required by Council of Europe standards⁷³, but such a solution is supported in a recent report prepared jointly by the Bureau of the CCJE and the Bureau of the CCPE for the attention of the Secretary General of the Council of Europe⁷⁴.

Gross negligence in adjudication of cases – violation of the law

The first case of gross negligence that can lead to disciplinary consequences is about delays in the proceedings conducted by a judge, in particular when legal deadlines are exceeded (e.g. a

⁷¹ See the Report of the Venice Commission “[On the independence of the judicial system - Part I: The independence of judges](#)”, CDL-AD(2010)004, § 60-61

⁷² See, for example, “[The civil liability of magistrates. International standards. New legislative tendencies](#)”, Cristi Danileț and Loreley Mirea, 2009, p. 3.1., 5.2 etc.

⁷³ Report of the Venice Commission “[On the independence of the judicial system - Part I: The independence of judges](#)”, CDL-AD(2010)004, § 59

⁷⁴ [Report “Challenges for judicial independence and impartiality in the member states of the Council of Europe”](#), prepared jointly by the Bureau of the CCJE and the Bureau of the CCPE for the attention of the Secretary General of the Council of Europe, 24 March 2016 (SG/Inf(2016)3rev), p. 21, 169-171, 203

decision is communicated to the parties, but the reasoned version not sent to them within the timeframe set by the law). One may, in this respect, mention § 62 of the Recommendation on Judges, which provides: *“Judges should manage each case with due diligence and within a reasonable time”*.

It has been explained to the experts that the violation of timeframes doesn't automatically entail disciplinary proceedings. Before reporting a case to the Judicial Disciplinary Committee, there is a discussion between the judge and the president of his court. Reporting the case or not may depend on the general workload of the judge or other special circumstances. It is a fact that, in many cases, delays can be justified by the judge's overall situation at the court.

Another situation where a judge can be subject to disciplinary proceedings is linked to adopting a *“wrong”* decision in the examination of a case. It is important here to again quote the Recommendation on Judges: *“Judges should have unfettered freedom to decide cases impartially, in accordance with the law and their interpretation of the facts”* (§ 5). *“The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to civil or disciplinary liability, except in cases of malice and gross negligence”* (§ 66).

This means that not any wrong decision should lead to disciplinary measures. From what the experts could learn during their meeting with the Committee, the latter may only initiate proceedings in cases where, in fact, the judge made a wrong decision by gross negligence or through intentional violation of the law (according to Section 1 §§ (1) and (2) of the Judicial Disciplinary Liability Law), this being in line with the Recommendation on Judges.

Misbehaviour in court and/or private life

The possible offences related to the judges' other behaviour in court and out of court have not been addressed during the experts' meeting with representatives of the Judicial Disciplinary Committee, but there is no doubt that behaviour contrary to the Code of Ethics, in both respects, may possibly lead to disciplinary sanctions (according to Section 1 § (3) of the Judicial Disciplinary Liability Law).

Sanctions

The possible sanctions were not discussed with the experts, except for an example of a judge of the Regional Court of Riga who was sanctioned in 2016 with a 20 % reduction of the salary for one year, since it took that judge one year to deliver the reasoned judgment after adopting the decision.

Section 7 of the Judicial Disciplinary Liability Law provides for the following possible sanctions: warning; reprimand; up to 20 % reduction of the salary for up to one year. The Judicial Disciplinary Committee may also decide to recommend the dismissal of the judge from office⁷⁵.

⁷⁵ According to Section 81 § (2) of the Law on the Judicial Power: *“A judge of a district (city) court, a regional court and the Supreme Court shall be dismissed from office by the Saeima, upon the recommendation of the Judicial Disciplinary Committee, but the Chief Justice of the Supreme Court shall be dismissed from office by the Saeima, upon the recommendation of the Judicial Disciplinary Committee, on the basis of an opinion of the Plenary Session*

It is interesting to note that, despite the Judicial Disciplinary Liability Law, and even Section 81 § (2) of the Law on the Judicial Power, referring to a “*recommendation*” by the Judicial Disciplinary Committee to dismiss the judge, Section 83 of the Law on the Judicial Power provides that a judge “*shall*” be dismissed from office on the basis of a decision of the Judicial Disciplinary Committee. Therefore, the *Saeima*, although formally dismissing the judge, has to comply with the decision of the Judicial Disciplinary Committee, which is an example of good application of § 46 of the Recommendation on judges.

No concerns were expressed by any person met by the experts about the range of the possible sanctions in disciplinary cases and the implementation of the law by the Judicial Disciplinary Committee in this field.

Disciplinary proceedings

Initiation of proceedings and investigations

Disciplinary proceedings can be initiated by:

- the Judicial Ethics Committee (in regard to any judge, if it has established a gross infringement of the norms of the Judges’ Code of Ethics);
- the Chief Justice of the Supreme Court (in regard to any judge);
- the Minister of Justice (in regard to any judge, except those of the Supreme Court);
- the presidents of regional courts (in regard to any judge of the regional court concerned and of the district (city) courts and land registry offices from the jurisdiction of this regional court),
- the presidents of district courts (in regard to any judge of the district courts concerned) and
- the heads of land registry offices of regional courts regarding judges of land registry offices of district (city) courts concerned.

Apparently, other persons, including ordinary citizens, may not complain directly to the Judicial Disciplinary Committee, nor can the latter initiate disciplinary proceedings *ex officio*. Therefore, if someone wants disciplinary proceedings to be started, and the case to be reported to the Judicial Disciplinary Committee, they have to contact one of the persons mentioned above. A possible pitfall of this regulation is that the petitioners may be confused and will tend to send identical requests to all subjects who may initiate a disciplinary proceeding. What happens if this is the case? As we can see from the list above, with regard to a lowest court judge, at least 5 persons/bodies may decide to initiate disciplinary proceedings (although the Ethics Committee will first consider whether a gross violation of the Judges’ Code of Ethics occurred in the case). This is not of little relevance, as it may appear – anyway, out of 5 persons/bodies at least one will treat the complaint. At the end of the day, having in mind this “*multitude*” of persons “*entitled*” to initiate disciplinary proceedings, the question is who bears the responsibility (and what kind responsibility) for properly addressing the complaints on the discipline of judges? The

of the Supreme Court. If a judge has been convicted and the judgment of the court has entered into legal effect, the judge shall be dismissed from office by the Saeima, upon the recommendation of the Minister of Justice.”

legal certainty and streamlined practices are objectives which may not be fully supported by the current state of play.

The persons who have the right to initiate disciplinary proceedings, if they recognise grounds to initiate such proceedings (the Minister of Justice will issue an order, while the other subjects will take a decision), shall organise an “*exhaustive*” preliminary examination of the materials received and request a written explanation from the judge concerned. They may collect evidence themselves or – generally – through a person they designate (e.g. in a court, a judge might be delegated by the president to investigate the case), before the case is reported to the Judicial Disciplinary Committee. This investigation, necessary of course, would be an integral part of what is referred to as “*disciplinary proceedings*”, as it will be the basis for any subsequent decision on the alleged disciplinary offence and shall, therefore, also comply with § 69 of the Recommendation on Judges. In the way this investigation is regulated in Latvia, it raises several concerns. The main question is whether the person chosen to conduct the “*exhaustive*” investigation, be it a judge (a closer or less so colleague of the judge under investigation) or the person appointed by the Minister of Justice, is independent (and, not negligible, confident) in conducting this investigation. The answer is not obvious and the matter will have to be examined case-by-case, which is a problem in itself. In many European countries this issue was solved by putting in place Judicial Inspections (usually under the authority of high judicial councils). Judicial Inspections are ensured statutory safeguards of independence, first, and, second, they may pursue a unified practice of thorough investigation of all complaints on judicial discipline. Such a solution might be taken into consideration in the Latvian system too.

When the case has been reported to the Judicial Disciplinary Committee, this Committee may also collect evidence, e.g. hear witnesses and the judge involved. It is interesting to note that, until the matter is examined by the Judicial Disciplinary Committee, the decision or the order regarding the initiation of a disciplinary matter may be withdrawn, through a reasoned decision or order, by the person who initiated it (Section 3 (6) of the Judicial Disciplinary Liability Law). There is not provision on the need for the Judicial Disciplinary Committee to examine such a withdrawal, nor its entitlement to reject it and continue the examination of the case. This is another peculiarity of the status of the Judicial Disciplinary Committee (along with the impossibility to directly receive complaints and to initiate disciplinary proceedings *ex officio*), which prevents the committee from having any initiative in pursuing the disciplinary liability of judges. This matter should be taken under review.

The judge involved has the right to be assisted by an attorney of his choice and enjoys other procedural guarantees in line with the principle of a fair trial. Several provisions of the law entitle the concerned judge and/or the “*person who initiated the disciplinary matter*” to get acquainted with the materials of the case, to be notified of or to participate in meetings during which the disciplinary matter is examined. It is probably a matter of translation, but it is unclear to the CEPEJ expert team whether, by the reference to “*person who initiated the disciplinary matter*” shall be understood the person who initially complained about the judge’s behaviour, or the person who formally initiated the disciplinary proceedings. It is rather standard that, in such proceedings, the complainant only has the right to be informed of the final decision taken about the case. Furthermore, there may be good reasons to exclude also the president of a court from the hearings held about one of the judges from his courts.

There is a statute of limitation of 2 years since the behaviour under review, and another statute of limitation of 3 months from the moment when the offence has come to light. There is also a one month deadline for the adjudication by the Judicial Disciplinary Committee, since the moment the case has come into its hands. The experts can only approve of speedy disciplinary proceedings, but doubt that the Committee can, within one month, deal with complex cases, where the judge under investigation might want it not only to review the evidence gathered in the preliminary investigation, but also to (re)hear witnesses, etc. The law might therefore provide for exceptions, where the Committee can decide to extend the timeframe when specific reasons ask for it.

The decisions made by the Judicial Disciplinary Committee shall be justified. It is assumed that members of the Judicial Disciplinary Committee participating in the examination of the case may formulate separate opinions about the adopted decision. The decisions are subject to a full appeal (both on the merits of the case and on procedural grounds) to the Disciplinary Court, which is a section of the Supreme Court (see above for the Supreme Court under section A. a.). Still, the Judicial Disciplinary Liability Law provides for exceptions, which are scattered throughout several different sections and are, therefore, not obvious. First of all, it seems that only the judge subjected to disciplinary responsibility may appeal the decision of the Committee, and only when it was decided to impose a disciplinary sanction, or to recommend the removal of the judge from office (see Section 8. (5) and Section 11.¹ (1)). Neither the person who complained on the behaviour of the judge, nor the one who initiated the disciplinary proceedings, can appeal the decisions of the Judicial Disciplinary Committee. Disciplinary proceedings are meant to restore order in the system, not to satisfy other persons.

The decisions adopted in the disciplinary proceedings, except the decisions to send the materials of the disciplinary matter to the Office of the Prosecutor General for a decision regarding the initiation of a criminal investigation, shall be published on the website within the period of one day after entering into force. When publishing the decisions, the part which reveals identification data of the person, including sensitive identification data, shall be excluded. According to amendments made in 2017 to the Judicial Disciplinary Liability Law, the decisions in disciplinary cases are published on the Internet by covering only that part of the information which discloses personal data, including the sensitive data, except for the name and surname of the person held liable. The principles of publicity, transparency and public accountability of the judiciary invite to render public, for example, general statistics on the number of disciplinary proceedings and their outcomes over certain periods of time, and also the instances when concrete judges are subjected to disciplinary sanctions on the basis of final and irrevocable decisions.

A particular outcome of a disciplinary procedure may be the recommendation by the Judicial Disciplinary Committee to remove a judge from office. If the *Saeima* votes against the removal of the judge, which may happen even after the confirmation of this decision by the Disciplinary Court, the disciplinary matter shall be returned to the Judicial Disciplinary Committee for a repeated examination. It is not clear whether the Judicial Disciplinary Committee or any other authority of judicial self-governance may uphold the recommendation on the removal of a judge as a consequence of a (definitely very serious) disciplinary offence. Similarly, it is not clear whether the *Saeima* can repeatedly reject the recommendation to remove a judge. This is a

hypothetical situation, as the practice under the current legislation demonstrates so far the compliance of the legislator with the opinion of judicial self-governance authorities in matters of judicial dismissal. On the other hand, a short legal provision which would clarify the consequences of a repeated substantiated recommendation to dismiss a judge may effectively exclude the risks of an inadmissible interference of the legislative and, implicitly, political actors, in a matter of judicial independence.

Table 2: Cases examined by the Judicial Disciplinary Committee between 2014 and 2017⁷⁶

Year	The number of disciplinary proceedings	Sanction	Recommendation to remove the judge from office
2014	16 (in 6 of these cases the disciplinary matter was dismissed, in 1 case the disciplinary matter was examined at a sitting, without the imposition of a disciplinary sanction)	in 2 cases the sanction was an annotation; in 2 cases – reprimand (1 case was appealed to the Disciplinary Court which modified the decision in part); in 2 cases – 10 % reduction of the salary for up to one year	in 2 cases it was recommended the remove a judge from office (1 case was appealed to the Disciplinary Court which modified the decision and a reprimand was applied instead)
2015	22 (in 8 of these cases the disciplinary matter was dismissed)	in 4 cases the sanction was an annotation (1 case was appealed to the Disciplinary Court, which dismissed the disciplinary matter); in 4 cases – reprimand (1 case concerned 4 counts); in 1 case – 15 % reduction of the salary for up to one year (the case concerned 2 counts)	in 1 case it was recommended the remove a judge from office (the case was appealed to the Disciplinary Court which upheld the recommendation of dismissal)
2016	11 (in 2 of these cases the disciplinary matter was dismissed, in 2 other cases the disciplinary matter was examined at a sitting, without the imposition of a disciplinary sanction)	in 4 cases the sanction was an annotation; in 1 case – 20 % reduction of the salary for up to one year	
2017	12	in 5 cases the sanction	

⁷⁶ This information was provided by representatives of the Ministry of Justice in January 2018 comments to a draft of the present report

	(in 4 of these cases the disciplinary matter was dismissed, in 3 other cases the disciplinary matter was examined at a sitting, without the imposition of a disciplinary sanction)	was an annotation;	
Total:	61 (in 20 of these cases the disciplinary matter was dismissed, in 6 other cases the disciplinary matter was examined at a sitting, without the imposition of a disciplinary sanction)	28	2

The numbers above may be regarded as comparatively low, in relation with the total number of judges (approx. 525), which means that every year around 3 % of judges face disciplinary proceedings. A large number of investigated cases (26 out of a total of 61, in the period between 2014 and 2017) didn't lead to any sanctions, while the recommendation to dismiss a judge as a result of a disciplinary wrongdoing is exceptional (2 instances in 4 years). This situation may be a direct consequence of the system of initiating and investigating disciplinary offences committed by judges.

e. Judicial staff

According to § 35 of the Recommendation on Judges, “[a] sufficient number of ... appropriately qualified support staff should be allocated to the courts”.

As we all know, judges need supporting staff for secretarial tasks. In many countries, judges also benefit from support by assistants with a legal training. In Latvia, both kinds of support are provided to the judges. The support staff (a total of 1433 persons in 2016), according to the information the CEPEJ team received from the Court Administration, is composed of the following categories (not all courts employ all categories of staff):

1. Assistant to Court President (38 persons employed per the entire court system)
2. Assistant to Judge (**471** persons)
3. Head of Court office (48 persons)
4. Deputy of Head of Court office (24 persons)
5. Consultant (25 persons)
6. Secretary of the hearing (**407** persons)
7. Secretary of the court (**109** persons)
8. Court translator/interpreter (**116** persons)
9. Archivist (52 persons)
10. Administrator of the court (19,5 persons)
11. Specialist (30 persons)
12. Messenger (Transporter) (7 persons)

13. Technical worker (86,5 persons).

The largest categories of court staff are the assistants to judges and secretaries of court hearings (rather close to the number of judges), and of secretaries of courts and translators/interpreters.

The Law on the Judicial Power expressly regulates the position of assistants (Section 99), consultants (analyse and generalise the court practice and statistics, as well as carry out other methodological work, Section 100), secretaries or court clerks (Section 101) and court recorder (participate in the sittings of a court in all cases when, according to law, the minutes of a court sitting must be recorded, Section 102). The court staff is not in charge of the court management, which is provided for by the Court Administration.

Assistants

According to Section 99 of the Law on the Judicial Power, an assistant to a judge shall receive visitors and their submissions, take measures in connection with the preparation of matters for adjudication at a sitting of the court, as well as perform other tasks assigned by the judge. In district and regional courts court assistants are selected by the president of the court. They should not perform a mere administrative job related to the case processing (this is the task of the courts' secretaries) but rather assist the judge in performing the judicial functions.

The assistants are persons with legal training who assist the judge in research and drafting. Basically, each judge in Latvia has an assistant. The experts were told that this is the case in the district courts, and there is an assistant per two judges in the regional courts, but at the Regional Court of Riga each judge has an assistant too.

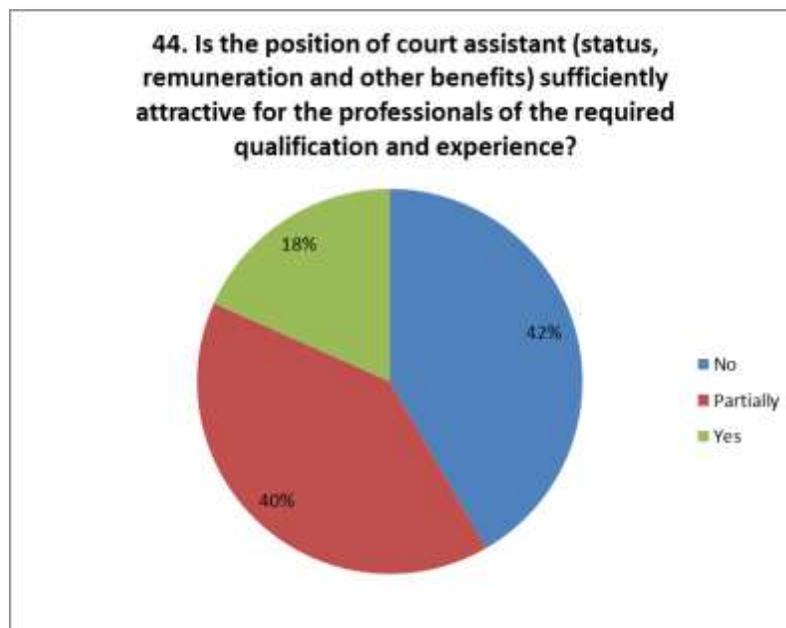
The assistants are selected and appointed by each court, generally by the president of the court. According to the judges' associations, recruitment of assistants isn't easy, as the salaries offered are low. As a consequence, most assistants are students and not full-trained lawyers, and they often leave as soon as they have completed their studies. Therefore, the quality of the assistants – and accordingly the support the judges receive from them – is sometimes not sufficient, an important investment in training the assistant by the judge being partly a waste of time. An incentive for the position of assistant seems to be provided by Section 52 of the Law on the Judicial Power, which stipulates that the candidate to a judicial appointment shall have at least five years length of service in a legal speciality after acquiring a lawyer qualification or must have been working in the position of assistant to a president of a court or assistant to a judge for at least five years. This provision actually replies why students of law faculties may be tempted to combine their studies with work as judicial assistants, in addition to the experience they may acquire.

The court employees' salaries, including the one of assistants, have been significantly increased in 2017, and a gradual increase is foreseen after 2018, with the goal that the salaries would reach the level of other civil servants, in particular for the assistants the level of salaries allocated to lawyers working in other state bodies.

In reply to the questionnaire on quality issues, only 18% of the respondents assumed that the position of court assistant (status, remuneration and other benefits) are sufficiently attractive for the professionals of the required qualification and experience. In the comments to this

question it is repeatedly emphasised that the assistant's position "It is an opportunity to get good practical experience, but the remuneration is not appropriate."

Figure 6: Answers to question 44 of the Questionnaire on Quality



The experts hope that the increase in the salaries will benefit the judicial system, in order for the courts to be able to hire well-trained and efficient assistants in the near future. However, one should also mention that, already now, some assistants become judges when their time comes, which rather speaks in favour of at least part of the assistants being sufficiently trained and efficient to be regarded as a real support for the judges they work for, before they embrace a judicial career.

The ratio court assistants to judges per the entire system seems to be 1:1. In the Supreme Court the number of court assistants is even higher than the number of judges. In addition to the court assistants, each branch of the Supreme Court can rely on 2-3 research advisers. A case-law and research division has also been recently created.

Secretaries of court

Each court has a secretariat. There are secretaries for the hearings and secretaries of the court, headed by the Head of the court office, who also specifically assists the president of the court. All of these are appointed by the president of the court.

No concern was raised with the experts about the quality of this support staff, but the same remarks as above have been made regarding the salaries secretaries are entitled to.

Training

The members of the support staff benefit from training provided by the Latvian Judicial Training Centre and are integrated in the Training Information System run by the Center. As is the case for judges, court staff has minimum limits for available training days, the training is designed on a thematic approach and it includes soft skills training. There seems to be no concerns about the training of the secretaries (about the assistants, see above).

Concluding remarks on judges and judicial staff

Selection, appointment and career of judges

1. The influence of the executive and legislative on judicial appointment decisions should be limited in order to prevent appointments for political reasons. Appointments by parliament carry the risk of a politicisation of judges.
2. The current procedures of selection of candidates, training/apprenticeship, examination, nomination, appointment and designation of the court in which a new judge will exercise his office are lengthy and, in some parts, cumbersome. Therefore, it is recommended to streamline and to simplify it, to the extent possible, so as to ensure the transparency of the process and the selection of best candidates.
3. The appointment of judges for an initial “*probationary*” term does not seem to really serve the pretended purpose. On one hand, it creates a real or at least a perceived dependence from political actors of judges awaiting appointment until the maximum age for holding the office. On the other hand, the system of selection and training of judges is complex and the chances that inappropriate candidates reach to judicial offices are very small. Finally, even if “*not sufficiently good*” candidates become judges, the system shall be able to eliminate them in the same way as it would eliminate judges having lost their qualification or moral standing throughout a longer career. This process should be based on the systems of professional evaluation and discipline, in which the participation of judges upholds their independence.

Initial and continuous training of judges

4. Making it obligatory for judges to undergo a minimum number of hours of training each year may have a good impact on the justice system. In addition, the completed training activities should always be a criteria in the framework of the professional evaluation of the judge.
5. Involving systematically, alongside judges, experienced university teachers and other legal professionals as trainers, may boost the cultural exchange and “*open*” the judiciary, as it may help to build a common understanding of legal issues throughout the legal community of the country.

Evaluation of judges

6. Regular evaluation of judges (every 5 years), along with extraordinary evaluations required by the law in specific circumstances (such as participation to competitions for appointment to higher courts) creates a considerable workload. Currently this workload is absorbed by the secretariat of the Judicial Qualification Committee, which is ensured by the Court Administration. An analysis of the evaluation system should be performed, to determine to which extent the provisions of the CCJE Opinion No. 17 (2014) are already implemented in Latvia and whether it contains recommendations which may contribute to further improvement of the current system.

Judicial discipline

7. The disciplinary system may be questioned on the subject of the entitlement to initiate the proceedings and to conduct “preliminary investigations”. The right to report a disciplinary case to the Judicial Disciplinary Committee might be given to anybody who has gained knowledge of a possible disciplinary offence.
8. The Judicial Disciplinary Committee should be in charge of the disciplinary investigations. This doesn’t mean that this Committee should proceed itself, but rather that it should be in a position to decide whether the collection of evidence is justified or not, and if yes, who should proceed with the investigations.
9. One can only approve of speedy disciplinary proceedings, but the law might provide for the possibility of exceptions to the deadlines set for dealing with disciplinary cases, where the Judicial Disciplinary Committee can decide to extend a timeframe when strictly necessary.
10. The Judicial Disciplinary Liability Law and related proceedings may be the subject of a more detailed expert assessment, to verify their compliance to the most recent recommendations of the Council of Europe and its bodies.

Judicial staff

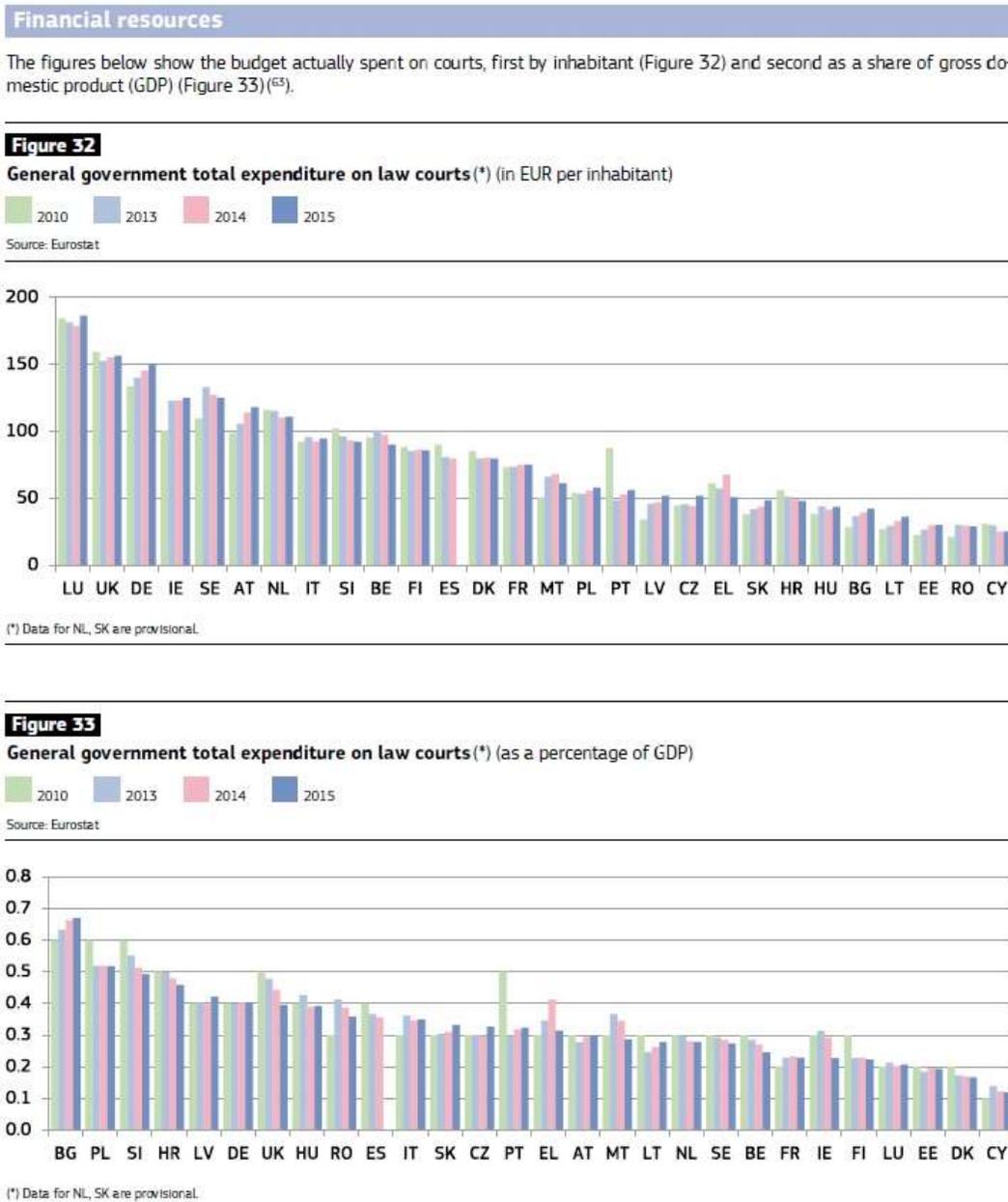
11. Sustained efforts are being undertaken and should be pursued to improve the status and other employment conditions for court staff. The authorities are exploring means that would motivate judges’ assistants (for example, financially supporting professional studies in law and providing incentives to participate in the competitions for judicial appointments). Reportedly, the remuneration remains uncompetitive in view of attracting good candidates and inciting long careers as court staff. The availability of training should also be constantly improved and adjusted to the needs of different categories of court employees.

C. Budget of the judicial system

a. Budget planning and allocation of resources

In “The 2017 EU Justice Scoreboard”, is compared the level of government total expenditure on courts in Euro, per inhabitant and as percentage of the GDP.

Figure 7: Figures 32 and 33 of the “2017 EU Justice Scoreboard” on the government total expenditure on law courts, per inhabitant and as percentage of the GDP



⁽⁶³⁾ General government total (actual) expenditure on administration, operation or support of administrative, civil and criminal law courts and the judicial system, including enforcement of fines and legal settlements imposed by the courts and operation of parole/probation systems, and legal aid — legal representation and advice on behalf of government or on behalf of others provided by government in cash or in services; excluding prison administrations (National Accounts Data, Classification of the Functions of Government (COFOG), group 03.3), Eurostat table gov_10a_exp, <http://ec.europa.eu/eurostat/data/database>

According to the above comparative data, Latvia is in the group of states with the average and above average expenditure.

The Ministry of Justice is the principal state administration institution in the public administration, supervising the judicial branch in Latvia. The Court Administration is responsible for administering district (city) courts, regional courts, and land registry offices. The Court Administration is involved in handling human resource matters in the courts and land registry offices, preparing the budgets for courts and land registry offices and managing the funds allocated for this purpose, providing material technical support, information and communication technology infrastructure to the courts and land registry offices, securing the maintenance and development of the information system (the State Unified Computerised Land Register, the Court Information System and the Register of Enforcement Cases). Regarding budget and finances, the Court Administration implements the planning of income and expenditures of the budget of the courts, land registry offices and of the Court Administration; administers the finances of the courts and land registry offices' budget, as well as the budgets for the justice sector allocated from the European Social Fund and other external funds. The Court Administration also performs the analysis the economic performance indicators of the courts and land registry offices.

The total amount of the budget of the judicial system (regional courts, district courts and land registry divisions) is planned in accordance with the Law on Budget and Financial Management and Cabinet Regulations issued on the basis of this Law. Cabinet of Ministers Regulations establish rules on the basic principles for developing and submitting budget requests (No. 523) and determine the procedure for calculating the maximum total amount of government budget expenditure and the maximum amount of government budget expenditure for each ministry and other central government institutions for the medium term (No. 867). The procedure for determining the maximum allowable amount of government budget expenditures by the Ministry of Justice and the procedure for preparation of the state budget request of the Ministry of Justice must also be taken into account.

Latvia has one budget for all courts (except the Supreme Court) and all development activities are maintained and planned by Court Administration. Special projects must be applied to the State budget, such as new legislative measures or political initiatives. The presidents of the courts (although they may express their wishes to supplement the technical basis) and the Judicial Council are not involved in drafting of the budget. The Judicial Council only issues an opinion on the budget of all courts, upon a submission of the Ministry of Justice. This opinion is forwarded also to the Ministry of Finance. Hopefully, the Council's standpoint is also submitted to the *Saeima*, especially when it is not totally taken into consideration by the Government. It would contribute to the perception of judicial independence, if the Council can be represented and heard in the debates on the budget in the *Saeima* or in its specialised commission. At the end of 2017, Mr Ivars Bičkovičs, Chief Justice and Chair of the Judicial Council, represented the judiciary in the *Saeima* debates on the next year's budget.

The following steps of courts' budget planning can be outlined:

1. The next year's budget plan begins with the approval of basic budget expenditure (historical expenses). The amount of basic expenses is adjusted only in relation to the impact of the projects launched and the changes in own revenue.
2. After approval of the amount of basic expenses for the next year, in co-operation with the Ministry of Justice, the Court Administration, in addition to funding, is preparing proposals for new policy initiatives for the medium term (3 years).
3. Each year, the Cabinet of Ministers approves the maximum amount of budget expenditure for the next three years, incorporating the new policy initiatives supported by it.
4. Respecting the approved maximum budget capacity, the Court Administration prepares the overall budget proposal for courts, according to planned revenue and expenses, and submits it to the Ministry of Justice.
5. The Ministry of Justice submits a budget request to the Judicial Council for the provision of an opinion.
6. Following the opinion from the Judicial Council, the Ministry of Justice submits the budget requests of land registry offices, district (city) courts and regional courts to the Ministry of Finance, appending thereto the opinion of the Judicial Council.
7. The Supreme Court submits the budget request of the Supreme Court to the Judicial Council for the provision of an opinion. In a next step, it shall submit the budget request to the Ministry of Finance, appending thereto the opinion of the Judicial Council.
8. The differing opinion of the Judicial Council regarding the budget requests (both the one submitted by the Ministry of Justice and the one by the Supreme court) shall not prevent their submission to the Ministry of Finance.
9. Following the approval of the total amount of expenditure and adoption of the Law on State Budget, the Court Administration is planning central spending on the judiciary.

Separate budget lines also take into account the actual number of cases. The budget line "*office goods*" and "*household materials*" is updated annually, according to certain criteria (including the number of cases reviewed in the previous year). Other budget lines are also optimised each year, for example, in connection with amendments to procedural laws, saving on funding for communications services, funds are directed towards improving infrastructure, ensuring better access to information in courts.

The additional financial efforts of Latvia over the last years cover all components of the judicial system. They target courts, through programmes of modernisation of computer equipment, strengthening the security of courts, or legal aid - through the development of a dedicated system – as well as the prosecution services.

The budget for the courts of first and second instance is based on the same principle – number of judges and staff, statutory wages, material and technical bases, buildings in which each particular court is located etc. and then merging into one general court budget sub-programme "*Regional courts and district (city) courts*". The three most important categories as concerns the breakdown by component of the court budget are the annual public budget allocated to (gross) salaries, annual public budget allocated to court building (maintenance, operation cost) and annual public budget allocated to justice expenses.

Within one month after the adoption of the State Budget Law in the *Saeima* in the second reading, the Court Administration prepares the funding plan (distribution of expenses by months of the financial year – one joint funding plan is being prepared; it is not further subdivided into courts and land registry divisions) and submits it to each court and land registry division.

Office and household goods are the only budget lines that are generally allocated to each court separately (approved by the Director of the Court Administration). Criteria for the budget allocation for office supplies include:

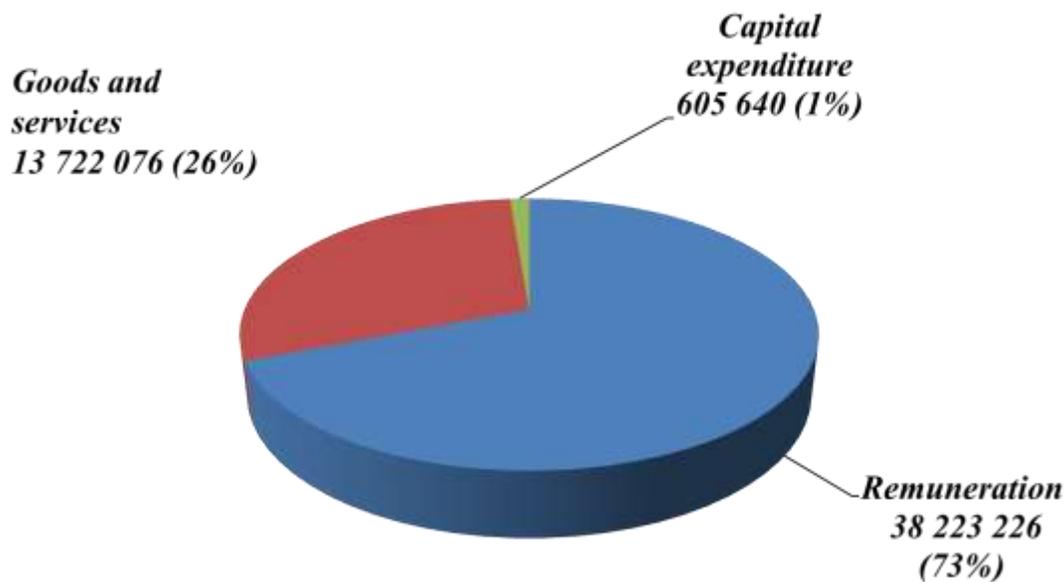
1. number of employees (judges, supporting staff);
2. the number of civil cases reviewed during the previous year;
3. number of administrative cases reviewed during the previous year;
4. the number of criminal cases and administrative offences reviewed in the previous year;
5. the number of applications for uncontested compulsory execution and the forced execution of obligations under the procedure of warning reviewed in the previous year;
6. the number of decisions of the judges of the land registry offices adopted in the previous year.
7. area of court's premises.

Table 3: The budget administered by different authorities in the justice sector, 2016

2016 data	Supreme Court		Court Administration (district courts, regional courts and land registry offices)		Constitutional Court		Prosecution Service	
	Approved budget (in €)	Implemented budget (in €)	Approved budget (in €)	Implemented budget (in €)	Approved budget (in €)	Implemented budget (in €)	Approved budget (in €)	Implemented budget (in €)
TOTAL - Annual budget allocated to the functioning of all courts (1 + 2 + 3 + 4 + 5 + 6 + 7)	4.853.973	4.660.179	48.511.181	48.276.758	1.484.895		22.557.706	22.533.408
1. Annual public budget allocated to (gross) salaries	4.454.070	4.274.250	33.555.973	33.536.118				
2. Annual public budget allocated to computerisation (equipment, investments, maintenance)	54.593	52.957	1.333.395	1.332.875				
3. Annual public budget allocated to justice expenses (expertise, interpretation, etc.), without legal aid. NB: this does not concern the taxes and fees to be paid by the parties.	10.000	9.963	2.792.714	2.699.386				
4. Annual public budget allocated to court buildings (maintenance, operating costs)	91.931	91.758	9.890.507	9.790.772				
5. Annual public budget	0	0	0	0				

allocated to investments in new (court) buildings								
6. Annual public budget allocated to training	27.200	27.168	260.854	248.396				
7. Other	216.179	204.083	677.738	669.211				

Figure 8: Planned court expenses in regional and district (city) courts and land registry offices, in 2017, totalling 52.6 million EUR (planned number of judges 546, number of court staff 1667)⁷⁷



As it may be expected, the bulk of courts' budget goes to remuneration (and related payments) of judges and court personnel.

b. Court fees and other fees for court services (in civil and administrative cases)

Article 6 § 1 of the European Convention on Human Rights provides that: *“In the determination of his civil rights and obligations..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”*

The right to a fair trial, as guaranteed by Article 6 § 1, must be construed in the light of the rule of law, which requires that litigants should have an effective judicial remedy enabling them to assert their civil rights. The rules governing the formal steps to be taken in lodging an application for judicial review are aimed at ensuring a proper administration of justice and compliance, in particular, with the principle of legal certainty. That being so, the rules in question, or their application, should not prevent litigants from using an available remedy. In the specific circumstances of a case, the practical and effective nature of this right may be impaired, for instance by the prohibitive cost of the proceedings in view of the individual's financial capacity (in particular by the excessive court fees). Member states of the Council of

⁷⁷ This is the 1st version I of the distribution of court resources in 2017, but the Court Administration ended the year with the 12th version in which the annual breakdown has changed.

Europe have made it an objective to guarantee access to justice to its citizens. An effective access to justice means that the costs of accessing justice are affordable to citizens and that information on such costs or sources of costs is itself easily accessible.

In “*The 2017 EU Justice Scoreboard*”⁷⁸, European Union has compared the level of court fees for a 6000 EUR claim and for a low value claim, which is based on the Eurostat poverty threshold for each member state.

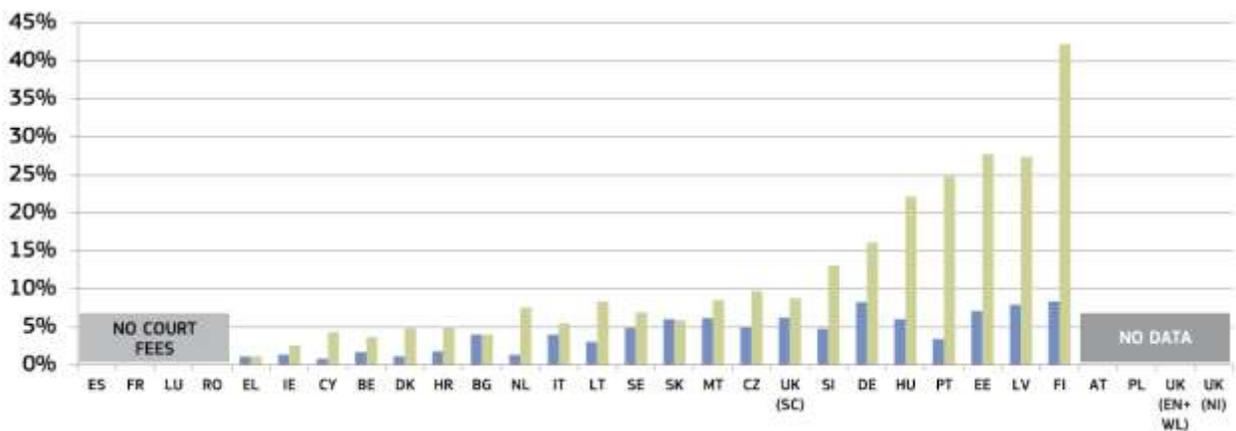
Figure 9: Figure 22 of the “2017 EU Justice Scoreboard” on court fee to start a judicial proceeding in a specific consumer case.

Figure 22

Court fee to start a judicial proceeding in a specific consumer case (*) (level of court fee as a share of the value of the claim)

■ Court fee for a €6000 claim (in %) ■ Court fee for a low value claim (*) (in %)

Source: European Commission with the CCBE⁽¹⁴⁾



According to the above comparative data, Latvia is in the group of states with the highest court fees.

In Latvia, the court fees shall be paid in civil and administrative court proceedings. According to the Administrative Procedure Law (Article 18), administrative proceedings in an institution shall be free of charge for private persons. Only a state fee and a security deposit, in accordance with the procedures and in the amount set out in the Administrative Procedure Law, shall be paid for submission of an application to a court. There are no court fees in criminal procedure.

In civil matters, the court fees are calculated from the amount of the claim, or they are set by the law as a fix sum for the specific case category. Court fees for the civil claims assessable as a monetary amount are calculated from the value of the claim according to the Civil Procedure Law as follows:

- up to 2134 Euro – 15 % from the amount claimed but not less than 71,14 Euro;
- from 2135 Euro to 7114 Euro – 320,10 Euro plus 4 % of the amount claimed exceeding 2134 Euro;

⁷⁸ See the report on EC webpage: http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm

- from 7115 Euro to 28 457 Euro – 519,30 Euro plus 3,2 % of the amount claimed exceeding 7114 Euro;
- from 28 458 Euro to 142 287 Euro – 1202,28 Euro plus 1.6 % of the amount claimed exceeding 28 457 Euro;
- from 142 288 Euro to 711 435 Euro – 3023,56 Euro plus 1 % of the amount claimed exceeding 142 287 Euro;
- exceeding 711 435 Euro – 8715,04 Euro plus 0,6 % of the amount claimed exceeding 711 435 Euro.

In regard to claims considered as non-monetary the state fees in civil cases are, according to the Civil Procedure Law, as follows:

- divorce – 142,29 / 14,23 Euro,
- special adjudication procedure cases – 42,69 Euro,
- insolvency proceedings– 355,72/71,14 Euro,
- legal protection proceedings – 142,29 Euro,
- intellectual property rights – 213,43 Euro,
- validity of decisions of the meeting of shareholders – 142,29 Euro,
- other claims which are not financial in nature or are not required to be evaluated – 71,14 Euro.

In administrative matters, the state fee in the amount of 30 Euro shall be paid in regard to the submission of an application for initiation of a matter in the court, counter-application, application of a third person with a separate claim for the subject-matter of the dispute.

A court, upon considering the financial situation of a natural person, may exempt such person partly or fully from payment of court expenses, as well as postpone payment of court expenses, or divide payment thereof into instalments. There are also general exemptions, set categories of persons who do not pay court expenses.

The unsuccessful party has to compensate to the successful party all the court costs. If a claim is satisfied in part, the court costs will be awarded in proportion. Similarly, the costs of conducting the case (lawyer’s fees, expenses of attendance at court and expenses related to the gathering of evidence) will be awarded. The fees payable to a lawyer are determined by agreement between the client and the lawyer, but the law provides for limitations of reimbursable expenses for the assistance of an advocate as follows:

value of claim	limitations
≤ 8 500	≤ 30 % of claim
8 501 – 57 000	≤ 2850
≥ 57 001	≤ 5 % of claim
non-monetary claim	≤ 2850
non-monetary (complex) claim	≤ 4275

The court fees for first in Latvia and in some other countries can be compared in *Table 4* below (see also “*Court fees and exemption from payment*” the section *E.b.* hereunder).

Table 4: Court fees for first instance courts.

value of claim EUR	Latvia	Estonia	Netherlands*		Italy	France*
			Co.	Ind.		
<i>civil proceedings</i>						
50	71.14	75	117	78	43	<i>no fee</i>
1 000	150	175	470	223	43	<i>no fee</i>
2 500	320,10+14,64 = 334,74	250	470	223	98	<i>no fee</i>
10 000	519,30+92,35 = 611,65	550	939	470	237	<i>no fee</i>
100 000	1202,28+1144.69 = 2346,97	1 200	1 924	883	759	<i>no fee</i>
500 000	3023,56+3577.13 = 6 600,69	3 400	3 894	1 545	1 214	<i>no fee</i>
5 000 000	8715,04+25731.39 = 34 446,43	3 400	3 894	1 545	1 686	<i>no fee</i>
10 000 000	8715,04+55731.39 = 64 446.43	3 400	3 894	1 545	1 686	<i>no fee</i>
<i>non-monetary</i>	71,14	300			98*	<i>no fee</i>
<i>administrative proceedings</i>						
<i>admin. case</i>	30	15	333	168	300	<i>no fee</i>

* in The Netherlands: "Co." for companies, "Ind." for individuals.

* no fees are applied in France, since the Ministry of Justice cancelled (on 04.10.2017) the previous policy.

* In Italy: 43 EUR for example if the divorce is agreed by both spouses and for some specific labour cases (e.g. social security cases).

It may be recommended to establish the court fees as fixed sums for different value categories of claims, in a table form, as per the Estonian example in *Table 5*.

Table 5: Example of court fees in Estonia. State Fees Act: Annex 1 "State Fee Rates for Filing in Petitions in Judicial Proceedings (in Euros)"

Value (up to)	State fee	Value (up to)	State fee	Value (up to)	State fee
350	75	4,500	350	20,000	750
500	100	5,000	400	25,000	900
750	125	6,000	425	50,000	1,000
1,000	175	7,000	450	75,000	1,100
1,500	200	8,000	475	100,000	1,200
2,000	225	9,000	500	150,000	1,500
2,500	250	10,000	550	200,000	1,800
3,000	275	12,500	600	250,000	2,100
3,500	300	15,000	650	350,000	2,700
4,000	325	17,500	700	500,000	3,400

If the value of a civil matter exceeds 500,000 Euros, a state fee shall be paid in the amount of 3,400 Euros.

Concluding remarks on the budget of the judicial system

1. The draft budget for judiciary is presented to the Parliament by the Ministry of Finance. There are discussions on the budget before that between the Ministry of Justice and the Judicial Council, but it is recommended to establish in the law that the written opinion of the Judicial Council (concerning the budget) shall be attached to the draft budget for judiciary when presented to the Parliament. Additionally, it is advisable that the Chair of the Judicial Council is heard during budget discussions in the Parliament, by the relevant parliamentary commission responsible for budgetary procedure.
2. The current budget process is based on “*incremental costs*”. This incremental budgeting is still used in many European judicial systems. A few countries have experienced alternative approaches to budgeting, among them Finland, France, Ireland, the Netherlands. The performance-based budgeting approach is adopted in each country along with different features and nuances. In Finland, a weighted caseload system is used to measure the workload and assess the budget needs. In addition a negotiation process is in place to allocate resources from the Ministry of Justice to courts. In France, judges’ performance and the quality of their decisions affect the allocation of resources to the various courts through a rather hierarchical system. In Ireland courts’ budget is based on a detailed programme of activities with qualitative statements and key outputs metrics. The Netherlands developed a sophisticated calculation of “*cost per case*”, which is the basis for the assessment of budget needs and allocation.⁷⁹
3. The performance-based budgeting approach tries to enhance the links between resources needed, performance, and targets. It also has drawbacks, for example it requires more time and resources to be prepared, but it addresses the need to have a more fact-based budget appropriation and a more balanced allocation of resources among courts, which is one of the few problems to be addressed by the Latvian judiciary. The Ministry of Justice and the Court Administration may take into consideration to move towards a performance-based budget, which should be inspired by the ones already implemented in some European countries, but adapted to the specific needs of the Latvian judiciary.
4. The performance-based budgeting may also bring changes in the governance structure of the courts, with a bigger managerial roles of courts’ presidents or managerial boards.
5. The current system of court fees in civil matters is unreasonably complex. The calculation of the costs of court fees requires computations with several variables (with decimal points) and therefore the actual costs are not easily understandable for citizens. Calculation of the court fees should be reasonably simple, easily understandable and

⁷⁹ The round table “*Court and judicial systems’ budget*” was organised by the CEPEJ and Court Administration of Latvia on 7 November 2017, in Riga. During this event were presented different innovative ways to draft and to manage the budgets of courts and of the judicial systems in France, Estonia, Finland, Ireland, and the Netherlands.

foreseeable for the public. Computations with several variables and decimal points shall be avoided. It is recommended to provide the court fees as fixed sums for different value categories of claims, in a table form.

6. The court fees for the claims of a value of 0,5 million EUR and above are much higher in Latvia than in other countries, and there is risk of violation of Article 6 § 1 of the European Convention on Human Rights. It is recommended to limit the court fees to the estimated average cost of settling a case, as has been done recently in some other European countries.

D. Court management. Efficiency of courts

a. Internal organisation of courts. Responsibilities and prerogatives within courts

This section on internal organisation of the courts of Latvia is based mainly on the information collected during the interviews carried out in the course of the fact-finding mission by the CEPEJ team and on the replies to the questionnaire designed by the CEPEJ team and distributed to Latvian courts. In addition it can be referred to some background information communicated in preparation of the [CCJE Opinion No. 19 \(2016\) "On the role of court presidents"](#).⁸⁰

According to the Law on the Judicial Power, the work in a court shall be managed by the president (often translated into English in the documents submitted to the expert team as "*chief judge*") who has responsibility on the overall administration and staff of the court. The president, depending on the size of the court, may have deputies to assist him in his/her management duties. Besides the provisions of the law however, attention has been raised about the limitation of tasks a president can carry on a daily basis because of the limitation of the management team as such. As a matter of fact it seems that President of courts and deputies who also have to carry adjudication duties are supported by court administrators but not specialised court managers in different areas, as it can be the case in other European countries where court management teams are far more complete.

One positive aspect of the current situation may be the willingness and dedication to the task of the current court presidents. Team management meetings seem to be a current practice according to the answers to the questionnaire. Official meetings are held by the chairman of a court with the judges on a regular basis, and with court staff, and when necessary with all partners of the court as well (like law enforcement agencies). These meetings are designed to discuss and harmonize practices and have an exchange about a uniform application of the law, the functioning of the court and the efficiency of the processes.

However, some respondents to the questionnaire declared that too many differences remain in the way judges make their reasoning and write their decisions, asking for more harmonization mechanisms whether it is through the authority of the president or his/her deputies or some tools guiding the reasoning and writing process for all judges. On the court administration side, raising awareness of court presidents on the role of the indicators in planning the court agenda, introducing mechanism for supervision and monitoring its performance, may be seen as something to work on. The Court Administration informed the experts that professional supervision of presidents of courts will be organised in the context of European Social Fund program, but it may be considered to redesign and implement a real management team around the President of a court and his/her deputies to cover all the areas of court management in a more professional way if the budget of the national court administration allows.

For the adjudication process in daily court operations, judges are helped by judge assistants whose role seem to be crucial but tasks carried by judge assistants have been described as for preparation of drafts of decisions, managing the court management system, working closely

⁸⁰ <https://www.coe.int/en/web/ccje/avis-n-19-sur-le-role-des-presidents-de-tribunaux>

with court secretaries on behalf of the judge, and being the first-front interlocutor for the parties in a case. Some respondents to the questionnaire mentioned the judges' assistants should have more training before taking office and more training at their disposal to deal with current legal issues on the way. Higher qualification of assistants would be desirable as well, as quality seems to vary too much from one person to another. Despite the fact each judge should have an assistant, some regret there is no legal advisors at their disposal. There may be a choice to make in providing either legal advisors or judge assistants if the two cannot be supported by the court administration budget, but first a clear design of the judge assistant tasks and profile may be considered in an overall design of a judge's team (including repartition of tasks and comparison of desirable/current profiles between court secretaries, judge assistants, judges as team leaders, and at the end studying the necessity and feasibility to have legal advisors in addition for any judge or shared among judges in specialised teams of specialised jurisdictions).

Team work being crucial to the efficiency and quality of the overall administration of a court and to the daily work of any individual judge, the functioning of Latvian courts may be enhanced by a revision of its internal organisation model and the way tasks are distributed in comparison with successful European best practices in the field. In this respect, it must be noted that the [revised SATURN Guidelines for judicial time management \(CEPEJ-SATURN\(2015\)2\)](#) emphasise that cooperation between all authorities responsible for the administration of justice, especially non-judge administrators, seems to be a factor of effectiveness. Even in the case there is a clear separation of tasks between judicial activities (in a broad sense) and court administration activities (registrars, non-judge assisting judges, etc.) all these authorities have a part of responsibility in the good functioning of the court, especially in a perspective of collective time management of cases and quality of service delivery.

b. Performance of courts. Statistics.

Analysis of the caseload structure and CEPEJ indicators

The Court Administration of Latvia delivered to the CEPEJ expert team a set of key statistical data for 2012-2016, for all courts of first instance, as well as for each of the 9 selected courts (3 Regional and 6 District Courts). These data supplied by the Court Administration have been the basis for the analysis carried out by the experts, with tables and graphs drawn up for the most important CEPEJ indicators:

- Clearance Rate (CR);
- (Forecasted) Disposition Time (DT);
- Age of Pending Cases (APC);
- Case Per Judge (CPJ);
- Case Per Staff (CPS)
- Staff Per Judge (SPJ);
- Cost Per Case (CPC);
- Appeal Rate (AR);
- Rate of Quashed and Modified Decisions (QMD).

In the first section, aggregate data for all the first instance courts will be examined, while in the second section data for each of the 9 selected courts will be analysed and compared.

Overall analysis of the statistics

Incoming, solved, and pending cases

In this paragraph, the movement of cases (incoming/new cases, disposed/solved cases, and pending cases at the end of the period) from 2012 to 2016 is examined, to give a first overview of caseflow trends.

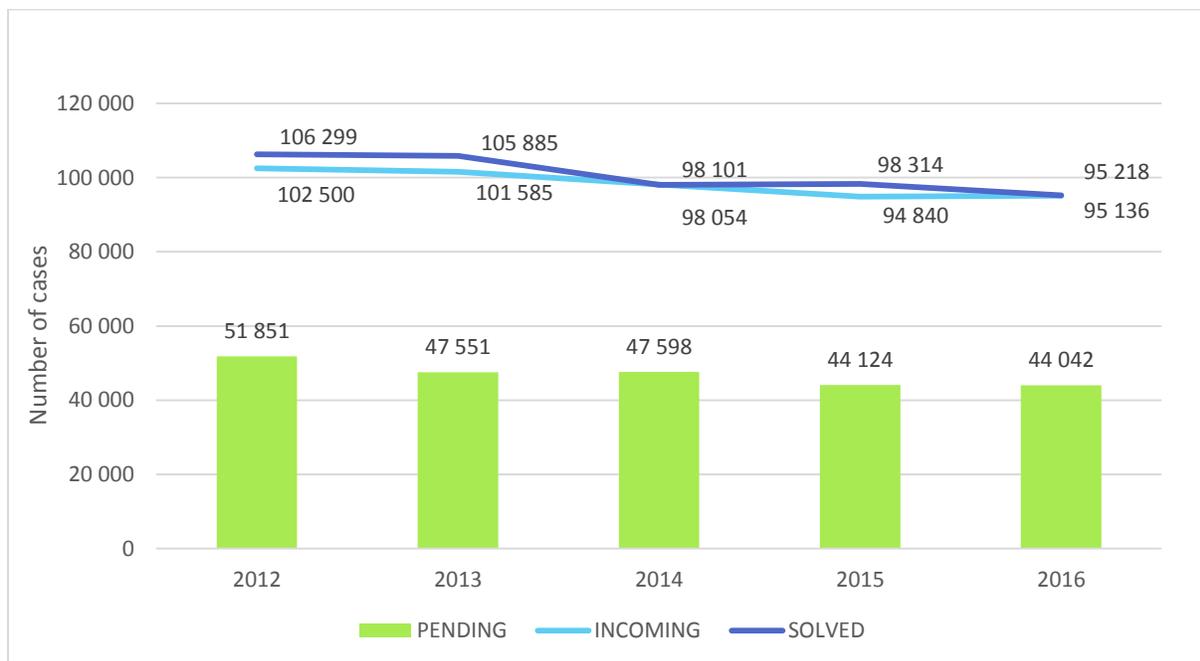
As *Table 6* and *Figure 10* show, the overall number of incoming (new) cases, as well as the number of solved (disposed) cases decreased every year.

The number of solved cases over the five years considered has been always higher than the number of incoming cases; as a result, the overall number of pending cases dropped by 15 % from 51.851 cases in 2012 to 44.042 cases in 2016, as both the *Table 6* and *Figure 10* show.

Table 6: All first instance courts - movement of cases

	2012	2013	2014	2015	2016
INCOMING	102.500	101.585	98.101	94.840	95.136
SOLVED	106.299	105.885	98.054	98.314	95.218
PENDING	51.851	47.551	47.598	44.124	44.042

Figure 10: All first instance courts - caseflow for all types of cases



The structure of caseload (meaning the distinction of cases into some main categories) is then analysed. *Table 7* shows the number of incoming, solved, and pending cases at the end of the year for some case categories from 2012 to 2016.

Table 7: All first instance courts - movement of cases by category

Incoming					
Category of cases	2012	2013	2014	2015	2016
Civil and commercial	75162	74760	75369	70228	70476
Administrative	5133	2723	2229	2342	2410
Administrative offences ⁸¹	10258	9192	8287	8390	8388
Criminal	9635	9162	9516	10600	10794
Enforcement ⁸²	2312	5748 ⁸³	2700	3280	3068
Total incoming cases	102500	101585	98101	94840	95136
Solved					
	2012	2013	2014	2015	2016
Civil and commercial	78861	77230	74328	73793	71527
Administrative	6417	4548	3269	2394	2281
Administrative offences	9336	9353	8204	8332	8188
Criminal	9447	9203	9700	10648	10232
Enforcement	2238	5551	2553	3147	2990
Total solved cases	106299	105885	98054	98314	95218

⁸¹ Administrative offences (also referred to as “Administrative Violations”) pertain to a category of cases very close to the concept of English “misdemeanours” or French “contraventions”. An administrative offense differs from a crime by the lesser degree of social danger. Codes of administrative offenses still exist in many European countries, especially those formerly part of the group of socialist states. The proceedings in regard to this category of cases are usually simplified, compared to criminal cases. It is to be emphasised that, in the interpretation of Article 6 of the ECHR, the notion of a “criminal charge” is regarded by the ECtHR as having an autonomous meaning, mainly with the purpose of preventing elusion from the ECHR obligations by the contracting states. Therefore, when applying the so-called “Engel criteria”, the vast majority of proceedings in regard to alleged administrative offences will be treated as “criminal charges” by the ECtHR and will have to comply with all the guarantees codified by Article 6 of the ECHR. The Latvian Administrative Violations Code envisages the administrative arrest from 24 hours up to 15 days and nights among the possible sanctions (the most severe, though), Section 23, 31 etc.

⁸² This category is related to enforcement of sanctions in criminal cases.

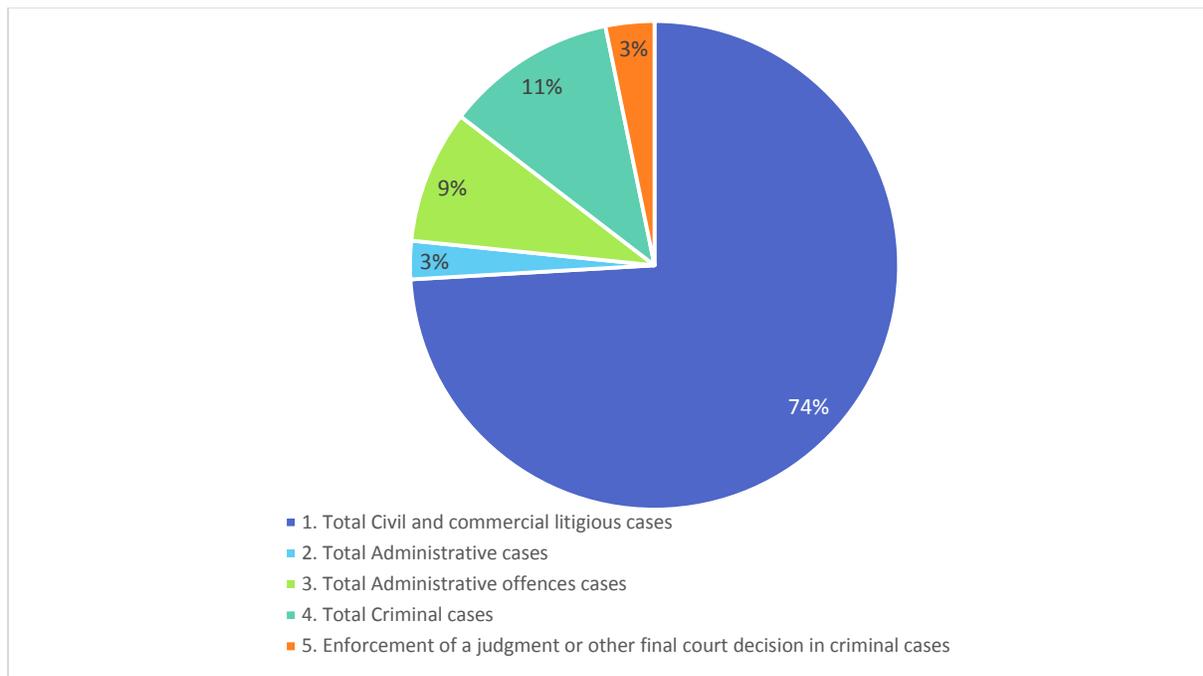
⁸³ The significant difference in 2013 compared to other years between the number of incoming and solved “Enforcement cases” was explained by the representatives of the Ministry of Justice by the fact that in 2012 a reform took place re-qualifying certain criminal offences. Therefore, courts reviewed (within 1 and 3 months legally binding delays) a large “bulk” of cases submitted by enforcement institutions or public prosecutors regarding the release of persons from serving sentences or regarding amending the court rulings due to amendments to the Criminal Law which came into force on 1 April 2013.

	Pending at the end of the year				
	2012	2013	2014	2015	2016
<i>Civil and commercial</i>	39579	37109	38150	34585	33534
<i>Administrative</i>	4501	2676	1636	1584	1713
<i>Administrative offences</i>	1834	1673	1756	1814	2014
<i>Criminal</i>	5303	5262	5078	5030	5592
<i>Enforcement</i>	634	831	978	1111	1189
Total pending cases	51851	47551	47598	44124	44042

As showed also in *Figures 11 and 12*, as expected, the main component of total incoming, solved, and pending cases are civil and commercial litigious cases.

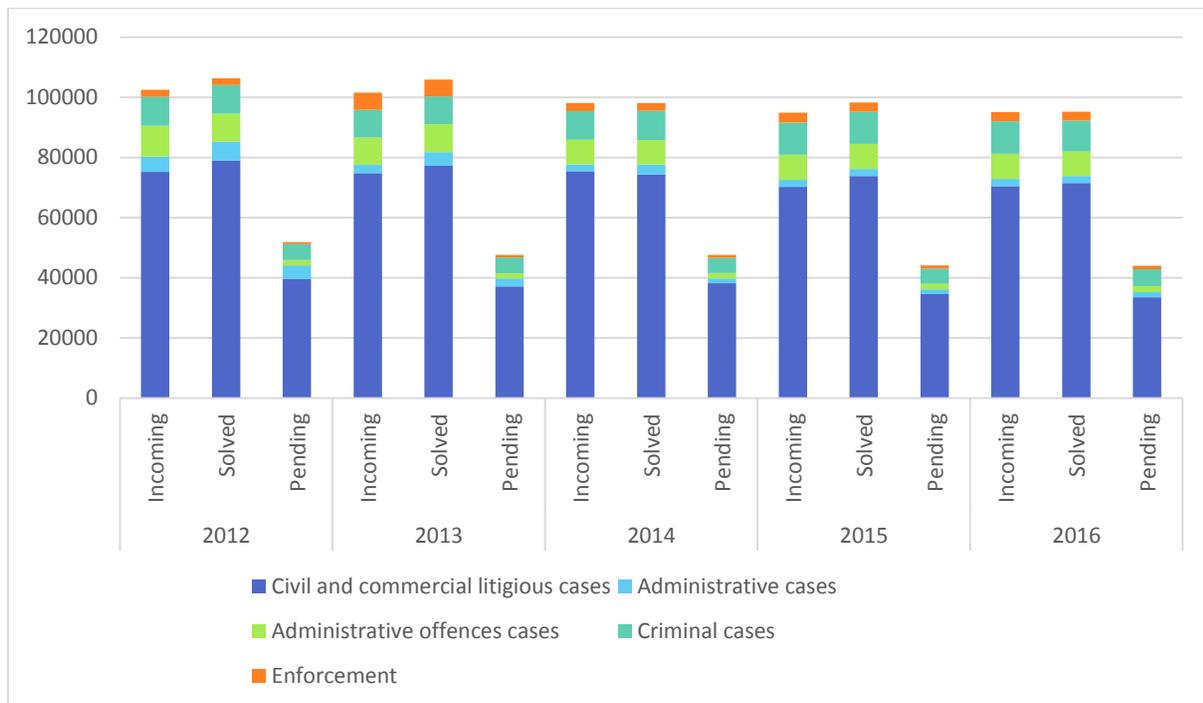
Figure 11 shows the structure of incoming cases in 2016, while *Figure 12* shows the caseflow for kind of cases (structure) from 2012 to 2016.

Figure 11: All first instance courts - structure of incoming cases in 2016



Civil and commercial cases in 2016 were 74 % of the total incoming cases, and 76 % of the total pending cases. Criminal cases were 11 % of the total incoming, and 13 % of the total pending. Administrative cases were 3 % of incoming cases and 4 % of pending cases, administrative offences were 9 % of the total incoming cases and 5 % of pending cases, while enforcement cases were 3 % both of incoming and pending total cases.

Figure 12: All first instance courts - caseload by category



As for the single categories:

- *“Civil and commercial litigious cases”*, are the most numerous case category, and as such they affect the overall trend. As already mentioned, from 2012 to 2016 a slight decrease of incoming, solved, and pending cases has been registered.
- *“Criminal cases”*, on the contrary, had an upward trend, with a constant increase of incoming, solved, and pending cases, especially since 2014.
- Both *“administrative”* and *“administrative offence cases”* had a major decrease of incoming cases from 2012 to 2014, and a slight rise from 2015 to 2016. Solved cases had an overall decreasing trend, but while administrative solved cases were more than administrative incoming cases every year except in 2016, for *“administrative offence cases”* the number of solved cases was lower than the number of new cases in the last three years, and this led to an increase of the number of pending cases
- Also the number of solved *“enforcement cases”* was always lower than the number of new cases, so the number of pending cases has constantly increased over the years.

Clearance rate and calculated disposition time

Clearance rate and calculated disposition time are indicators useful to have a first glance at court performance; they are particularly useful for a diachronic analysis, comparing different years and different categories of cases.

The Clearance Rate (CR) indicator is calculated as the ratio between new incoming cases and solved cases in the same period, in percentage. 100 % is the *“key value”*, meaning that courts have solved the same number of cases that were filed. As a consequence, values above 100 %

are considered as “*positive*”, and they indicate that the courts have solved more cases than the incoming cases, while values below 100 % are considered as “*negative*”, meaning that cases solved are less than new incoming cases.

The Calculated Disposition Time (DT) indicator compares the number of solved/disposed cases during the observed period (normally a calendar year) and the number of pending cases at the end of that period. This indicator shows, in days, the time needed to solve all the pending cases in a court, upon the condition that it does not receive new ones. Indirectly, this indicator gives a forecast of the length of proceedings.

Table 8 shows the development of Clearance Rate (CR) values for all the courts over the years for each main case category. Values around 100 % are coloured in yellow, values below 100 % are coloured in red and values above 100 % are coloured in green.

Table 8: All first instance courts - clearance rate by category

	2012	2013	2014	2015	2016
Civil and commercial litigious cases	104,9%	103,3%	98,6%	105,1%	101,5%
Administrative cases	125,0%	167,0%	146,7%	102,2%	94,6%
Administrative offence cases	91,0%	101,8%	99,0%	99,3%	97,6%
Criminal cases	98,0%	100,4%	101,9%	100,5%	94,8%
Enforcement	96,8%	96,6%	94,6%	95,9%	97,5%

In 2013, 2014, 2015 CR had positive values (more than 100 %) for all the categories except “*enforcement cases*”, while in 2016 all the values, except for “*civil and commercial cases*”, were negative (under 100 %).

Table 9 shows the Calculated Disposition Time (DT) values expressed in number of days. For the ease of the reader, cells are coloured in a green-yellow scale, where yellow is the forecasted highest number of days to dispose the pending cases, and dark green is the lowest forecasted number of days.

Table 9: All first instance courts - calculated disposition time by category

	2012	2013	2014	2015	2016
Civil and commercial litigious cases	183	175	187	171	171
Administrative cases	256	215	183	242	274
Administrative offence cases	72	65	78	79	90
Criminal cases	205	209	191	172	199
Enforcement	103	55	140	129	145

The calculated disposition time for “civil and commercial” cases and for “criminal cases” marginally decreased over the years (from 183 in 2012, to 171 in 2016 for civil cases; and from 205 in 2012, to 199 days in 2016 for criminal cases), while in the other categories, especially “enforcement”, DT rises. It is worth noting the situation with enforcement cases, especially the fact that, in 2013, witnessing an “explosion” by more than 2 times of this category of cases, the court system had no problem in dealing with this increase and demonstrated the same CR as in other years, diminishing at the same time from 103 to 55 days the DT. On the other hand, as explained by the representatives of the Ministry of Justice, the measures taken in 2013 to cope with the sudden increase of enforcement cases included legally binding delays of 1 and 3 months and a fully written procedure of their examination.

Cases per judges and staff, cost per case

Table 10 shows the number of judges, staff, budget amounts, then some indicators are calculated.

Based on the information collected from the Court Administration and the Ministry of Justice, the number of judges and staff are supposed to be calculated as “full time equivalent” (FTE)⁸⁴.

In order to make a more in-depth analysis, it would be necessary to have detailed data on the number of judges and personnel divided by the main case categories, as well as a budget breakdown for at least these main case categories. At the time of this writing, these data are not available, therefore it is not possible to proceed with a more precise and meaningful analysis. However, this first analysis presents the method proposed, and a first rough overview about courts’ efficiency (ratio between court performance and costs).

Table 10: All first instance courts - budget, judges, staff and related indicators

	2012	2013	2014	2015	2016
<i>INCOMING</i>	102.500	101.585	98.101	94.840	95.136
<i>SOLVED</i>	106.299	105.885	98.054	98.314	95.218
<i>PENDING</i>	51.851	47.551	47.598	44.124	44.042
<i>CR</i>	104%	104%	100%	104%	100%
<i>DT (in days)</i>	178	164	177	164	169
<i>Budget (Euro)</i>	34.967.584	38.197.538	40.209.823	42.342.153	42.353.067
<i>Judges</i>	433,00	432,00	441,00	446,00	448,00
<i>Total number of staff</i>	1.495,50	1.486,00	1.502,00	1.500,00	1.433,00

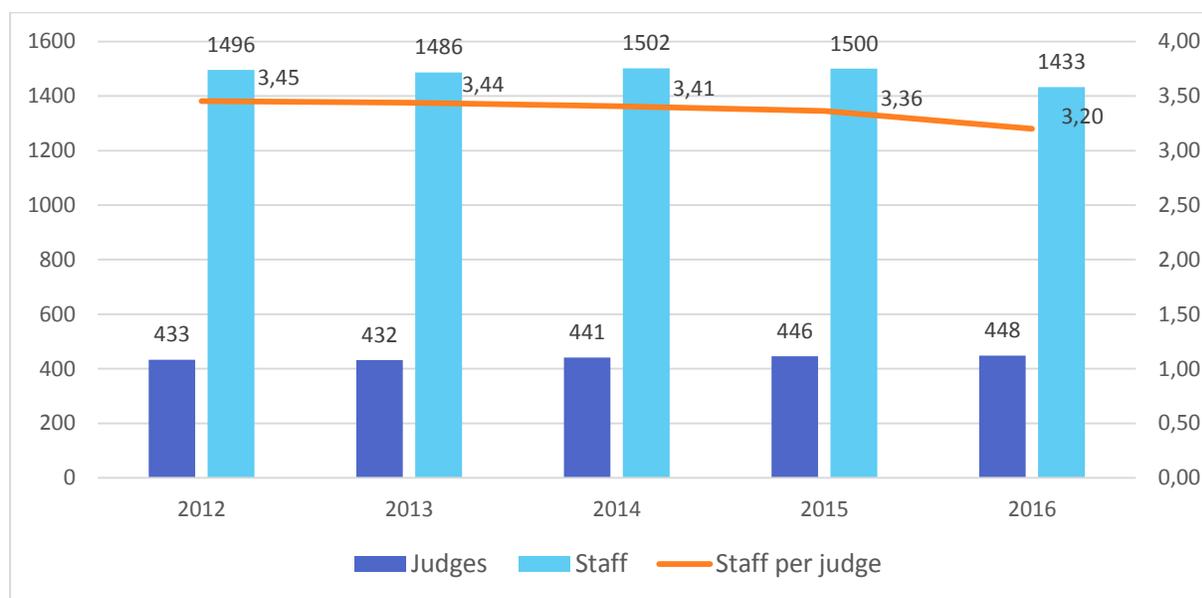
⁸⁴ “The “full-time equivalent” indicates the number of persons working the standard number of hours; the number of persons working part time is converted to full-time equivalent. For instance, when two people work half the standard number of hours, they count for one full-time equivalent, one half-time worker should count for 0.5 of a full-time equivalent” CEPEJ (2013), *Explanatory Note to the Scheme for Evaluating Judicial Systems. 2014-2016 Cycle*, Strasbourg, France, p. 2.

<i>Total staff per judge</i>	3,45	3,44	3,41	3,36	3,20
<i>Cost per case (Euro)</i>	329	361	410	431	445
<i>Incoming cases per judge</i>	237	235	222	213	212
<i>Solved cases per judge</i>	245	245	222	220	213
<i>Solved cases per staff</i>	71	71	65	66	66

From 2012 to 2016, the budget increased by 21 %, and the number of judges rises by 3,5 %, while the number of personnel staff decreased by 4 %; as a consequence, the number of staff per judge decreased. The number of solved cases fell by 10 % from 2012 to 2016, therefore the cost per solved case (budget per solved cases) increased and the number of solved cases per judge and staff decreased.

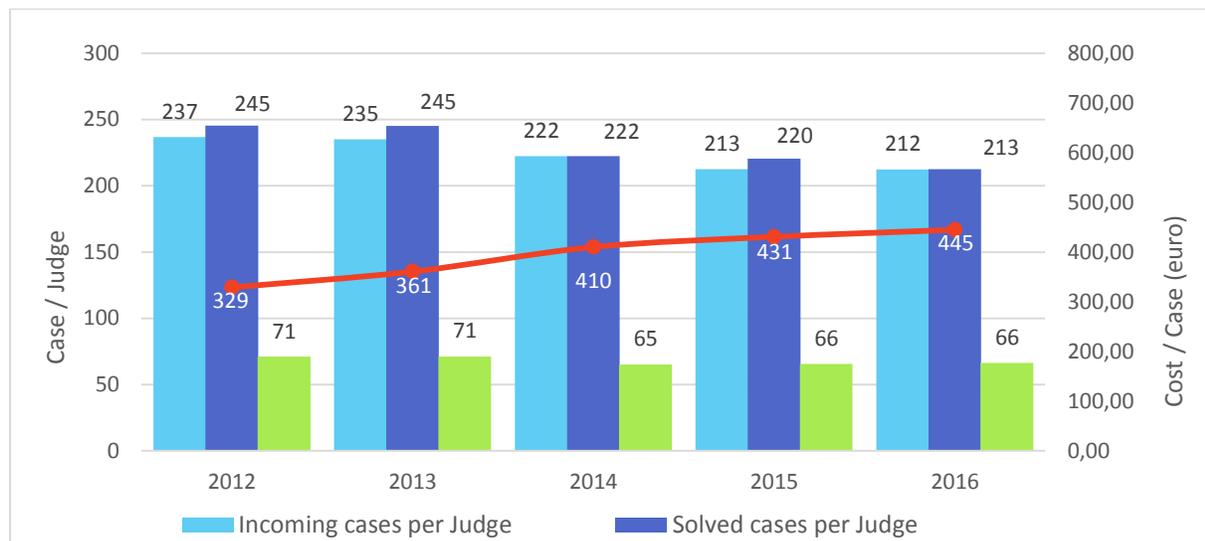
Figure 13 and Figure 14 present graphically the trends just described.

Figure 13: All first instance courts - judges, staff and staff per judge 2012-16



Although the tendencies are “thin” and a more in-depth knowledge of all actual circumstances is necessary to be able to make sustained conclusions, the evolution of first instance courts’ “productivity” aligns to the developments in court staff, both diminishing, in parallel. Pushing further the same approach to narrow interpretation of data, it may be noted that increasing the number of judges by 3,5%, between 2012 and 2016, occurred in parallel to a consistent increase of the cost per case. Of course these are not conclusions which the CEPEJ expert team would like to ascertain, but only examples of questions which should be asked, and answers sought, when analysing statistical data in regard to courts.

Figure 14: All first instance courts - Incoming and Solved cases/Judge, Solved cases/Staff, Cost/Case 2012-2016



A steady increase in the cost per case between 2012 and 2016 (by some 35%) can be observed in first instance courts. This should have well founded explanations, in particular it might have been caused by the increase in the level of remuneration of judges and court staff, or by higher investments in the infrastructure of the courts. To a certain extent (approx. 10%) this increase was caused by the slightly diminished “productivity” of courts.

Appeal rate and Rate of quashed or modified decisions

Appeal rate (AR) and rate of quashed and modified decisions can be considered rough indicators of the functioning of first instance courts.

The appeal rate is calculated as the ratio between the number of decisions appealed (incoming cases in appeal) and the number of disposed cases at first instance. The rate of quashed or modified decisions is the ratio (in percentage) between the court decisions quashed or modified by the higher instance courts (appeal or cassation) and the number of disposed by the same court over a certain period of time.

Table 11 shows the ratio of appealed decisions, and of decisions quashed or modified in appeal, calculated as a percentage of the total number of appealed decisions and of the total number of cases solved by first instance courts.

Table 11: All first instance courts - appeal and quashed rate

	2012	2013	2014	2015	2016
Solved cases first instance	106.299	105.885	98.054	98.314	95.218
Appealed decisions (appeal incoming cases)	13.030	12.868	11.413	10.840	10.669
Appeal Rate (appealed decisions / solved cases first instance)	12,3%	12,2%	11,6%	11,0%	11,2%
Decisions quashed or modified in appeal	2.227	2.432	2.028	1.921	2.031
Rate of quashed or modified decisions in	17,1%	18,9%	17,8%	17,7%	19,0%

<i>appeal (decisions quashed or modified / appealed decisions)</i>					
<i>Rate of quashed or modified decisions (decisions quashed or modified / solved cases first instance)</i>	2,10%	2,30%	2,07%	1,95%	2,13%

As Figure 15 shows, the number and the percentage of appealed decisions gradually decreased from 2012 to 2016, while the rate of decisions quashed or modified slightly increased.

Figure 15: All first instance courts - Solved cases/Appealed Decisions/Decisions quashed or modified in appeal. All types of cases.

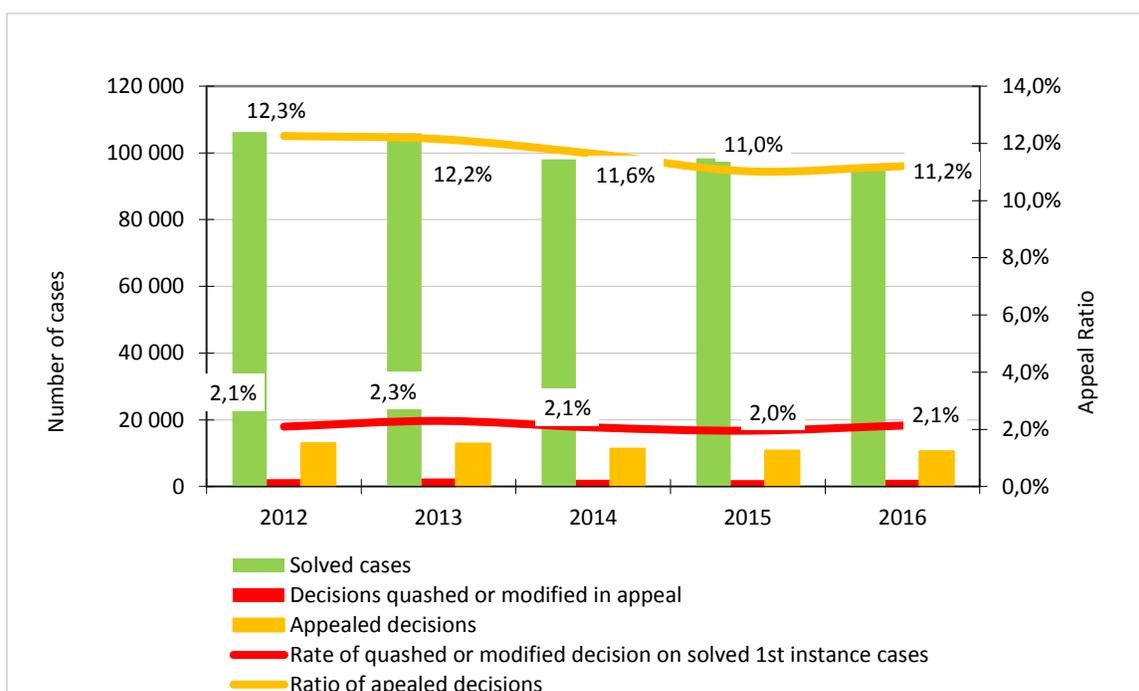


Table 12 shows the number and the percentage of appealed decisions and decisions quashed or modified in appeal for the 5 main categories of cases.

Table 12: All first instance courts - appeal and appeal rate by category

	2012	2013	2014	2015	2016
1. Total Civil and commercial litigious cases					
Solved cases first instance	78.861	77.230	74.328	73.793	71.527
Appealed decisions (appeal incoming cases)	6.414	6.046	5.715	5.802	5.792
Decisions quashed or modified in appeal	993	900	778	783	878
Appeal Rate	8,1%	7,8%	7,7%	7,9%	8,1%
Rate of decisions quashed or modified in appeal	15,5%	14,9%	13,6%	13,5%	15,2%

2. Total Administrative cases					
Solved cases first instance	6.417	4.548	3.269	2.394	2.281
Appealed decisions (appeal incoming cases)	2.710	1.895	1.882	1.392	1.284
Decisions quashed or modified in appeal	709	610	495	447	392
Appeal Rate	42%	42%	58%	58%	56%
Rate of decisions quashed or modified in appeal	26,2%	32,2%	26,3%	32,1%	30,5%
3. Total Administrative offences cases					
Solved cases first instance	9.336	9.353	8.204	8.332	8.188
Appealed decisions (appeal incoming cases)	1.552	1.987	1.413	1.348	1.392
Decisions quashed or modified in appeal	90	64	82	60	69
Appeal Rate	16,6%	21,2%	17,2%	16,2%	17,0%
Rate of decisions quashed or modified in appeal	5,8%	3,2%	5,8%	4,5%	5,0%
4. Total Criminal cases					
Solved cases first instance	9.447	9.203	9.700	10.648	10.232
Appealed decisions (appeal incoming cases)	2.196	2.196	2.176	2.048	1.986
Decisions quashed or modified in appeal	407	764	632	576	641
Appeal Rate	23,2%	23,9%	22,4%	19,2%	19,4%
Rate of decisions quashed or modified in appeal	18,5%	34,8%	29,0%	28,1%	32,3%
5. Enforcement					
Solved cases first instance	2.238	5.551	2.553	3.147	2.990
Appealed decisions (appeal incoming cases)	158	744	227	250	215
Decisions quashed or modified in appeal	28	94	41	55	51
Appeal Rate	7,1%	13,4%	8,9%	7,9%	7,2%
Rate of decisions quashed or modified in appeal	17,7%	12,6%	18,1%	22,0%	23,7%

Generally speaking, the five-year period considered does not show any particularly worrying trend in appeal for the five main case categories but administrative case, which had a significant increase of appeal ratio since 2013. In this category of cases

Administrative cases have the highest rate of appeal (56 % in 2016), with rather high rate of decisions quashed or modified in appeal. The CEPEJ expert team cannot connect this finding to the positive feedback it received during the fact-finding visit on the results of the reform

introducing the specialised administrative courts.⁸⁵ Criminal cases have the highest rate of quashed or modified decisions (32,3 % out of those 19,4% of decisions which were appealed in 2016), with an upward trend from the previous years. Obviously these aspects deserve a thorough examination by the court management and continuous monitoring in view of improving the said indicators.

The appeal rate for civil and commercial cases is quite constant in the five years considered (around 8 %), as well as it is constant the rate of quashes or modified decision in appeal, which is around 15 %.

Administrative offences cases have the lowest rate of decisions quashed or modified in appeal, while enforcement have the lowest rate of appealed decisions.

Focus on the 3 selected Regional Courts

In this paragraph, data for the three selected Regional Courts (Regional Court of Kurzeme, Regional Court of Latgales, Regional Court of Riga) will be examined and compared.

Table 13 shows the movement of cases (incoming/new, solved, and pending cases at the end of the period) from 2012 to 2016.

Table 13: Regional Courts – caseflow, 2012 - 2016

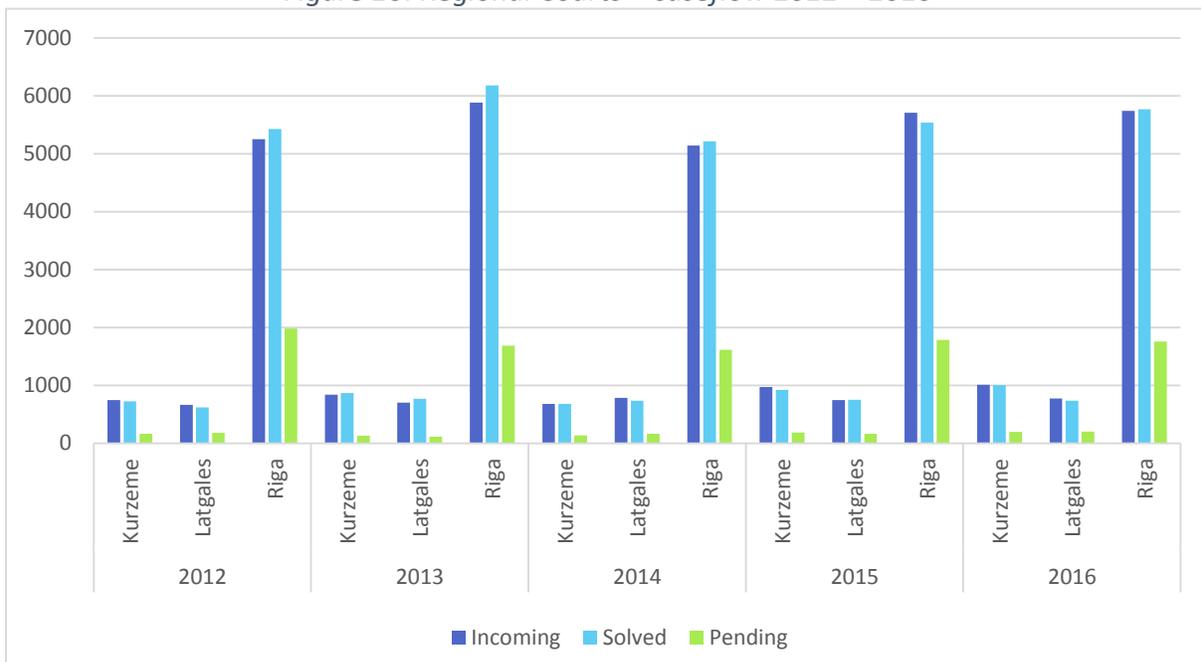
		Regional Court of Kurzeme	Regional Court of Latgales	Regional Court of Riga
2012	Incoming	746	660	5250
	Solved	722	620	5424
	Pending	162	177	1982
2013	Incoming	837	702	5880
	Solved	867	767	6178
	Pending	132	112	1684
2014	Incoming	680	783	5140
	Solved	679	731	5213
	Pending	133	164	1611
2015	Incoming	972	745	5708
	Solved	919	748	5538
	Pending	186	161	1781
2016	Incoming	1010	773	5742
	Solved	1001	731	5765
	Pending	195	203	1758

⁸⁵ In a comment to a draft of the present report, Ms Lauma Paegļkalna, Judge and President of the Association of Administrative Judges, has mentioned the following: *“It is not possible to objectively express this conclusion because it is not known which decisions (category of cases, the type of decisions, etc.) make the statistical results. More precise data would be needed to prepare an objective response. At the same time, it should be noted that cases subject to administrative jurisdiction have become more complex, they include both specific issues of law and extensive examination of evidence. In addition, the judiciary develops with a decreasing number of cases, courts are increasingly scrutinising the qualitative indicators of the case.”*

The case volumes handled by the Regional Court of Kurzeme and by the Regional Court of Latgales are quite similar, while the Regional Court of Riga handles 5 times more than the incoming cases of Kurzeme.

Figure 16 presents the development of the caseflow in the three Regional Courts over the last 5 years.

Figure 16: Regional Courts – caseflow 2012 – 2016



In the Regional Court of Riga the flow of incoming, solved, and pending cases is fluctuating. From 2012 to 2014, judges solved more cases than the incoming cases, therefore the number of pending cases dropped. In 2015, there was an inversion of this trend: the number of solved cases did not overcome the number of incoming cases, so the pendency rose. Finally, in 2016, incoming cases and solved cases were balanced, and the pending cases slightly decreased.

In the Regional Court of Kurzeme there was an overall increasing trend of incoming cases (except in 2014). The number of solved cases, especially in the last two years, was lower than the number of new cases. As a result, in 2016 pending cases increased by 20 % from 2012.

Also in the Regional Court of Latgales there was a rising trend of incoming cases, while the number of solved cases was fluctuating. In 2016 in particular, the number of solved cases was lower than the number of incoming cases, and the number of pending cases increased by 11 % since 2012.

Table 14 shows the caseflow by cases category: civil and commercial cases, criminal cases, enforcement cases, and administrative offence cases.

Table 14: Regional Courts – caseflow by case category

	Incoming					Solved					Pending				
	2012	2013	2014	2015	2016	2012	2013	2014	2015	2016	2012	2013	2014	2015	2016
	Civil and commercial cases														
Kurzeme	421	384	360	538	620	430	405	359	507	594	87	66	67	98	124
Latgales	289	241	340	371	435	291	269	302	361	395	60	32	70	80	120
Riga	3404	3178	2988	3684	3707	3802	3626	3131	3502	3588	1514	1066	923	1105	1224
	Administrative offences cases														
Kurzeme	109	157	97	169	134	83	180	90	155	151	31	8	15	29	12
Latgales	104	144	106	116	108	83	166	104	115	113	37	15	17	18	13
Riga	647	1326	963	832	906	464	1216	1004	842	1035	207	317	276	266	137
	Criminal cases														
Kurzeme	206	224	209	245	235	201	209	216	239	235	40	55	48	54	54
Latgales	233	203	300	218	195	212	219	289	233	188	79	63	74	59	66
Riga	1134	1036	1092	1075	1036	1094	1006	975	1085	1043	255	285	402	392	385
	Enforcement cases														
Kurzeme	10	72	14	20	21	8	73	14	18	21	4	3	3	5	5
Latgales	34	114	37	40	35	34	113	36	39	35	1	2	3	4	4
Riga	65	340	97	117	93	64	330	103	109	99	6	16	10	18	12
	Total cases														
Kurzeme	746	837	680	972	1010	722	867	679	919	1001	162	132	133	186	195
Latgales	660	702	783	745	773	620	767	731	748	731	177	112	164	161	203
Riga	5250	5880	5140	5708	5742	5424	6178	5213	5538	5765	1982	1684	1611	1781	1758

In all the three regional courts, the number of civil and commercial cases is about 60 % of the total incoming cases, with few differences: 61 % in Kurzeme, 56 % in Latgales, and 65 % in Riga. Criminal incoming cases are 23 % of the total incoming cases in Kurzeme, 25 % in Latgales, and 18 % in Riga; administrative cases are 13 % in Kurzeme, 14 % in Latgale, and 16 % in Riga, while enforcement cases are a small percentage in all Courts (2 % in Kurzeme and Riga and 5 % in Latgale).

For ease of reference, the main data are represented by graphs. *Figure 17* shows the incoming cases by category in 2016, while *Figure 18* presents the flow of pending cases by category over the 5-year period.

Figure 17: Regional Courts – incoming cases by category, 2016

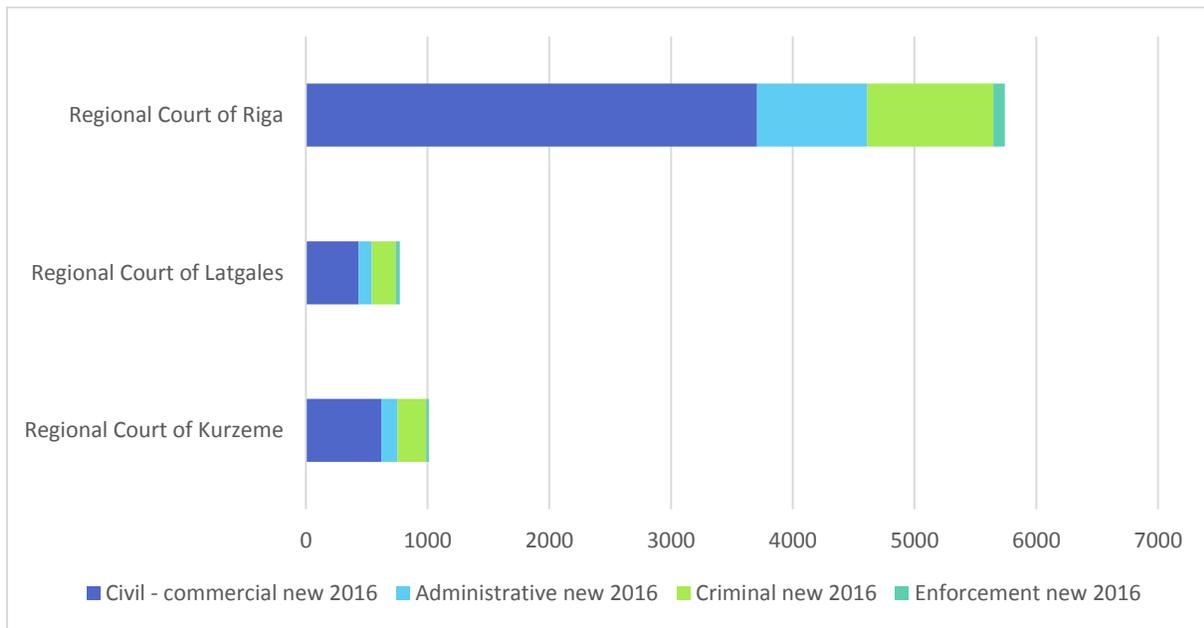
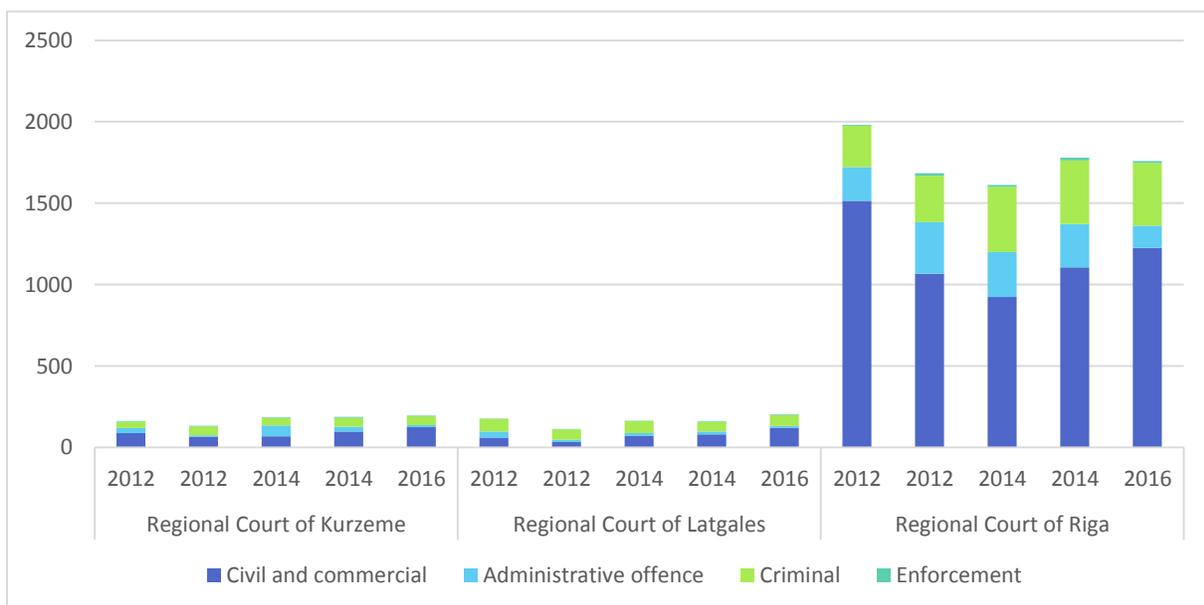


Figure 18: Regional Courts – pending cases by category, 2012-2016



In the Regional Courts of Kurzeme and Latgales, the increasing of total pending cases is due to the rise in civil and commercial pending cases, caused in turn by the rise in civil and commercial incoming cases, and a constant number of solved cases every year.

In Riga, the number of civil and commercial pending cases diminished, while the number of criminal pending cases increased, probably due to the decrease of the number of criminal solved cases in the 5-year period.

Clearance rate and calculated disposition time

Also for the three selected Regional Courts, the Clearance rate (CR) and the Calculated disposition time (DT) indicators will be compared. *Table 15* sets out the evolution of Clearance Rate and Calculated Disposition Time values in the 5-year period, as a first overview of the whole court caseload. Clearance rate values are coloured in red when they are below 100 %, in green when they are above; calculated disposition time values are coloured in a red-white-green scale, where red is the highest value and dark green is the lowest one.

Table 15: Regional Courts - clearance rate and calculate disposition time (2012-2016)

	2012		2013		2014		2015		2016	
	CR	DT	CR	DT	CR	DT	CR	DT	CR	DT
Regional Court of Kurzeme	97%	82	104%	56	99%	71	95%	74	99%	71
Regional Court of Latgales	94%	104	109%	53	93%	82	100%	79	95%	101
Regional Court of Riga	103%	133	105%	99	101%	113	97%	117	100%	111

Clearance Rate is quite variable in all the courts, with values overall around 100%. Riga has the best CR in the 5-year period, while Kurzeme has negative values (below 100%) every year except in 2013. Somehow the year 2013 was the “best” in terms of clearance rate and then forecasted disposition time for all these courts. It may be useful to try to identify the reasons behind these good results

However, Kurzeme is the court where the calculated disposition time has the best values: 71 days in 2016, 9 days less than in 2012, while Riga is the court where calculated disposition time is the longest. This is due to the difference in the inflow of cases and related “pressure” on the courts. The stock of pending cases, is about 30% of solved cases in Riga, while in Kurzeme it is about 20%. When comparing the CR and DT between courts, it is also important to take into consideration other indicators, such as the cases per judge and the cases per staff.

Different case categories have different calculated disposition times. *Table 16* shows the DT values for different categories in 2016.

Table 16: Regional Courts – calculated disposition time by case category in 2016

	Regional Court of Kurzeme	Regional Court of Latgales	Regional Court of Riga
Civil and commercial	76	111	125
Admin. offence	29	42	48
Criminal	84	128	135
Enforcement	87	42	44

Kurzeme is the Regional Court where the calculated disposition time is the lowest for civil, administrative offense, and criminal, but not for enforcement proceedings. In Latgales and Riga, the highest calculated disposition time (which is 128 and 135 days) is for criminal proceedings.

Cases per judges and staff, and cost per case

Table 17 collects, for the 3 selected Regional Courts, the amount of budget including capital investments, the number of judges and the number of judicial staff from 2012 to 2016.

Table 17: Regional Courts - budget, judges, and judicial staff, 2012 - 2016

	2012	2013	2014	2015	2016
Regional Court of Riga					
Budget (€)	4.340.537	4.612.926	4.497.702	4.736.447	4.733.318
Judges	56	57	56	57	58
Judicial staff	115	115	117	117	97
Regional Court of Kurzeme					
Budget (€)	1.091.493	1.156.024	1.191.927	1.303.069	1.231.413
Judges	14	14	14	13	14
Judicial staff	26	26	26	27	21
Regional Court of Latgales					
Budget (€)	1.305.494	1.111.082	1.144.717	1.155.719	1.143.367
Judges	15	15	15	14	14
Judicial staff	21	24	24	22	20

Riga is the biggest Regional Court, with the highest amount of budget and the highest number of judges and judicial staff, while Kurzeme and Latgales regional courts are quite similar for staff and budget.

In Regional Court of Riga, the budget and the number of judges slightly increased over the years, while the number of judicial staff decreased. In Kurzeme, the budget increased, the number of judges remained stable, while the number of judicial staff decreased. In Latgales, the budget decreased, while the number of judges and judicial staff remained constant.

At the time of this writing, data available do not allow to make a more detailed analysis of the cost per case divided, at least, by main case categories. The following *Table 18* calculates the cost-per-case, case solved-per-judge, and staff-per-judge indicators, taking into consideration the whole court caseload.

Table 18: Regional Courts - CPC, SPJ, SPJ indicators, 2012 – 2016

	2012	2013	2014	2015	2016
Regional Court of Riga					
Cost per case	800	747	863	855	821
Solved cases per Judge	97	108	93	97	99
Total staff per Judge	3,04	2,98	3,09	3,04	2,59
Incoming per judge	94	103	92	100	99
Incoming per staff	31	35	30	33	38
Disposed per staff	32	36	30	32	38
Regional Court of Kurzeme					
Cost per case	1.512	1.333	1.755	1.418	1.230
Solved cases per Judge	52	62	49	71	72
Total staff per Judge	3,14	3,21	3,14	3,46	2,43
Incoming per judge	53	60	49	75	72
Incoming per staff	17	19	15	22	30
Disposed per staff	16	19	15	20	29
Regional Court of Latgales					
Cost per case	2.106	1.449	1.566	1.545	1.564
Solved cases per Judge	41	51	49	53	52
Total staff per Judge	3,20	2,73	2,80	2,86	2,64
Incoming per judge	44	47	52	50	55
Incoming per staff	14	17	19	19	21
Disposed per staff	13	19	17	19	20

Riga is the court with the lowest cost per case and the highest number of solved cases per judge, while Latgales is the court with the highest cost per case (almost twice the amount of Riga) and the lowest number of solved cases per judge (almost half of the solved cases per judges in Riga). These first data suggest to have a more in-depth analysis about the allocation of budget and human resources, which appears to be, at first glance, quite unbalanced in the three regional courts.

Focus on the 6 selected District Courts

In this section, data for the six selected District Courts (Daugavpils City Court, Jelgava City Court, Liepāja City Court, Rēzekne City Court, Riga City Latgales district Court, Ventspils City Court) will be examined and compared.

Incoming, solved, and pending cases

Table 19 shows the caseflow (incoming/new, solved, and pending cases at the end of the period) from 2012 to 2016.

Table 19: District courts – caseflow, 2012 - 2016

		Daugavpils City Court	Jelgava City Court	Liepāja City Court	Rēzekne City Court	Riga City Latgales District Court	Ventspils City Court
2012	Incoming	2519	2984	3409	1484	7048	1502
	Solved	2924	3533	4148	1583	7436	1524
	Pending	1378	1524	2265	830	6412	672
2013	Incoming	2692	2898	3152	1576	6835	1380
	Solved	2677	3042	3770	1648	7256	1526
	Pending	1393	1380	1647	758	5991	526
2014	Incoming	2772	2872	2962	1779	5775	1797
	Solved	2525	2536	3130	1538	6598	1553
	Pending	1640	1716	1479	999	5168	770
2015	Incoming	3078	2799	3186	1957	6191	1727
	Solved	3174	2947	3206	1989	6702	1872
	Pending	1544	1568	1459	967	4657	625
2016	Incoming	4846	2819	3080	3595	6396	1664
	Solved	4503	2786	3123	3086	6631	1738
	Pending	1887	1601	1416	1476	4422	551

The 6 selected courts have necessarily different sizes and they are handling different volumes of incoming cases, which go from 1.664 incoming cases in 2016 in Ventspils City Court, to 6.396 incoming cases in Riga.

Figure 19 and Figure 20 present the development of incoming and pending cases in the six District Courts over the last 5 years.

Figure 19: District Courts - incoming and solved cases from 2012 to 2016

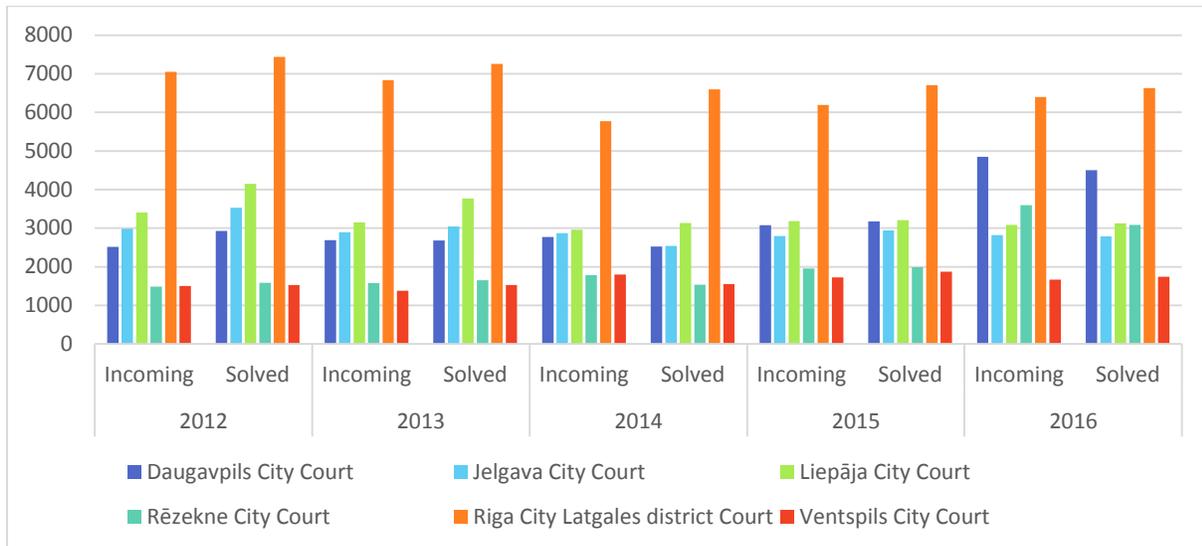
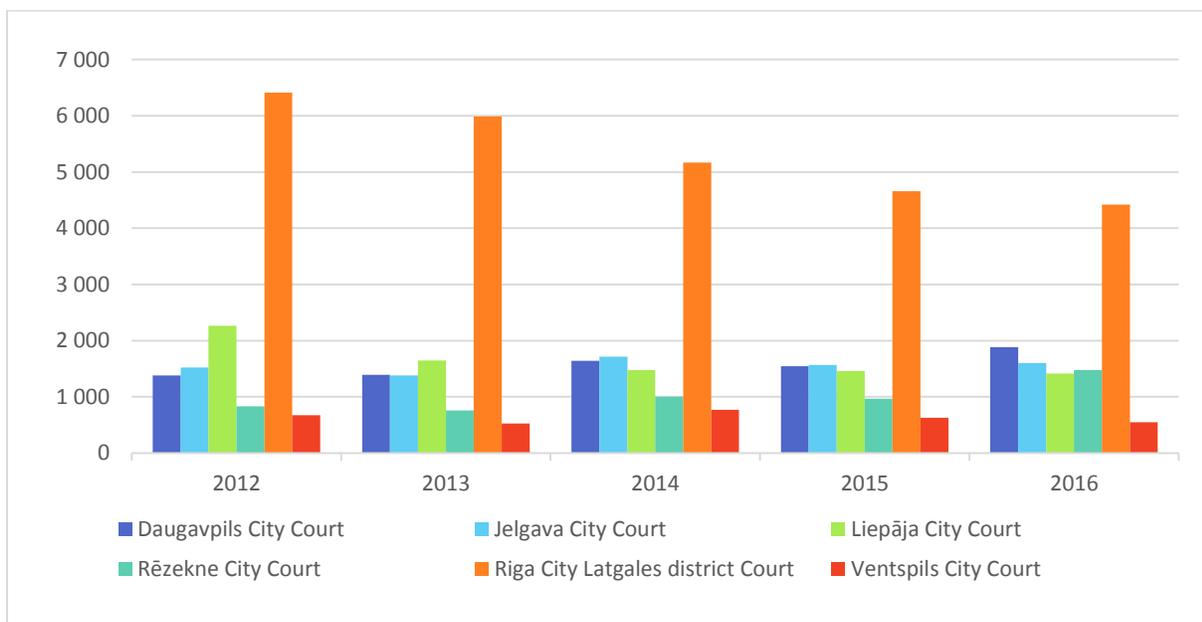


Figure 20: District courts - pending cases from 2012 to 2016



Data show three different tendencies:

- Increasing of incoming, solved, and pending cases, especially from 2015 to 2016, in Daugavpils and Rēzekne City Courts – probably due to a merging with other courts in 2016. The reasons of such development, going against the general trend, should be verified.

- Overall decreasing of incoming, solved and pending cases, in Liepāja, Jelgava and Riga City Courts;
- A fluctuating trend in Ventspils City Courts.

Table 20 shows the caseload by case category: civil and commercial cases, criminal cases, enforcement cases and administrative offence cases.

Table 20: District Courts – caseload by case category, 2012 - 2016

	Incoming					Solved					Pending				
	2012	2013	2014	2015	2016	2012	2013	2014	2015	2016	2012	2013	2014	2015	2016
	Civil and commercial														
Daugavpils	1644	1585	1792	1870	2989	2015	1588	1561	1925	2816	996	993	1224	1169	1342
Jelgava	2108	1791	1888	1738	1772	2636	1959	1588	1918	1769	1312	1144	1444	1264	1267
Liepāja	2399	2060	2046	2065	2016	3173	2662	2194	2137	2122	2019	1417	1269	1197	1091
Rēzekne	951	939	1105	1203	2164	1096	985	833	1231	1918	581	535	807	779	1025
Rīga	3907	3846	3451	3708	3827	4465	4228	4254	4045	4076	5236	4854	4051	3714	3465
Ventspils	1061	997	1302	1199	1147	1112	1129	1106	1303	1233	565	433	629	525	439
	Administrative offence														
Daugavpils	339	336	321	347	583	335	338	309	375	552	28	26	38	10	41
Jelgava	307	356	295	323	327	352	368	275	331	318	41	29	49	41	50
Liepāja	387	367	355	383	372	368	376	343	378	368	45	36	48	53	57
Rēzekne	179	232	325	351	571	165	245	311	327	552	35	22	36	60	79
Rīga	1622	1108	921	875	900	1524	1126	914	916	861	313	295	302	261	300
Ventspils	246	160	239	275	190	231	161	219	293	185	30	29	49	31	36
	Criminal														
Daugavpils	338	378	406	518	912	375	374	408	544	772	313	317	315	289	429
Jelgava	437	442	545	554	533	418	412	535	513	525	159	189	199	240	248
Liepāja	529	528	476	610	593	515	545	508	570	532	189	172	140	180	241
Rēzekne	306	307	294	346	739	275	318	347	370	517	199	188	135	111	333
Rīga	1157	969	967	1104	1215	1081	1004	1004	1276	1232	798	763	726	554	537
Ventspils	164	161	205	210	276	155	174	183	231	267	58	45	67	46	55
	Enforcement														
Daugavpils	198	393	253	343	362	199	377	247	330	363	41	57	63	76	75
Jelgava	132	309	144	184	187	127	303	138	185	174	12	18	24	23	36
Liepāja	94	197	85	128	99	92	187	85	121	101	12	22	22	29	27
Rēzekne	48	98	55	57	121	47	100	47	61	99	15	13	21	17	39

Rīga	362	912	436	504	454	366	898	426	465	462	65	79	89	128	120
Ventspils	31	62	51	43	51	26	62	45	45	53	19	19	25	23	21
	Total														
Daugavpils	2519	2692	2772	3078	4846	2924	2677	2525	3174	4503	1378	1393	1640	1544	1887
Jelgava	2984	2898	2872	2799	2819	3533	3042	2536	2947	2786	1524	1380	1716	1568	1601
Liepāja	3409	3152	2962	3186	3080	4148	3770	3130	3206	3123	2265	1647	1479	1459	1416
Rēzekne	1484	1576	1779	1957	3595	1583	1648	1538	1989	3086	830	758	999	967	1476
Rīga	7048	6835	5775	6191	6396	7436	7256	6598	6702	6631	6412	5991	5168	4657	4422
Ventspils	2840	2443	2541	2593	2533	1524	1526	1553	1872	1738	2126	1510	1410	1297	1203

Figure 21 and Figure 22 show the incoming cases by category in 2016 in absolute value and in percentage.

Figure 21: District Courts - incoming cases by category in 2016

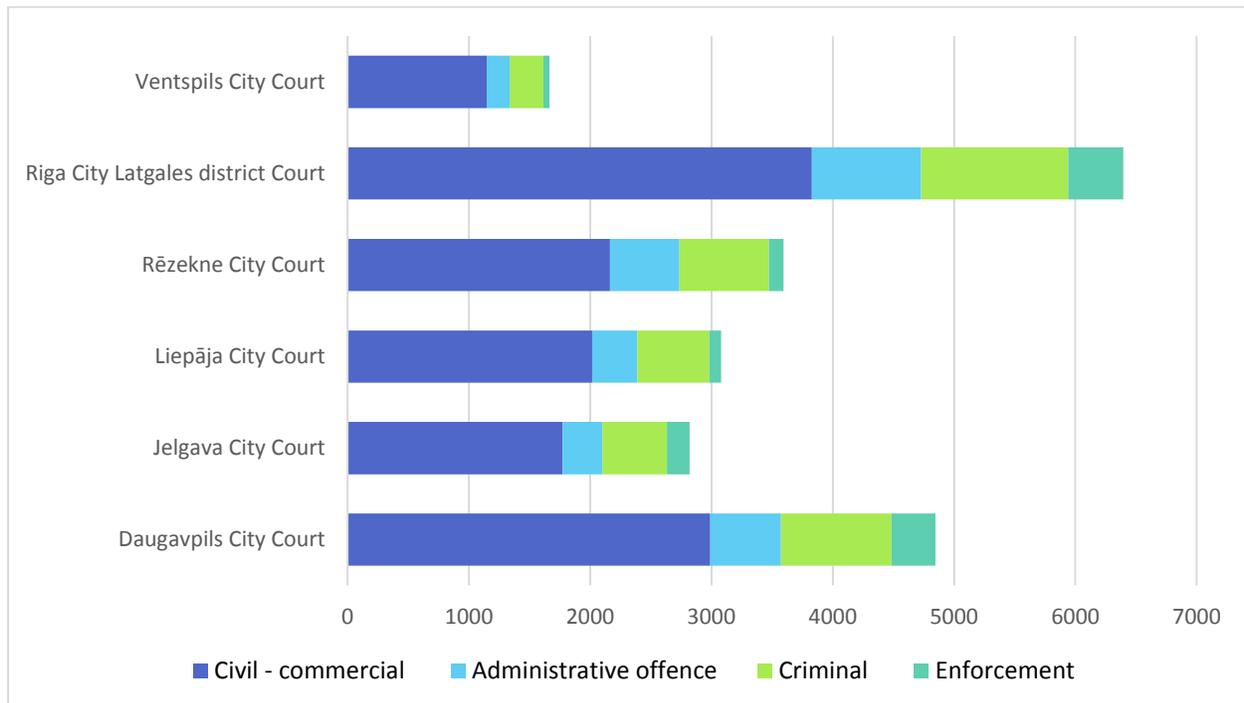
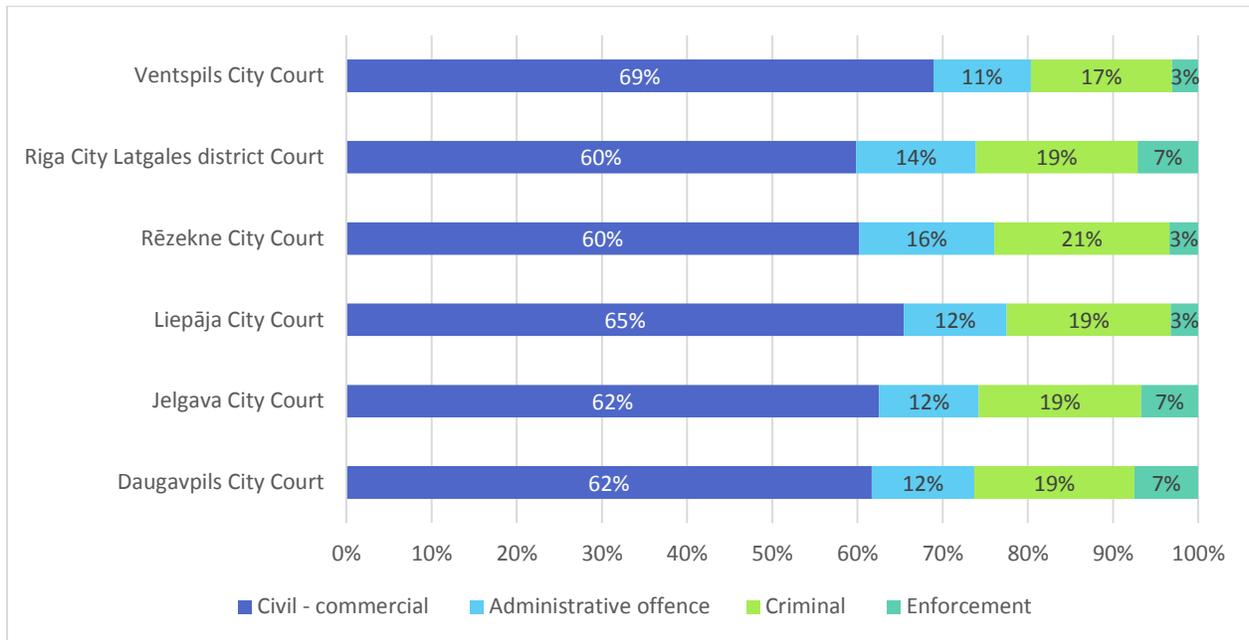


Figure 22: District Courts - incoming cases by category in 2016 (percentage)

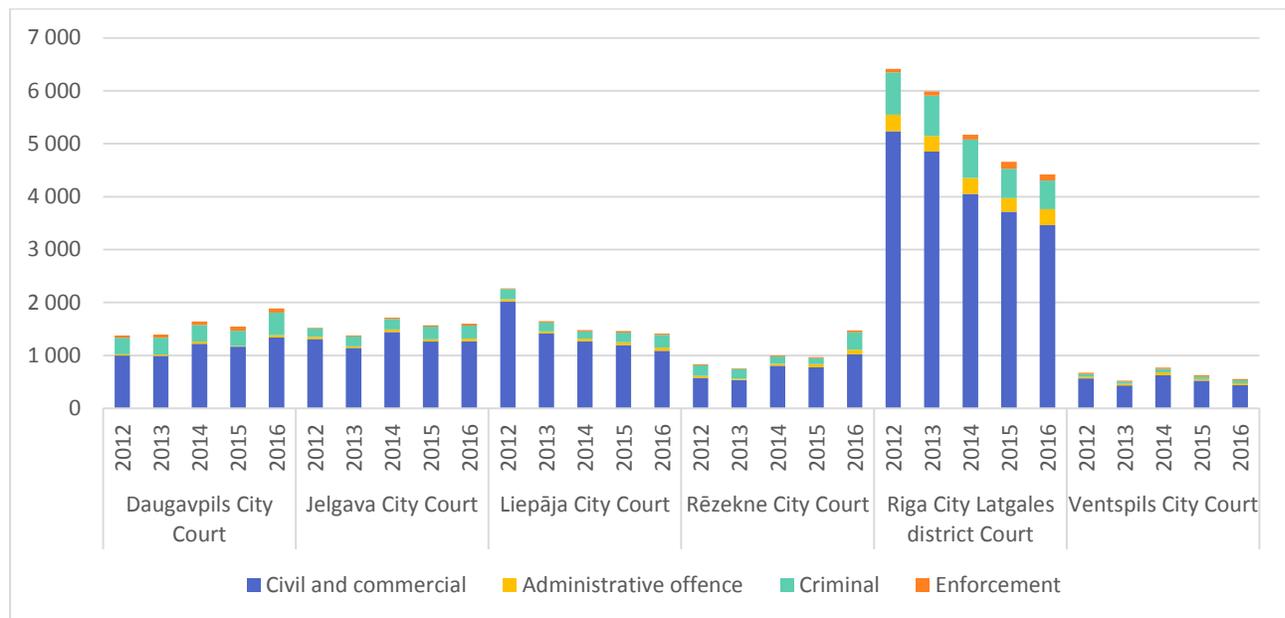


The percentage of each category on the total of incoming cases is quite similar in each of the 6 selected courts, with few differences:

- Jelgava, Daugavpils and Riga have a similar incoming cases structure, with 7 % of enforcement cases, 19 % of criminal cases, 12-14 % of administrative cases, 60-62 % of civil and commercial cases;
- In Ventspils, compared to the other courts, there is slight lower percentage of criminal cases, a lower percentage of administrative offences and a higher percentage of civil and commercial cases;
- In Rēzekne, compared to the other courts, there is a slight higher percentage of administrative and criminal cases;
- Enforcement cases are 3 % of the total number of incoming cases in Ventspils, Rēzekne and Liepāja.

Figure 23 presents the development of pending cases by category over the 5-year period

Figure 23: District Courts - pending cases by category (2012 - 2016)



Civil and criminal pending cases have diminished over the years in all courts excluding Daugavpils and Rēzekne, the number of administrative and enforcement pending cases have risen in every court, while criminal pending cases have increased in all the courts excluding Riga and Ventspils.

As the Figure 23 above shows, there is a constant decreasing trend of civil and commercial pending cases in Riga City Latgales district court. It has to be checked if this is due to the “Transfer of cases” policy to move cases from Riga to the other district courts that has been implemented in the recent years.

Clearance rate and calculated disposition time

In this paragraph, the Clearance rate (CR) and the Calculated disposition time (DT) indicators will be compared. Table 21 sets out the evolution of Clearance Rate and Calculated Disposition Time values in the 5-year period. Clearance rate values are coloured in red when they are below 100 %, in green when they are equal to or above 100 %; calculated disposition time values in number of days are coloured in a red-white-green scale, where red is the highest value, and dark green is the lowest one.

Table 21: District Courts - clearance rate and disposition time 2012 - 2016

	2012		2013		2014		2015		2016	
	CR	DT								
Daugavpils City Court	116%	172	99%	190	91%	237	103%	178	93%	153
Jelgava City Court	118%	157	105%	166	88%	247	105%	194	99%	210
Liepāja City Court	122%	199	120%	159	106%	172	101%	166	101%	165

Rēzekne City Court	107%	191	105%	168	86%	237	102%	177	86%	175
Riga City Latgales district Court	106%	315	106%	301	114%	286	108%	254	104%	243
Ventspils City Court	101%	161	111%	126	86%	181	108%	122	104%	116

The above table suggests the following:

- In Liepāja Court and in Riga Court the Clearance Rate indicator has been positive (above 100 %) in all the 5-year period;
- In the other courts, the CR indicator has fluctuated over the years, it has been positive in all the courts in 2012 and 2015, negative in 2014 and 2016 in the courts of Daugavpils, Jelgava and Rēzekne;
- Riga is the court where calculated Disposition Time is the longest, while Ventspils has the best values;
- According to the DT indicator, calculated disposition time got shorter from 2012 to 2016 in all the courts excluding Jelgava, indicating a general positive trends in decreasing the stock of pending cases.

Table 22 shows the DT values for different case categories in 2016.

Table 22: District courts – calculated disposition time by category in 2016

	Civil and commercial	Administrative offence	Criminal	Enforcement
Daugavpils City Court	174	27	203	75
Jelgava City Court	261	57	172	76
Liepāja City Court	188	57	165	98
Rēzekne City Court	195	52	235	144
Riga City Latgales district Court	310	127	159	95
Ventspils City Court	130	71	75	145

DT indicator values are longer for criminal proceedings in Rēzekne, and for civil / commercial proceeding in Riga, which is, however, less than 1 year (310 days).

Cases per judges and staff, and cost per case

Alike for the Regional Courts, at the time of this writing, data available do not allow to make a more detailed analysis of the cost per case divided, at least, by main case category. The following Table 23 collects, for the 6 selected District Courts, the budget, the number of judges and the number of judicial staff from 2012 to 2016. Table 24 calculates the cost-per-case, case

solved-per-judge, and staff-per-judge indicators, taking into consideration the whole court caseload.

Table 23: District Courts - Budget, number of judges and staff 2012 - 2016

	2012	2013	2014	2015	2016
Daugavpils City Court					
Budget (€)	1.041.812	1.069.938	1.101.370	1.247.905	1.951.167
Judges	13	13	14	14	21
Staff	28	28	28	28	30
Jelgava City Court					
Budget (€)	870.839	966.435	1.369.177	1.321.150	1.471.134
Judges	14	13	14	15	15
Staff	28	28	30	30	30
Liepāja City Court					
Budget (€)	988.345	1.064.246	1.084.312	1.151.077	1.176.921
Judges	15	16	16	15	14
Staff	30	32	32	32	30
Rēzekne City Court					
Budget (€)	564.324	617.580	696.217	743.254	1.438.001
Judges	9	9	8	9	15
Staff	18	18	18	18	18
Riga City Latgales district Court					
Budget (€)	1.664.020	1.800.523	1.856.141	2.158.539	2.178.514
Judges	23	21	25	25	28
Staff	39	39	38	41	40
Ventspils City Court					
Budget (€)	601.306	598.372	625.251	675.543	680.210
Judges	8	8	8	8	8
Staff	16	16	16	16	16

The above table suggests the following:

- The budget amount has risen in every court since 2012;
- In Daugavpils, Rēzekne and Riga the budget amount and the number of judges had a substantial rise, while the number of non-judicial staff remained almost the same;
- In Jelgava, Liepāja, Ventspils, the number of judges and staff remained stable.

Table 24: District Courts - Cost per case, solved cases per judge and total staff per judge 2012 - 2016

	2012	2013	2014	2015	2016
Daugavpils City Court					
Cost per case (€)	356	400	436	393	433
Solved cases per judge	225	206	180	227	214
Total staff per judge	3,46	3,69	3,43	3,43	2,33
Incoming per staff	56	56	58	64	99
Disposed per staff	65	56	53	66	92
Jelgava City Court					
Cost per case (€)	246	318	540	448	528
Solved cases per judge	252	234	181	196	186
Total staff per judge	3,50	3,77	3,57	2,93	2,93
Incoming per staff	61	59	57	64	64
Solved cases per staff	72	62	51	67	63
Liepāja City Court					
Cost per case (€)	238	282	346	359	377
Solved cases per judge	277	236	196	214	223
Total staff per judge	3,03	2,97	2,97	3,17	3,14
Incoming per staff	75	66	62	67	70
Solved cases per staff	91	79	66	67	71
Rēzekne City Court					
Cost per case (€)	356	375	453	374	466
Solved cases per judge	176	183	192	221	206
Total staff per judge	3,61	3,61	3,94	3,50	2,20
Incoming per staff	46	48	56	62	109
Solved cases per staff	49	51	49	63	94
Riga City Latgales district Court					
Cost per case (€)	224	248	281	322	329

Solved cases per judge	323	346	264	268	237
Total staff per judge	3,78	4,14	3,56	3,84	3,54
Incoming per staff	81	79	65	64	65
Solved cases per staff	85	83	74	70	67

Ventspils City Court

Cost per case (€)	395	392	403	361	391
Solved cases per judge	191	191	194	234	217
Total staff per judge	3,69	3,69	3,31	3,31	3,31
Incoming per staff	51	47	68	65	63
Solved cases per staff	52	52	59	71	66

Cost per case values, in 2016, range from 329 € in Riga to 528 € in Jelgava. In every court, except in Ventspils, there was a rising trend in cost per case from 2012 to 2016, especially in the last two years. On the other hand, the Ventspils City Court displayed a rather high cost per case already in 2012, therefore it is difficult to give it as an example to other courts. From this perspective, an example of efficiency, to be further explored, is the Riga City Latgales district Court.

The number of solved cases per judge in 2016 is quite similar in the 6 selected courts, ranging from 186 solved cases per judge in Jelgava to 237 in Riga. The trend of the solved cases indicator over the years is not the same in every court: in Rēzekne and Ventspils there was an upward trend, in Jelgava, Liepāja and Riga a downward trend, in Daugavpils a fluctuation. The same trend is found in the incoming and solved cases per staff indicator. This evaluation may be the result of an attempt to balance the “*productivity*” of courts, which is a good idea. But, it has to be carefully analysed whether balancing has not been achieved at the cost of diminishing the earlier better results of some courts.

The number of staff per judge decreased from 2012 to 2016 in every court except Liepāja.

Figures 24 to 26 show the three indicators (cost per case, solved cases per judge, and total staff per judge) on a map for 2016. In each map, the size of the circle is proportional to the number of incoming cases, while the indicator is represented in a red – gold – green scale, where the circle is red the cost for cases is higher, the more the circle turns into dark green the cost for cases is lower. The same colour code map is used in *Figure 25*, which deals with the number of solved case per judge.

At the time of this writing, more detailed breakdown of data on the number of judges working on the main case categories are not available, therefore these maps are necessarily drafted taking into consideration the whole court caseload to give a general overview of court performance. This method would be much more useful if detailed data on personnel costs could be available for each case category.

Figure 24: District Courts - cost per case 2016 - map

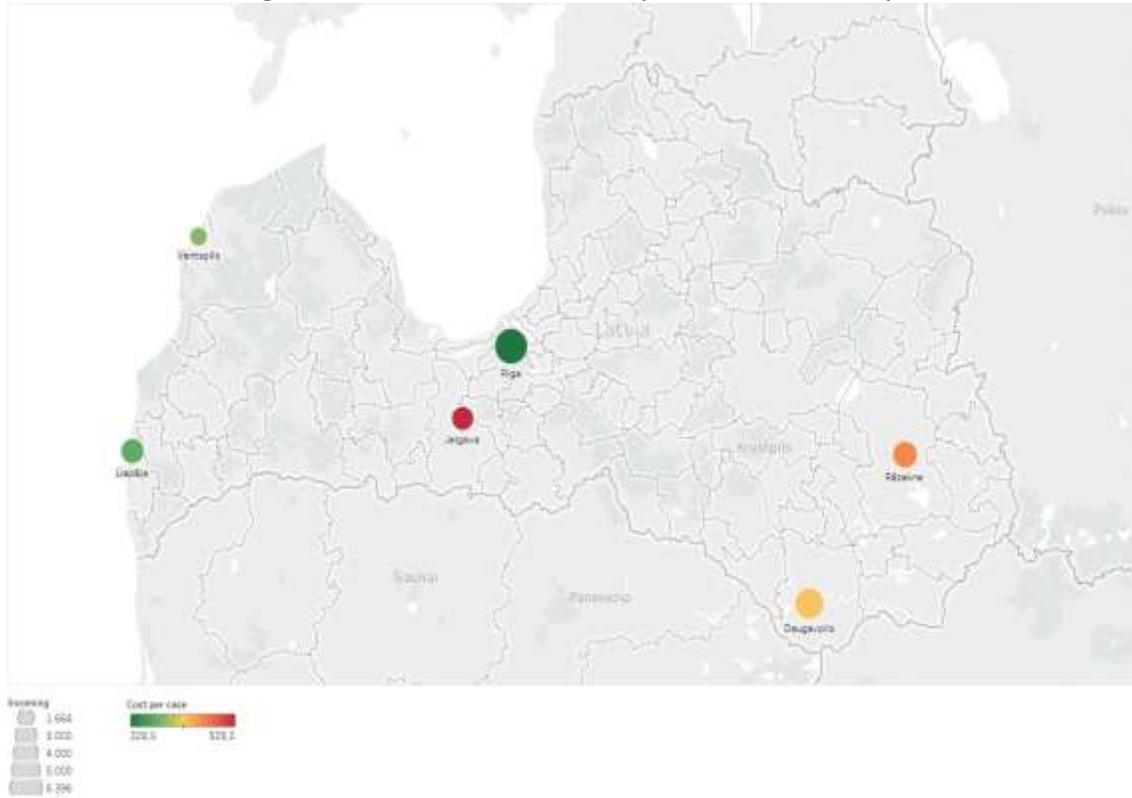


Figure 25: District Courts - solved cases per judge 2016 - map

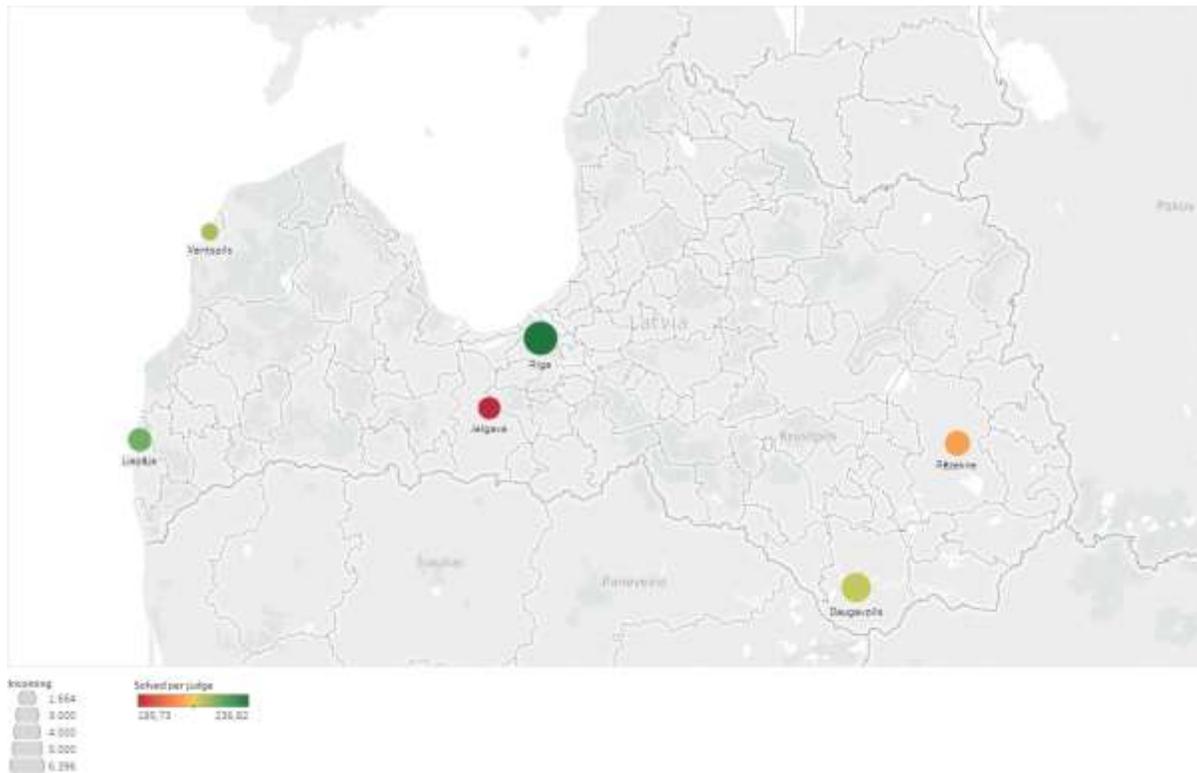
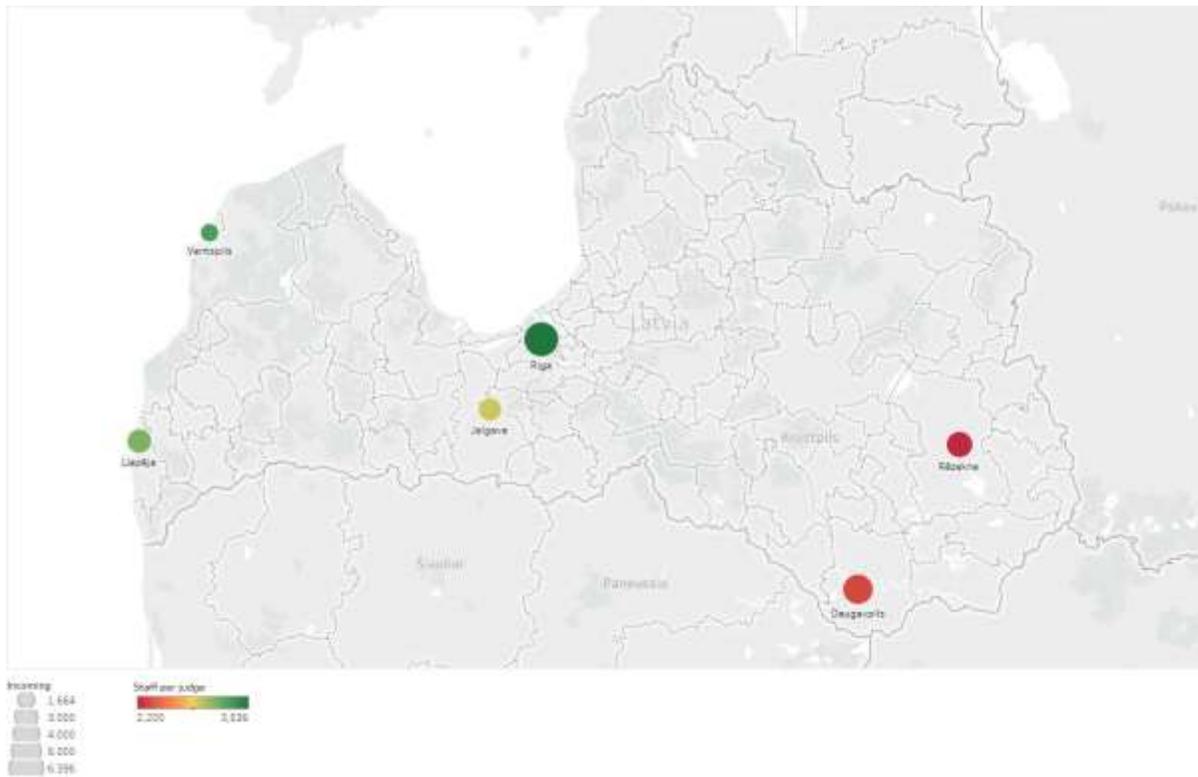


Figure 26: District Courts - staff per judge 2016 - map



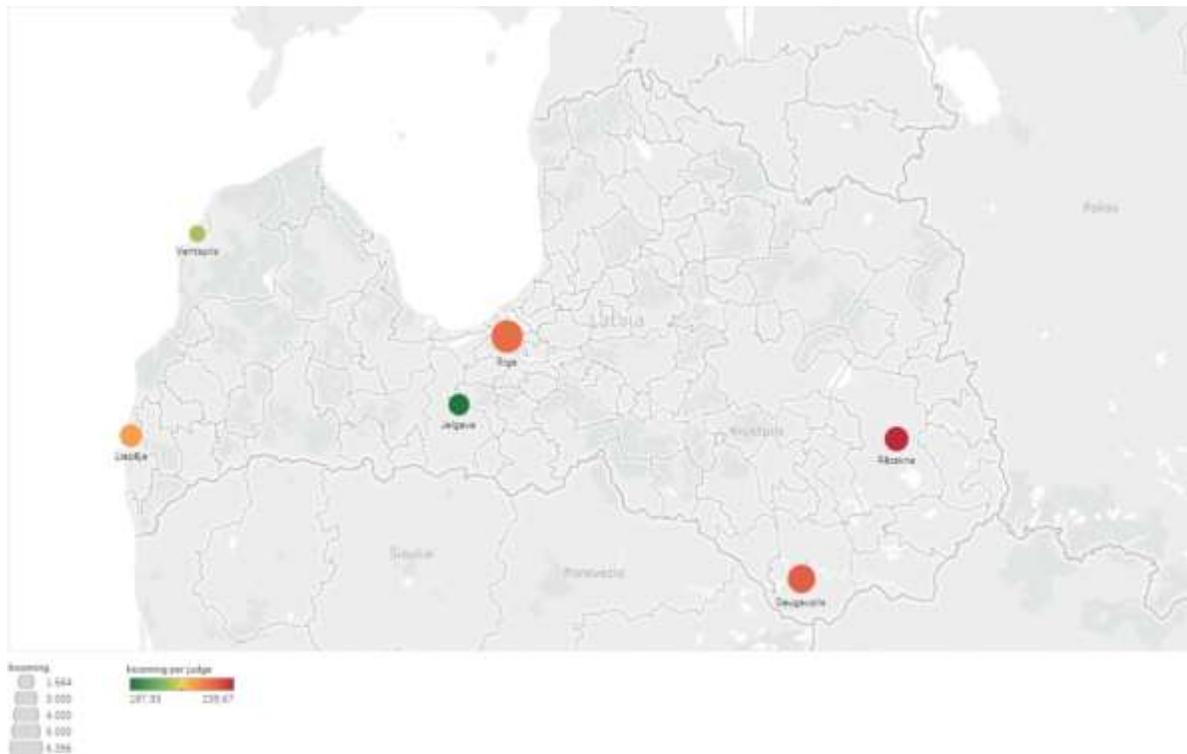
Figures 27 and 29 describe the development in the 5-year period of two indicators: the number of incoming cases per judge and the number of pending cases per judge.

Figures 28 and 30 represent the values of the two indicators in 2016 on a map. In the tables and in the maps, the size of the circle is proportional to the number of total incoming cases, while the indicator is represented in a red – gold – green scale. When the circle is red, the number of incoming cases per judge is high, the more the circle turns into dark green the number of incoming cases per judge is lower.

Figure 27: District Courts – total incoming cases per judge 2012 - 2016



Figure 28: District Courts - total incoming cases per judge 2016 - map⁸⁶

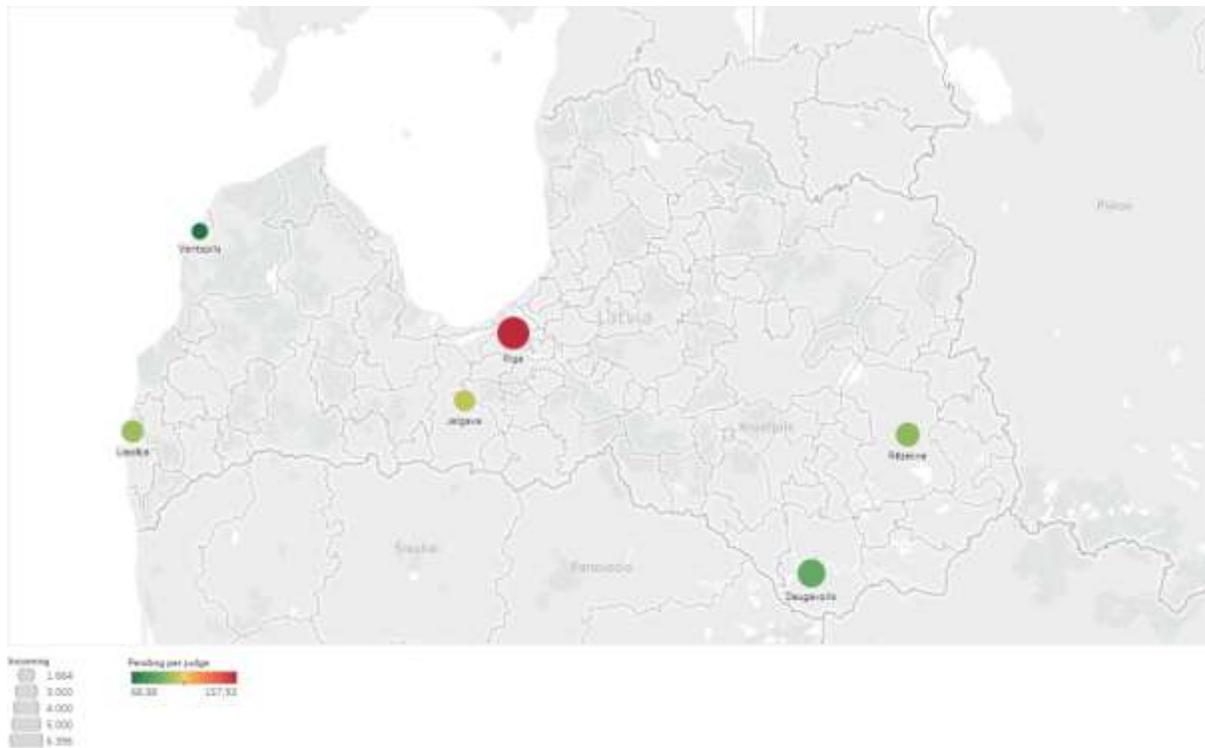


⁸⁶ Please note that colors are different from the ones in the previous Figure 27 because Figure 28 takes into consideration only the year 2016.

Figure 29: District Courts - pending cases per judge 2012 - 2016



Figure 30: District Courts - pending cases per judge 2016 - map



c. Case management and time management in courts

Case management can be defined as the management of all the different actions that a court and the other stakeholders take to progress cases from initial filing to disposition.

A basic assumption of case management is that courts, and judges in particular, should have an active, effective, and efficient administrative control over the proceedings, in order to solve cases with a fair and quality decision within an established and reasonable timeframe.

In order to make a meaningful case management analysis much more information than the one collected in a short visit is needed. In particular, procedural law and practices have to be known in some detail to explore what kind of improvements could be brought, and what kind of actions could be undertaken to advance the case management.

Since this analysis is not possible due to resource constraints, this section will briefly focus on the so-called *“transfer of a case accepted for examination to another court to ensure faster examination of a cases”*, (Section 32.1 Code of civil procedure), which is also dealt with in the section *“Legal certainty and rule of law”* of this report.

It would also be interesting to better understand how in practice is implemented Section 28/1. *“Division of matters”* of the Law on the Judicial Power, which states that:

“(1) The president of the court, prior to the beginning of each calendar year, shall approve a division of matters plan.

(2) The president of the court may amend the division of matters plan during the calendar year:

- 1) due to the overload of work of judges;*
- 2) due to an insufficient workload of judges;*
- 3) in relation to a change of judges;*
- 4) in relation to judges being unable to perform their duties.*

...

(5) In the division of matters, the workload of a judge when fulfilling duties in collegial administrative bodies shall be taken into account”.

The CEPEJ team did not analyse any data on the caseload of the land registry judges, who should also deal with the non-litigious cases. It may be further investigated if the land registry offices could become just sections within district courts, to increase the flexibility in the allocation of cases to different judges, in particular in Riga, and then, limiting or avoiding the transfer of cases to other courts.

There is no sufficient information to make an assessment of this policy, but this is certainly one of the most critical issues in the case management of the Latvian courts. The transfer of cases is not by definition something that should be avoided. Alike to *“flying squads”* or *“task forces”* used in several European countries, these are solutions carried out to deal with exceptional caseload peaks. However, the policy rules and practices should be better explained, and they should be much more transparent to the parties and within the judiciary.

Article 6 of the European Convention on Human Rights states that *“everyone is entitled to a fair and public hearing within a reasonable time”*. This statement from an organisational and institutional perspective can also be seen as a more general objective that courts have to accomplish, which is the *“timeliness of case processing”*. This objective has to be pursued

through the development of tools, policies, procedures, and actions by the decision makers, the judges, the court personnel, the lawyers, and other stakeholders.

It is worth mentioning that the reasonable length of judicial proceedings is just one of what can be defined as the “*trilogy*” of goals for judicial systems, the functioning of which should be: *fair, affordable, and in reasonable time*.

Across European judiciaries, it is not that easy to calculate the length of judicial proceedings, since there is not a common definition of the “*starting date*” of incoming cases, and of the “*ending date*”, when the case is disposed of. In civil matters, in a large majority of European courts, the *starting date* is the date in which the case is filed and registered by the court. However, in some courts the time starts running not from filing, but from service or return of service of the complaint. In criminal matters, the *starting date* is the date of the first appearance to court, or in which the formal charge is filed by the public prosecutor. The *ending date* or disposition date, for both civil and criminal matters, is the date when the case has been decided by the judge and the decision is available to the parties.

The definition of the “*starting date*” of incoming cases and of the “*ending date*” of the disposed of/decided/resolved cases should be crystal clear, to avoid any misunderstanding. It has been understood that the starting date of the data collected by the Court Administration is the date when the case has been filed to a court, and the ending date is when the case has been decided by the judge and made available to parties. In any case, the most important issue, to carry out meaningful comparisons across courts, is that they use and make explicit the same definition of starting and ending dates.

As it has been mentioned in other sections of this report, CEPEJ has developed a list of indicators that help to monitor the functioning of justice systems in general and courts. Among them, for the monitoring and the development of policies to improve the pace of litigation there are: Clearance Rate, Disposition Time, Average length of judicial proceedings, and Age of pending cases.

More in detail, the Clearance Rate and the Disposition Time are useful indicators on the overall functioning of courts, but their calculation is based on data that do not really take into consideration the length of judicial proceedings, since they use stock cases data. It is expected that a constant Clearance Rate below 100 % is going to increase the number of pending cases, but nothing is really said on the length of these judicial proceedings. The forecasted Disposition Time makes a calculation on how long it is supposed to take for the current pending cases to be disposed of, but it is a forecast, and nothing is said about the age of pending cases.

The average length from filing to disposition is another useful indicator to have an idea on the duration of the proceedings, but it is an “*average*”, and it does not help to clarify if the “*reasonable time clause*” is really pursued in all the proceedings. Therefore, to have a detailed idea of how each court, and the judiciary in general, deal with its caseload in a timely way, the most important indicator is the Age of pending cases.

The first part of this section of the report will comment the information collected through the Questionnaire on Time Management. A second part will analyse data on the age of pending cases in the selected courts, introducing the concept of Timeframes. The concluding remarks

will deal with the various issued address in the whole section, putting forward some suggestions for possible further actions to be undertaken.

The Questionnaire on Time Management

The questionnaire was designed by the CEPEJ expert team. It has 18 main questions and 21 additional/related questions. The questionnaire was not meant only for “Yes”, “No” or “Partially” answers, but the respondents were kindly invited to fill in comments outlining their view of the areas where the relevant regulation, organisation and/or functioning of the Latvian judicial system may be further improved. The goal was to collect information from judges and judicial key personnel on the policies and practices in place for time management in courts, and to identify areas of further investigation.

The questionnaire was translated into Latvian language by the Latvian Court Administration, and it was subsequently submitted to all judges, while it was not submitted to non-judge personnel. Unfortunately, only 24 judges filled in the questionnaire. This low response rate does not allow to make a robust analysis, however some hints can be drawn from the questionnaire answers.

In addition, some questions were further commented by the judges, unfortunately, at the time of this writing, the translation into English of these comments is not available yet.

If the questionnaire will be filled in by more judges, its analysis could give interesting information to the national policy-makers, such as the Court Administration and the Ministry of Justice, about the overall functioning of courts, and also specific piece of information on single courts. These kind of surveys are also useful to collect information on local good practices that may be shared among the courts.

Therefore, the Court Administration and the Ministry of Justice are invited to re-submit this survey to collect more answers, and plan to do it from time to time, to investigate challenges and problems in the courts, as well as identify possible solutions. Such surveys may also be used in view of broad consultations with the members of the judiciary, to have a more informed decision making process.

Among the judges who replied to the questionnaire, 4 were court presidents. 7 judges have more than 20 years of experience, 13 judges have between 10 and 20 years of experience, and 4 judges have less than 10 years of experience.¹ 1 judge who replied works in the biggest court (more than 40 judges), 9 judges work in courts which have between 21 and 40 judges, 8 judges work in courts with 11-20 judges, 6 judges -in courts with less than 10 judges. Notwithstanding the disappointing response rate, the 24 judges who replied represent quite well the diversity in size of the various courts.

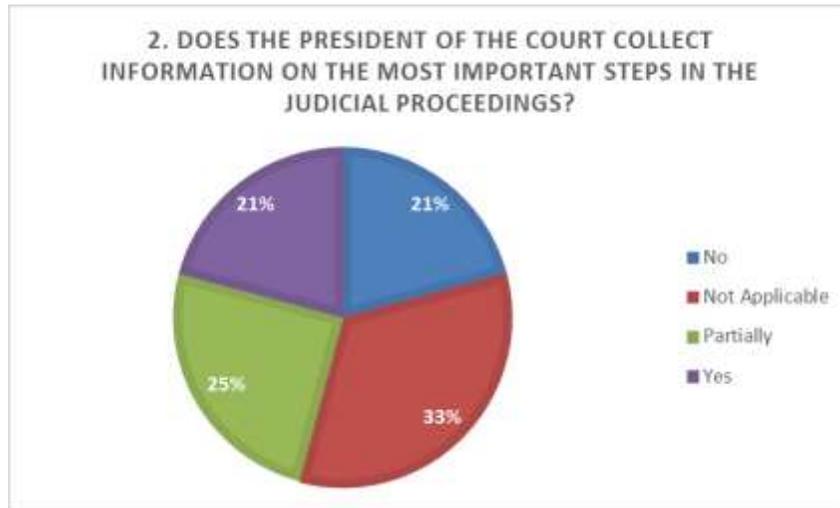
20 judges say that particular attention is given to cases that may cause a violation of the reasonable time clause of the ECHR (Q1), while 2 judges said that the question was “*not applicable*” and two other judges said that there a partial attention to the excessive length of judicial proceedings.

19 out of 24 judges answered that the president of the court collects information on the overall length of judicial proceedings (Q1.1), 4 replied “*partially*”. It is to be recalled that collection of reliable information about the length of judicial proceedings, their monitoring and immediate intervention by the court presidents are fundamental activities to manage cases in due time.

Only 6 judges out of 24 reported to collect information on the length of judicial proceedings (Q1.2), 10 partially and 7 do not collect any information. This should be a matter of further investigation.

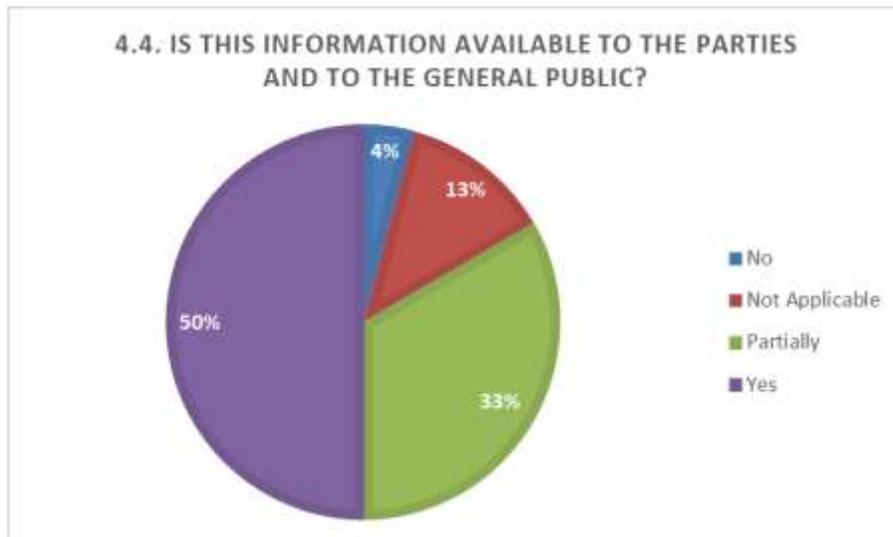
The replies were much divided on the question whether the length of the various steps of a judicial proceeding is monitored (Q2).

Figure 31: Answers to question 2 of the Questionnaire on Time Management



In addition, 11 judges reported that the length of judicial proceedings is monitored in the various steps (Q2.1), but 21 out of 24 judges said that judges make sure that the periods of inactivity of a case are not excessively long (Q2.2). A similar number of judges also mentioned that information on the length of judicial proceedings (Q3) is analysed, and that the information is available to court administrators, judges and other stakeholders. Information is discussed among judges (Q4.2), and it is generally used to improve the functioning of the court (Q4.3). Information is also fully available (12 judges) or at least partially available (8 judges) to the general public (Q4.4).

Figure 32: Answers to question 4.4 of the Questionnaire on Time Management



However, a smaller number of judges (12 “yes” + 4 “partially”) said that reports on the length of judicial proceedings (Q5) are produced regularly. These reports not always include recommendations to improve the length of judicial proceedings (Q5.2).

21 judges reported (16 of them wrote partially) that there are standards or timeframes for the length of judicial proceeding set up by a central authority (Q6). However, 10 judges said that these timeframes are made public only partially, while 8 said they are made public (Q9). Judges’ understanding or perceptions are slightly different here.

22 judges mentioned that timeframes are also set up at the courts’ level (Q7), and the President of the court is in charge of setting up these targets (Q7.2). Timeframes are then periodically reviewed (Q10). However, some judges (9 out of 24) think that Presidents have not all the authority and autonomy to actively set timeframes targets.

For almost all the judges who replied (19 out of 24), courts and judges are obliged to estimate the length of judicial proceedings accordingly to the timeframes set (Q8.1), and parties are entitled to be informed about the length of their proceedings for 12 judges out of 24.

Specific common initiatives among judges, court personnel, and lawyers to reduce the length of judicial proceedings are taking place “partially” for most of the judges (13), are taking place for 5 judges, while they are not taking place for 4 judges. It should be further investigated in which courts the judges work, and then maybe see if there are local “good practices” that may be shared among the various courts.

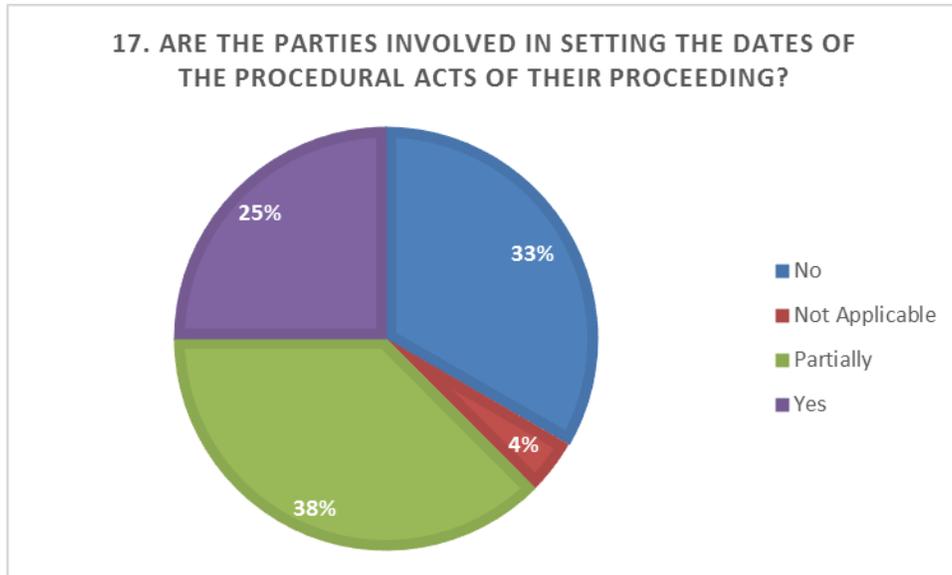
Compliance with timeframes is also used for the evaluation of both court’s performance (Q11) and judges’ performance, even though 6 judges out of 24 reported that it is “only partially used” for that scope.

Almost all judges (23) said that there is a complaint procedure for the parties if the examination of cases is perceived to be delayed.

All judges also reported that there are “priorities” in dealing with the cases (Q15), and these priorities are set by the law.

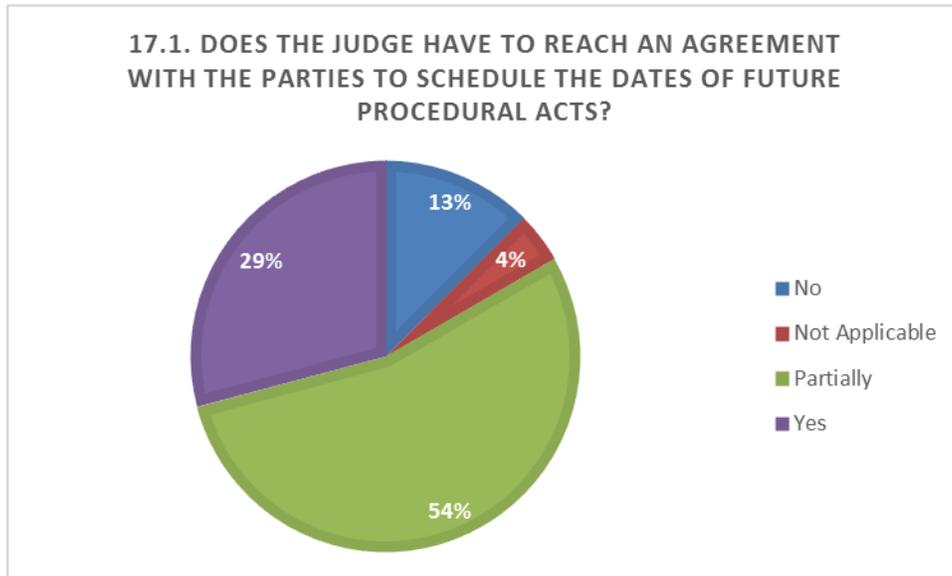
Judges provided scattered answers about the question on parties’ involvement in setting the dates of procedural actions (such as hearings). 6 said “yes” they are involved, 9 “partially”, and 8 “no”, and 1 “not applicable”. This is an issue which will need some further explanation (Q17).

Figure 33: Answers to question 17 of the Questionnaire on Time Management



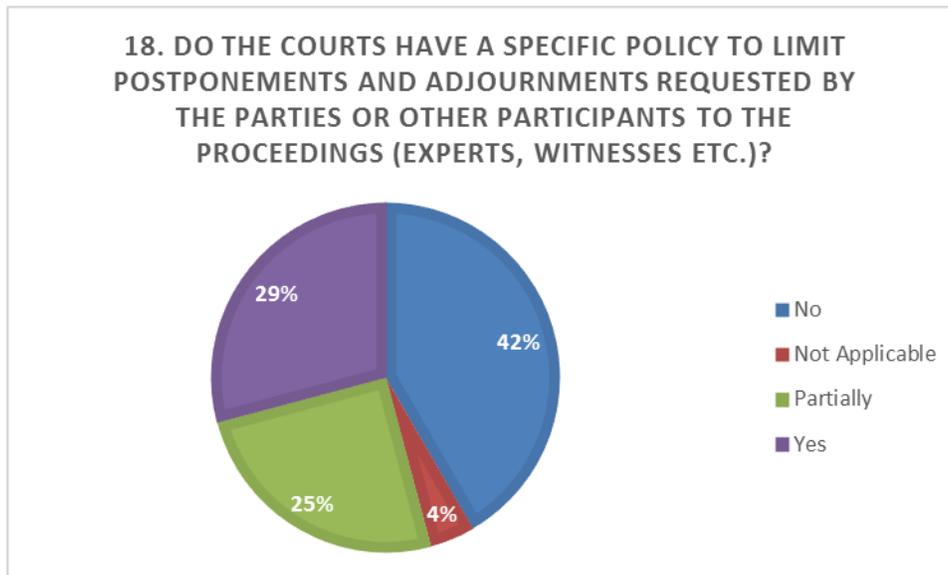
The understanding of the previous question might have been mistaken, because 20 judges out of 24 said that judges have to reach an agreement (at least partially) with the parties to schedule case events (Q17.1).

Figure 34: Answers to question 17.1 of the Questionnaire on Time Management



Another matter of concern for court case processing is the number of postponements that usually affect the length of the proceedings. 7 judges said that courts do have a policy for limit postponements, 6 judges said they have partially such a policy, 10 judges that there is not any policy on this issue (Q18).

Figure 35: Answers to question 18 of the Questionnaire on Time Management



However, almost all the judges reported (Q18.1) that there are sanctions by law for parties who intentionally delayed the proceeding. Sanctions also are in place for other participants in the proceedings who may have caused delays such as experts or witnesses (Q18.2).

Based on the replies collected, keeping in mind that, unfortunately, the response rate was low, the information on the length of judicial proceedings appears to be constantly monitored, then discussed among the judges, available to other stakeholders and the general public. This is in line with the recommendations developed by CEPEJ.

The age of pending cases

For this analysis, the Court Administration supplied data on the age of pending cases on 31 December 2016 for the 6 selected district courts and the 3 regional courts. These data are not consistent with the data about the pending administrative offences, civil and criminal cases at the end of 2016, supplied by the Court Administration in a different set of data. The discrepancies were noticed to the Court Administration. Therefore, this analysis is carried out on the only data available that should be double-checked, because of the lack of consistency with the total amount of pending cases in 2016. However, the method of the analysis is the one usually carried out by CEPEJ, and it may be replicated by the Court Administration with correct data.

Data on the age of the pending cases have been broken down in the following time periods: “less than 6 months”, “between 7 and 12 months”, “between 13 and 24 months”, “between 25 and 48 months”, and “over 48 months”.

Alternatively, CEPEJ would recommend to collect data with the following time periods “less than 12 months”, “between 13 and 18 months”, “between 19 and 24 months”, “between 25 and 36 months”, and “over 36 months”, which are reflected in the below CEPEJ Timeframes.

It is also worth mentioning that 24 months for civil and administrative proceedings, and 12 months for criminal proceedings, are a kind of watershed for the point of attention of the ECtHR in the assessment of the reasonable time clause.

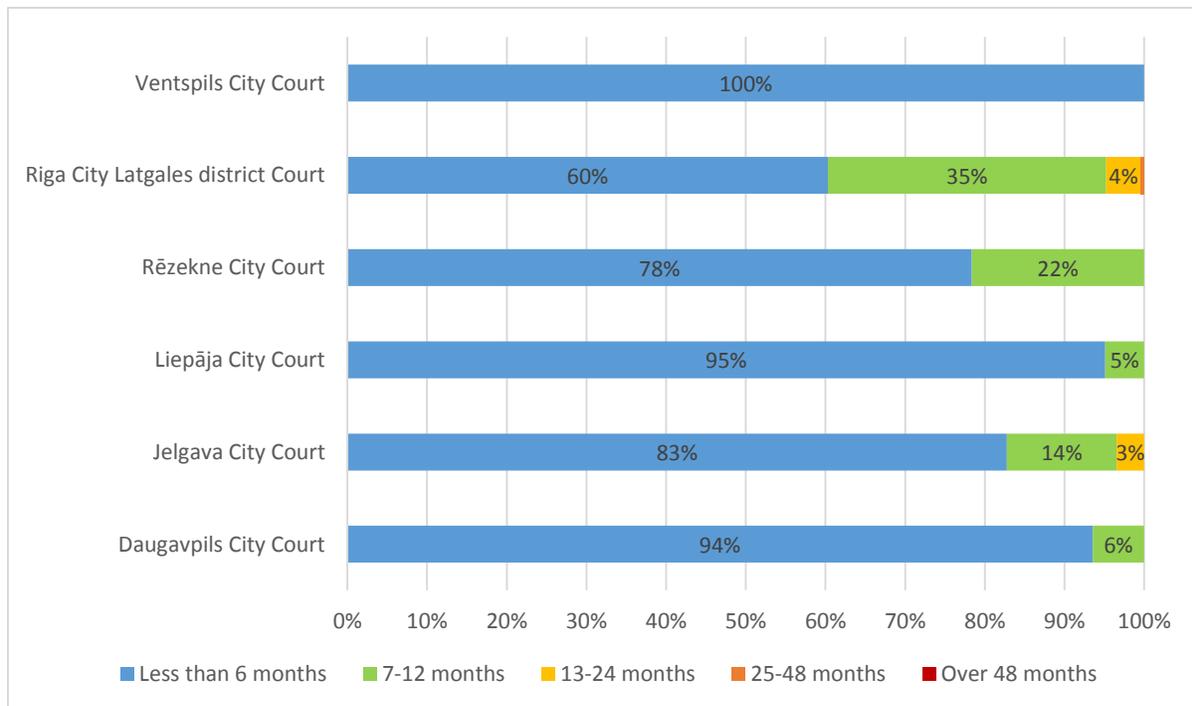
District courts

Tables 25-27 and Figures 36-38 show the “age of pending cases” in the 6 selected District courts divided by main case categories.

Table 25: Age of pending administrative offence cases - district courts, 31 December 2016

	Administrative offence									
	Less than 6 months	%	Between 6 months and 1 year	%	Between 1 and 2 years	%	Between 2 and 4 years	%	More than 4 years	%
Daugavpils	29	94%	2	6%	0	0%	0	0%	0	0%
Jelgava	24	83%	4	14%	1	3%	0	0%	0	0%
Liepāja	39	95%	2	5%	0	0%	0	0%	0	0%
Rēzekne	29	78%	8	22%	0	0%	0	0%	0	0%
Riga Latgales	152	60%	88	35%	11	4%	1	0%	0	0%
Ventspils	16	100%	0	0%	0	0%	0	0%	0	0%

Figure 36: Age of pending administrative offence cases - district courts, 31 December 2016



As Table 25 and Figure 36 show, the courts of Ventspils, Liepja, Daugavpils have more than 90 % of their administrative offences pending cases with an age of 6 months, and the rest that are

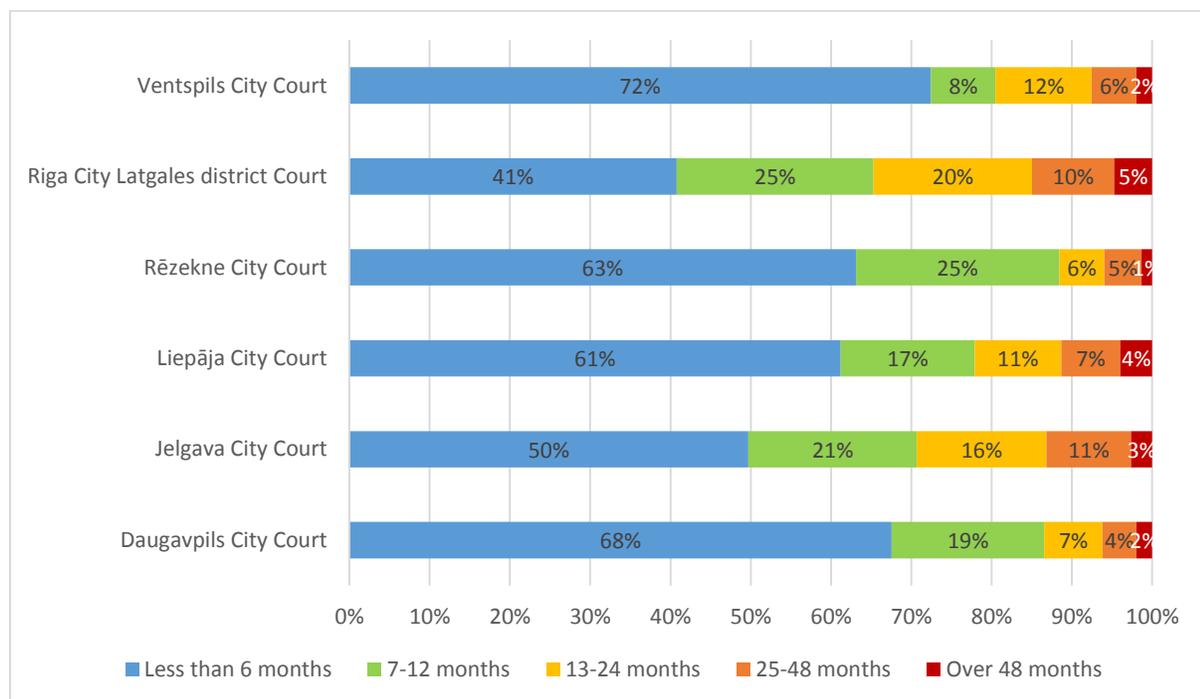
not older than 1 year. Please note that Ventspils cases reported should be double-checked because they are a few. Rezekne and Jelgava have about 80 % of their administrative offences pending for less than 6 months and the rest within 1 year, with a small percentage in Jelgava within 24 months. The biggest court, Riga Latgales, has 60 % of the age of pending cases within 6 months and the rest within 1 year.

It looks like the largest court is struggling a bit more than the small ones to have a good pace of litigation in administrative cases, but the situation seems to be under control and does not raise any concern for CEPEJ expert team.

Table 26: Age of pending civil cases - district courts, 31 December 2016

Civil										
	Less than 6 months	%	Between 6 months and 1 year	%	Between 1 and 2 years	%	Between 2 and 4 years	%	More than 4 years	%
Daugavpils	860	68%	242	19%	92	7%	54	4%	25	2%
Jelgava	592	50%	250	21%	192	16%	126	11%	31	3%
Liepāja	573	61%	156	17%	101	11%	69	7%	37	4%
Rēzekne	573	63%	230	25%	51	6%	42	5%	12	1%
Riga Latgales	1335	41%	802	25%	647	20%	335	10%	154	5%
Ventspils	260	72%	29	8%	43	12%	20	6%	7	2%

Figure 37: Age of pending civil cases - district courts, 31 December 2016



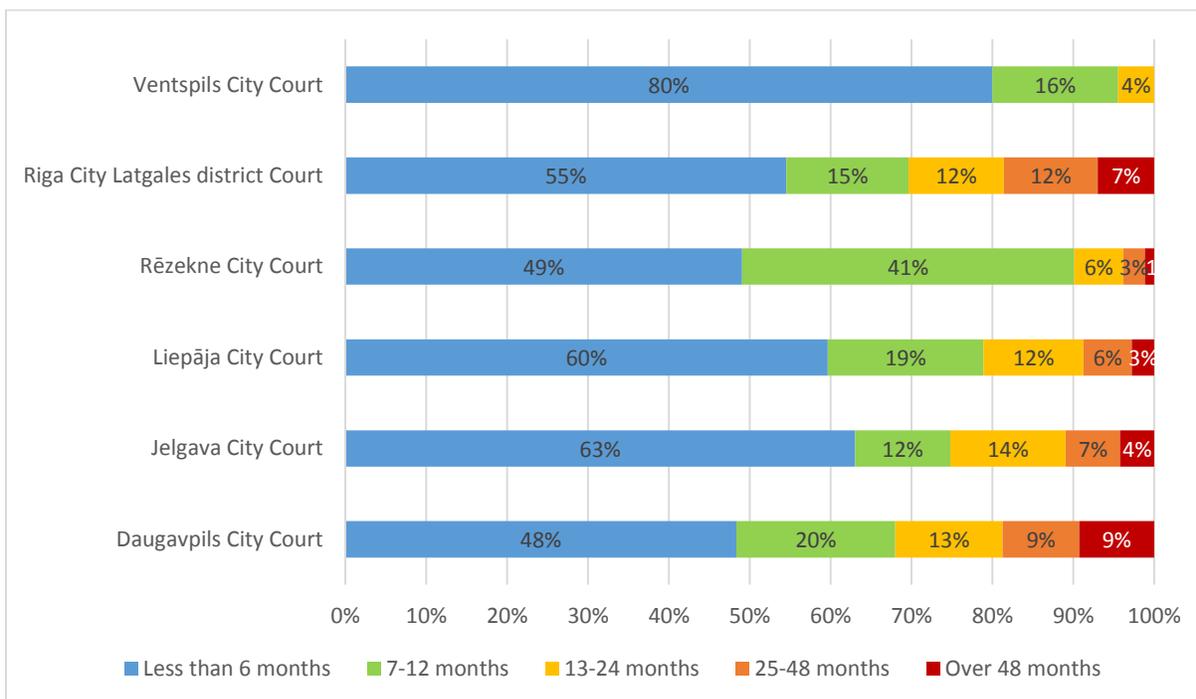
According to the data supplied by the Court Administration, the age of pending civil cases in the 6 selected courts raise some concern. All the 6 selected courts have a certain percentage of civil cases that are older than 24 months, with a smaller percentage of case older than 4 years. In particular, Riga has 15 % of cases older than 2 years, Jelgava 14 %, Liepāja 11 %, Ventaspils 8 %, Rezekne and Daugavpils 11 %.

Further analysis are needed to try to understand the reasons behind the cases that are over the 2 year threshold outlined by the ECtHR.

Table 27: Age of pending criminal cases - district courts, 31 December 2016

Criminal										
	Less than 6 months	%	Between 6 months and 1 year	%	Between 1 and 2 years	%	Between 2 and 4 years	%	More than 4 years	%
Daugavpils	204	48%	83	20%	56	13%	40	9%	39	9%
Jelgava	150	63%	28	12%	34	14%	16	7%	10	4%
Liepāja	130	60%	42	19%	27	12%	13	6%	6	3%
Rēzekne	129	49%	108	41%	16	6%	7	3%	3	1%
Riga Latgales	282	55%	78	15%	61	12%	60	12%	36	7%
Ventspils	36	80%	7	16%	2	4%	0	0%	0	0%

Figure 38: Age of pending criminal cases - district courts, 31 December 2016



Age of pending criminal cases also raise some matter of concern. In particular in Daugavpils where data reported 9 % of pending cases (40) older than 2 years, and another 9 % older than 4 years. Riga also has 12 % of pending case older than 2 years, and 7 % older than 4 years.

Further analysis are needed to understand the reasons behind these numbers. On a positive note, the CEPEJ expert team noticed that the courts and Court Administration continuously monitor and invite judges to take actions in regard to cases getting “older”.

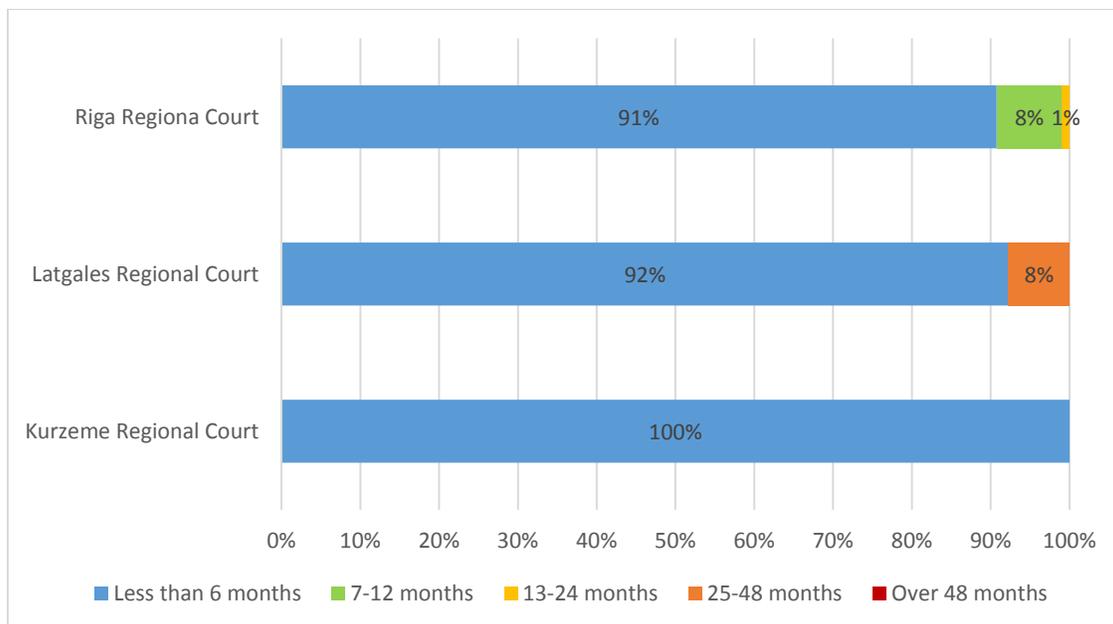
The Ventspils court copes very well with both administrative and criminal cases, but it also has very few of those cases. It seems to be a very small court, having to deal with a small overall caseload. It is not surprising that, being a small court, it displays lower efficiency (see the above section on “Cases per judges and staff, and cost per case”)

Regional courts

Table 28: Age of pending administrative offence cases - regional courts, 31 December 2016

Administrative offence										
	Less than 6 months	%	Between 6 months and 1 year	%	Between 1 and 2 years	%	Between 2 and 4 years	%	More than 4 years	%
Kurzeme Regional	5	100%	0	0%	0	0%	0	0%	0	0%
Latgales Regional	12	92%	0	0%	0	0%	1	8%	0	0%
Riga Regional	98	91%	9	8%	1	1%	0	0%	0	0%

Figure 39: Age of pending administrative offence cases - regional courts, 31 December 2016

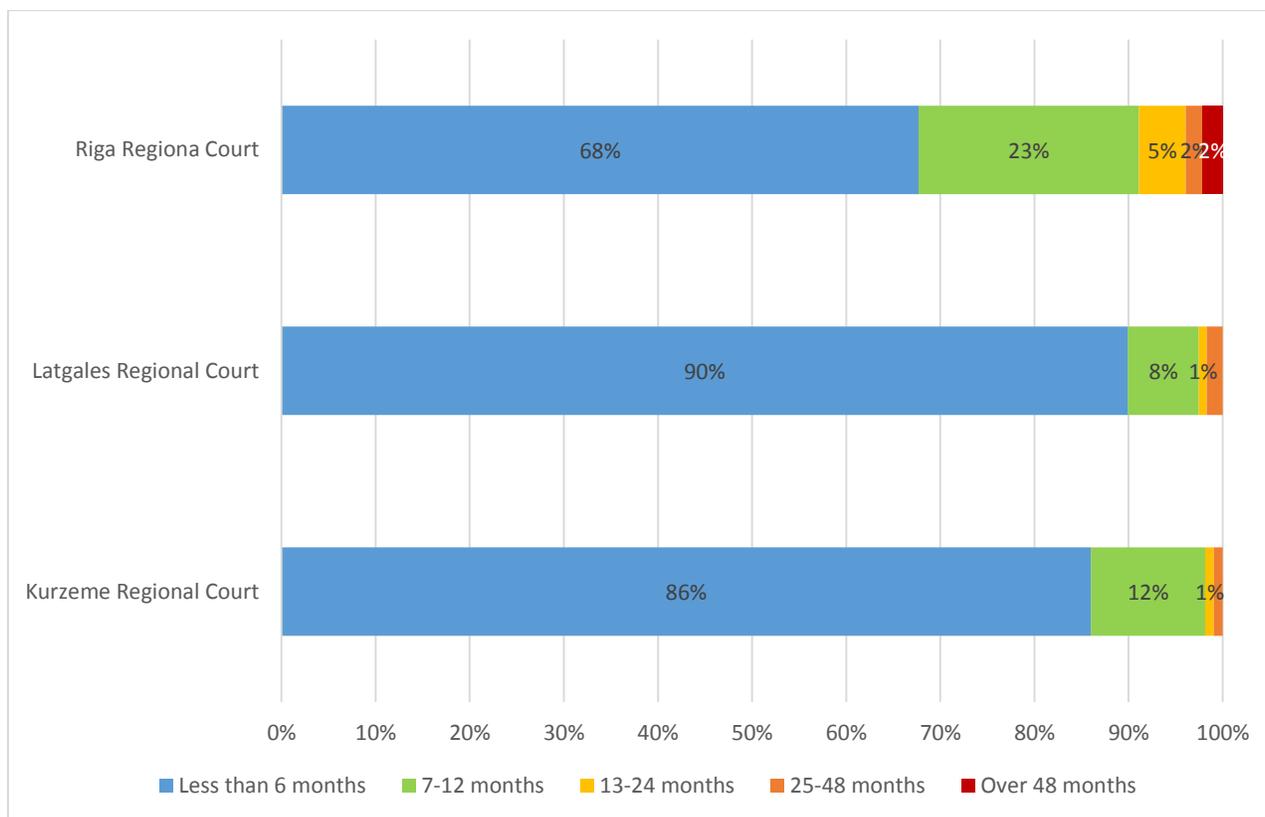


As data show, numbers are quite small for this case category and they are disposed quite fast, since more than 90 % of the pending cases are less than 6 month old.

Table 29: Age of pending civil cases - regional courts, 31 December 2016

Civil										
	Less than 6 months	%	Between 6 months and 1 year	%	Between 1 and 2 years	%	Between 2 and 4 years	%	More than 4 years	%
Kurzeme Regional	92	86%	13	12%	1	1%	1	1%	0	0%
Latgales Regional	107	90%	9	8%	1	1%	2	2%	0	0%
Riga Regional	828	68%	286	23%	61	5%	22	2%	26	2%

Figure 40: Age of pending civil cases - regional courts, 31 December 2016

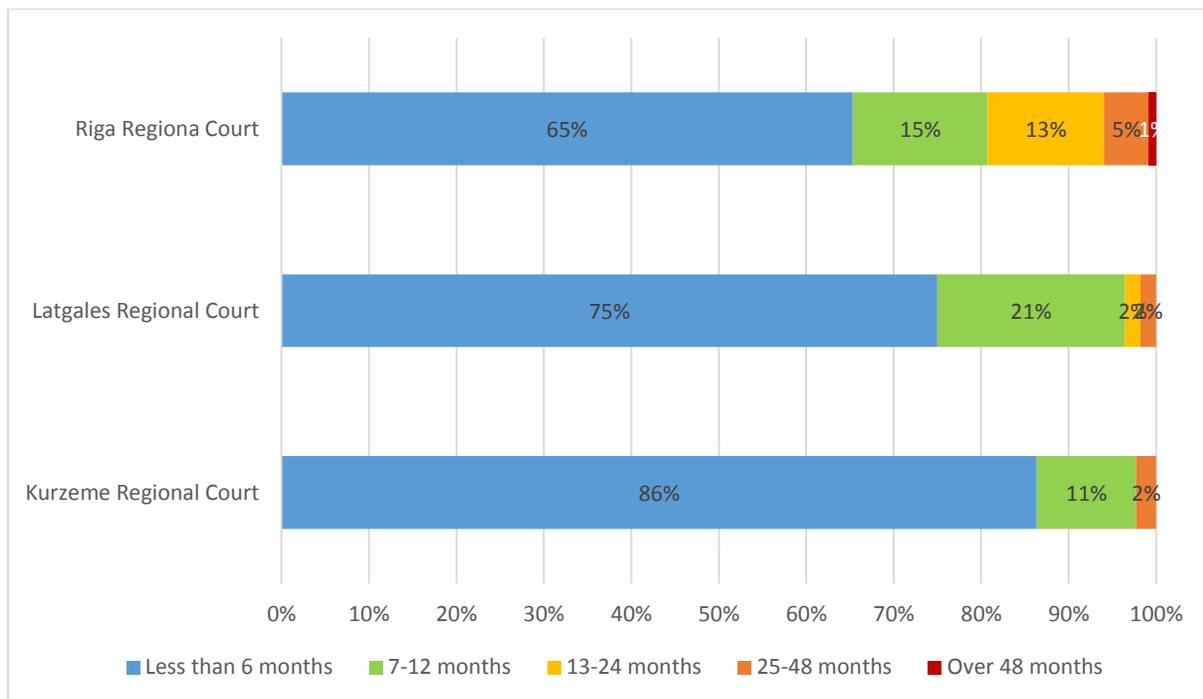


In general, the age of reported pending civil cases in the three selected regional courts do not raise concerns. Only in Riga, 4 % of cases are older than 2 years, and, in particular, 26 cases are older than 4 years.

Table 30: Age of pending criminal cases - regional courts, 31 December 2016

	Criminal									
	Less than 6 months	%	Between 6 months and 1 year	%	Between 1 and 2 years	%	Between 2 and 4 years	%	More than 4 years	%
Kurzeme Regional	38	86%	5	11%	0	0%	1	2%	0	0%
Latgales Regional	42	75%	12	21%	1	2%	1	2%	0	0%
Riga Regional	241	65%	57	15%	49	13%	19	5%	3	1%

Figure 41: Age of pending criminal cases - regional courts, 31 December 2016



The age of pending criminal cases raises some concerns only in Riga where 13 % are between 1 and 2 years, and, more importantly, 6 % (22 cases) are older than 2 years.

The setting up of CEPEJ timeframes

As reported data show, all the indicators related to the length of judicial proceeding in Latvia are quite positive, with some limited exceptions, mainly in the largest courts of Riga.

The few replies to the questionnaire on “time management” reported the existence of “standards/timeframes/targets” as a tool to promote the reasonable length of judicial proceedings, but it is not clear if this tool is developed at the level of the Court Administration and deployed as a managerial tool in all the courts. The Law on the Judicial Power is not

overlooking the matter and seems to put the responsibility for time management on the presidents of the courts and the Judicial Council, and implicitly of judges. In particular, its Section 27/1 “*Management of the Time Periods for Adjudicating Matters in a Court*” provides that the president of a court shall plan and determine the objectives of the court work in relation to average time periods for adjudication of matters in a court (the standard of time periods for adjudication of matters), prior to the beginning of each calendar year and in co-operation with court judges. Furthermore, the president of the court submit to the Judicial Council, before 1 February of each year, the information regarding the approved standard timeframes. It is not clear how the courts deal in practice with establishing the timeframes, monitoring the compliance with them by judges and, eventually, comparing the experience of other courts.

According to CEPEJ-SATURN working group, “*timeframes*” are not the panacea for decreasing the length of judicial proceedings, but they have been proven as a useful tool to assess the court functioning and policies, and then to improve the pace of litigation.

Timeframes can be considered *operational tools*, because they are concrete targets to measure to what extent each court, and more generally the administration of justice, meets the timeliness of case processing, and then the principle of fair trial within a reasonable time, as stated by the ECHR.

They are *inter-organisational* tools because the length of judicial proceedings is the result of the interplay of different actors (judges, administrative personnel, lawyer, expert witnesses, prosecutors, police etc.).

The added value to setting timeframes is not only in the timeframes themselves but, above all, it is in the whole process used to set and to monitor them. This process should involve all the court personnel and the stakeholders in an in-depth analysis about the functioning of the court and the possible actions to improve it. Timeframes have to be goals shared and pursued by all of them. The stakeholders’ involvement is necessary for at least three reasons: 1) it helps to build the commitment among all the key players, 2) it creates a proper environment for the development of innovative policies, 3) it points out that the responsibility for timely case processing is not just in the court operations but also includes other players, first of all the lawyers.

The setting of timeframes is a fundamental step to start measuring and comparing case processing performance and defining conceptually the *backlog*, which is the number or percentage of cases that are older than the approved timeframe.

As stated in the [Implementation Guide Towards European Timeframes for Judicial Proceedings](#) (CEPEJ (2016)5), timeframes are management tools, which deal with the aggregated caseload of a court or of a judicial system. Therefore, they are not supposed to be a safeguard to avoid a conviction of the ECtHR. The reasonable time clause stated by Article 6 is applicable in the context of individual cases. The ECtHR is the institution having ultimate authority to assess if a case has violated Article 6 of the ECHR.

However, it is important to underline that quantitative indicators are just “*photos*” of the functioning of courts and of the desirable goals to be reached. Courts’ policies, rules and concrete actions are the steps to be undertaken to reach these goals. The setting of realistic and

measurable timeframes should also stimulate the adoption of CEPEJ tools and qualitative hints to improve the court performance, and they should be the basic measures through which each judiciary can self-evaluate its capacity to dispose of cases fairly and in a reasonable time.

For policy makers, court managers, lawyers, the setting of realistic timeframes and monitoring of their implementation is also one of the most efficient means to assess the results of the efforts made to decrease the lengths of judicial proceedings and then the backlog.

CEPEJ proposes the following timeframes that are just an example starting from which each judiciary should find its own targets.

Table 31: Timeframes for contentious civil and administrative cases

Contentious Civil and Administrative Cases	Timeframe	Timeframe	Timeframe	Timeframe
	Target A	Target B	Target C	Target D
Priority Cases	Disposed in 6 months	Disposed in 12 months	Disposed in 12 months	Disposed in 12 months
Normal Cases + (priority cases)	95% - 90%	95% - 90%	95% - 90%	95% - 90%
	Disposed in 18 months	Disposed in 24 months	Disposed in 30 months	Disposed in 36 months
Complex Cases (buffer)	5% - 10%	5% - 10%	5% - 10%	5% - 10%
	Pending cases older than 18 months	Pending cases older than 24 months	Pending cases older than 30 months	Pending cases older than 36 months

Table 32: Timeframes for criminal cases

Criminal Cases	Timeframe	Timeframe	Timeframe	Timeframe
	Target A	Target B	Target C	Target D
Priority Cases	Disposed in 3 months	Disposed in 6 months	Disposed in 6 months	Disposed in 6 months
Normal Case + (Priority cases)	95% - 90%	95% - 90%	95% - 90%	95% - 90%
	Disposed in 12 months	Disposed in 18 months	Disposed in 24 months	Disposed in 30 months
Complex Cases (buffer)	5% - 10%	5% - 10%	5% - 10%	5% - 10%
	Pending cases older than 12 months	Pending cases older than 18 months	Pending cases older than 24 months	Pending cases older than 30 months

As the *Tables 31 and 32* show, CEPEJ proposes 4 basic timeframes/targets (A-B-C-D), separately for civil and administrative contentious cases and for criminal cases, in order to take into consideration the different situations in the judiciaries of the member states. Timeframe/target A for criminal cases sets the following targets: priority cases should be disposed of in 3 months from the date of their filing; 95-90 % of all cases from this category should be disposed of in 12

months; 5-10 % of such cases, the most complex ones, could overcome 12 months. The target is reached if each condition is met: priority cases are disposed of within 3 months; 95-90 % of all the cases are disposed of within 12 months, meaning that no more than 5-10 % of the pending cases should be older than 12 months.

The same reasoning is used for contentious civil and administrative cases, and for the other targets (B-C-D) that extend the timeframes within which 95-90% of cases are supposed to be disposed of. The decision to set the “buffer” at 5% or 10% is left to each member State or court, taking into consideration the percentage of very complex cases that they have to deal with.

It is then open to courts to identify which targets/timeframes they meet for different case categories. For example, a court could be able to apply the following timeframes: Target A for civil proceedings and Target B for criminal proceedings, and then Target A for family matters, but Target C for bankruptcy cases and enforcement.

It is then open to courts to identify which targets/timeframes they meet for different case categories. For example, a court could be able to apply the following Timeframes: Target A for civil proceedings and Target B for criminal proceedings, and then Target A for family matters, but Target C for bankruptcy cases and enforcement.

Once the timeframes currently met have been established, each court should plan what kind of realistic and concrete actions it can undertake to try to pursue the set targets, in line with general policies that can be planned and recommended at the national level.

d. ICT tools in support of court management

The notion of ICT⁸⁷ covers all forms of computers, networks, forms of communication including telephony, wireless networks, other infrastructure, software and processes that enable creating, storing, retrieving, manipulation and exchange of data . The ICT should be a tool or means to improve the administration of justice, to facilitate the user’s access to the courts and to reinforce the safeguards laid down in Article 6 of the ECHR: access to justice, impartiality, independence of the judge, fairness and reasonable duration of proceedings.

To conduct effective court management an adapted information system is needed, that would enable decision makers a good insight into the functioning of the courts. Qualitative analysis and decisions on the organisation of business procedures can only be taken upon reliable and consistent data on the performance of courts. Once a reliable case management system is in place, the court managers can start building on the information provided with different types of statistical analyses. These analyses help stakeholders to have a better understanding of the work of courts and reach better decisions. Decisions on the allocation of human and other categories of resources, on the distribution of tasks and organisation of the work, on time management – all these decisions are much better when made on informed grounds.

⁸⁷ The references to “ICT” includes what is also commonly referred to as Information Technology (IT).

The main thematic Council of Europe documents to be taken into consideration when elaborating on IT for the justice sector are:

1. Recommendation Rec(2001)2 of the Committee of Ministers to member states on concerning the design and redesign of court systems and legal information systems in a cost-effective manner;
2. Recommendation Rec(2001)3 of the Committee of Ministers to member states on the delivery of court and other legal services to the citizen through the use of new technologies;
3. Recommendation Rec(2003)14 of the Committee of Ministers to member states on the interoperability of information systems in the justice sector;
4. CEPEJ thematic report *“Use of information and communication technologies (ICT) in European judicial systems”*, (CEPEJ STUDIES No. 7), 2007, Marco Velicogna, IRSIG-CNR;
5. CCJE Opinion No. 14 (2011) *“Justice and information technologies (IT)”*;
6. CEPEJ thematic report *“Use of information technology in European courts (CEPEJ STUDIES No. 24)”*, 2016.
7. CEPEJ *“Guidelines on how to drive change towards Cyberjustice”* (CEPEJ (2016)13)⁸⁸

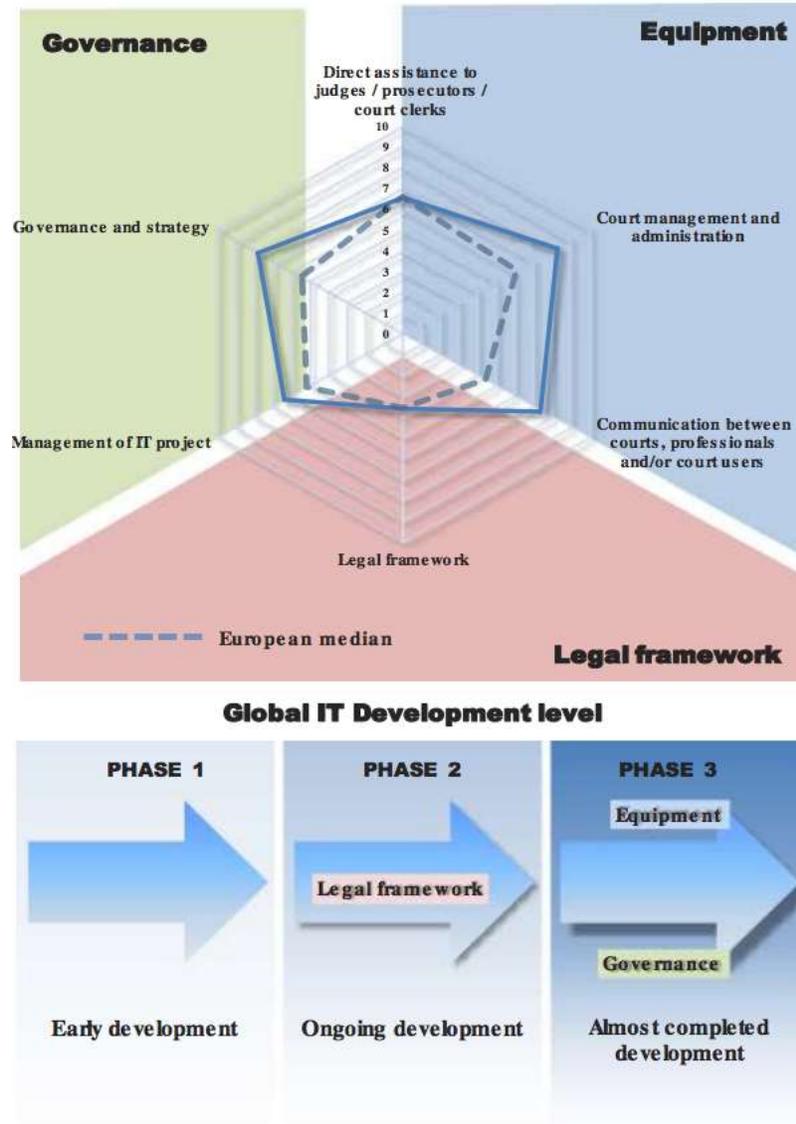
The general performance of Latvia in regard to the development of the ICT tools, as a way to support efficiency and quality of the courts, is quite good and at the level of or above the European average performance, according the CEPEJ evaluation exercise of 2016 (based on data from 2014). An overview of this performance is provided below with illustrations extracted from the [CEPEJ Study n°24 “The use of information technology in European Courts”](#)⁸⁹ and the online [CEPEJ Stats Dynamic Database](#)⁹⁰.

⁸⁸ Referred to also as *“Cyberjustice Guidelines”*

⁸⁹ https://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/REV1/2016_2%20-%20CEPEJ%20Study%2024%20-%20IT%20Report%20-%20EN.pdf

⁹⁰ <https://www.coe.int/t/dghl/cooperation/Cepej/evaluation/2016/STAT/default.asp>

Figure 42: The sum of ICT developments indices in each field (equipment, legal framework and governance), Latvia compared to the “European median”



The above graphic illustrates the very good performance of Latvia in regard to the level of equipment and governance of IT strategies and projects. One area of concern may be the legal framework related to ICT tools (see details of 2014 data below), for which a better investigation is needed, along with an update on the situation of 2016-2017. The ICT is a very swiftly evolving domain and the understanding of CEPEJ experts is that, in the last couple of years, new achievements have been reached by Latvian authorities.

Table 33 below presents detailed ratings for all analysed parameters of the study and deserves attention on the part of national decision makers. It clearly shows, one more time, that the “legal framework” dedicated to IT tools seems to be the least developed, which affects the high rating in areas of “equipment” and “governance”. The experience of other countries, for example Austria (scoring 9,3 the same area) or Finland (scoring 8,6) may suggest solutions for improving the situation in Latvia.

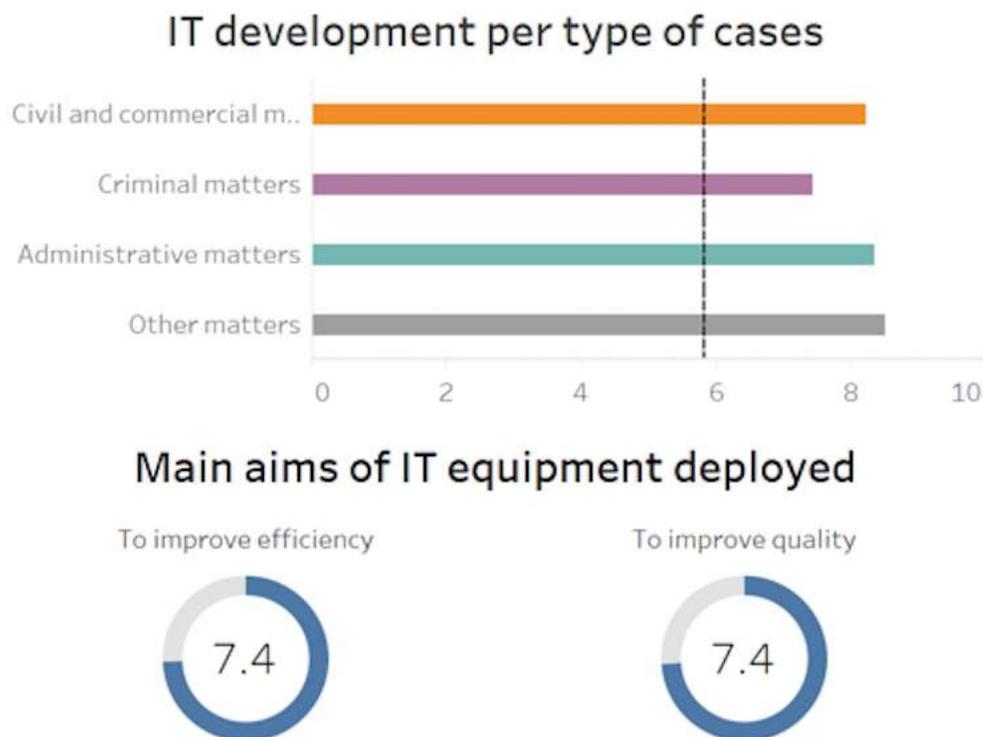
Table 33: Evaluation of ICT developments per main areas and branches of law

Details

Equipment	Direct assistance to judges / prosecutor..	6,6
	Court management and administration	8,3
	Communication between courts, profes..	7,5
Legal framework	Legal framework	3,6
Governance	Management of IT projects	6,4
	Governance and strategy	7,8
Main aims	To improve efficiency	7,4
	To improve quality	7,4
Civil and commercial matters	Direct assistance to judges / prosecutor..	8,5
	Court management and administration	8,5
	Communication between courts, profes..	7,7
	Legal framework	3,9
	Governance and strategy	8,1
	To improve efficiency	7,3
	To improve quality	7,6
Criminal matters	Direct assistance to judges / prosecutor..	6,2
	Court management and administration	8,2
	Communication between courts, profes..	7,9
	Legal framework	3,9
	Governance and strategy	7,7
	To improve efficiency	8,0
	To improve quality	7,8
Administrative matters	Direct assistance to judges / prosecutor..	8,1
	Court management and administration	8,2
	Communication between courts, profes..	8,8
	Legal framework	4,5
	Governance and strategy	8,0
	To improve efficiency	8,2
	To improve quality	8,1
Other matters	Direct assistance to judges / prosecutor..	8,5
	Court management and administration	8,2
	Communication between courts, profes..	8,8
	Legal framework	4,5
	Governance and strategy	8,0
	To improve efficiency	8,3
	To improve quality	8,2

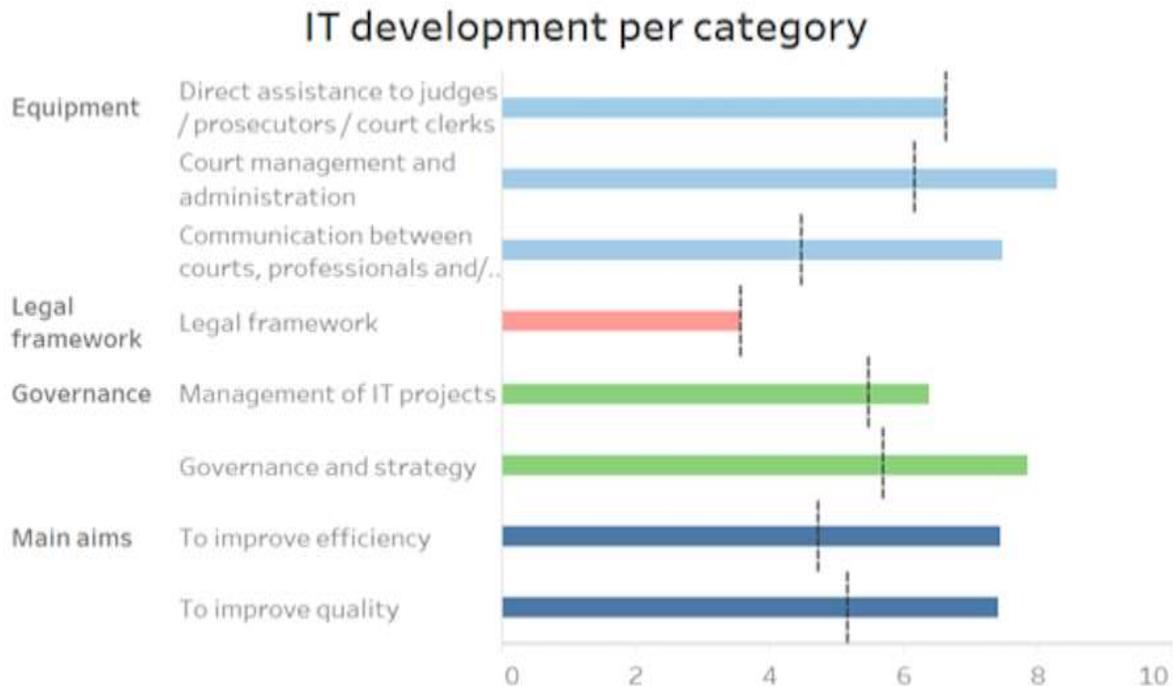
The CEPEJ Study n°24 established several areas where, despite a 100 % equipment rate in all branches of law, the legislative framework is lagging behind, leaving also some advanced practices evolving without a proper regulations. For example, “[o]f the 34 States or entities offering the option of bringing a case to court electronically, only Latvia, Turkey and UK-Northern Ireland do not have a specific legislative framework...”. The situation is (or was, at the time of reporting) the same for electronic summonses to hearings or pre-hearing appointments and communication between courts and lawyers or enforcement agents. Furthermore, according to the report, “[w]here electronic signature is an option, it is almost systematically covered by a legislative framework. Of the 4 States or entities not possessing such a framework (Latvia, Russian Federation, UK Scotland and Ukraine), Latvia is the State where this technology is most widely used”. Overall, it appears that Latvia is among a very few States where the active introduction of new technologies was not systematically accompanied by a legislative framework. Some developments explained below, for example the recent amendments to the civil procedure law, may have eliminated the abovementioned concerns.

Figure 43: Advancement of IT developments per types of cases and by the main aims



The above graph shows a consistent development of IT in the different areas of adjudication with a small negative difference for criminal proceedings. It seems that the Latvian Court Administration and other involved national authorities followed a balanced strategy, as both efficiency and quality of justice are well targeted by the advancement of ICT tools.

Figure 44: Advancement of IT developments per category (equipment, legal framework and governance) and by the main aims. Latvia compared to the “European median”



The above Figure 44 provides further insights into the situation as regards the level of ICT tools. The category of tools providing direct assistance to the professionals of the court may be considered as an area for future developments.

Going further in the analysis of the ICT tools to support court administration, it must be said that production, dissemination and analysis of court statistics are seen by CEPEJ as one of the most important exercise to orient and support court management. ICT tools can largely assist and enhance the capacity of production, dissemination and analysis of such statistics. According to the presentations made to the experts, statistics in Latvia are provided to support management of the courts according to the following path. Presidents of courts receive reports on an annual basis in order to plan next year’s timeframes for different categories of cases. Presidents of regional courts receive monthly reports for case distribution. As for all judges, they receive information about the actual caseload on a semestrial basis.

A more sophisticated court statistics policy based on a real time “feeding” through the court information system may be considered, to enhance analysis capacity and action responsiveness at the court administration levels, both central and local. Improved and more frequent (real-time *dashboards*) statistics about the performance of any court will be crucial to some reforms and achievements Latvia is considering in the near future, especially in respect to the reduction of the lengths of proceedings, that needs a close monitoring. One key principle of the delivery of court statistics should be to consider that each judge is the first recipient of data concerning his work and that of his staff, and that this data is to be provided on a real-time basis.

Latvia’s Court Administration is considering to invest in mediation as part of its ADR policy to reduce civil cases adjudicated by the courts, or redirect litigations dealt by courts to out-of-court

mediation. Two pilot projects have been conducted recently playing on incentives to attract more cases to mediation. In this area, it is advised that IT tools may support and even expand or accelerate the objectives of settlements through negotiation, conciliation or mediation processes. The development of an online dispute resolution platform (ODR), accessible to the public or lawyers at the early stage of a dispute, should be investigated by Latvian Court Administration as a solution to enhance further its ADR policy in a cost-effective way, based on examples from other countries who have experimented this kind of platform.

Another area in which Latvia is investing to enhance the efficiency of the court proceedings is the use of videoconferencing, each court facility having at least one equipped videoconferencing room for a total of 66 access points in the entire country. This policy has a potential to facilitate the organisation of hearings but could also be a starting point for “*video recorded minutes*” instead of audio recording.⁹¹ However, beyond the investment in hardware it is now admitted that such practices need to be guided with a redefinition of the procedural framework and of court processes and rituals in which they operate, so that the administration of the court is prepared to handle hearings and judges from the superior court or parties have access to the materials in a secure way, in order to do their job.

In another important field of ICT, amendments to the civil procedure law have entered into force recently expanding electronic communication between the courts and the parties through a specific court information system, allowing the reception of procedural documents in electronic form as well as court decisions. It is expected from this system that management of cases and related documents will be enhanced. One issue has been raised in the answers to the questionnaire about the insufficiently user-friendly character of some IT tools, as seen by the users, namely the discrepancy in the use of e-signatures among judges.

As the Latvian Court Administration is expressing an interest in the development of a full e-court, with exclusive use of digital documents, an in-depth assessment should be carried in the field and a review conducted of the plans to have a system ready in 2020 (which is close), in light of the *Cyberjustice Guidelines* the CEPEJ has recently published and started to disseminate in European countries. The idea is to push from a traditional Case Management System to a fully integrated Court Management System, including e-service of documents, enhanced use of templates, and implementation of business intelligence tools.

One last area in which the ICT could support court management is the organisation of language services. If, today, translation is provided centrally, interpretation is still provided locally. As part of the deployment of videoconferencing, Latvian Court Administration could consider organising a central or distributed system of court interpretation mediated through a video link, so that distribution of tasks among language experts is facilitated and interpreters’ services could be offered to the courts and users with the same quality, on request, through a dedicated platform.

⁹¹ It is acknowledged that in 2015 the Latvian Court Administration was awarded a special mention of the “*Crystal Scales of Justice*” Prize for the project “*Recording of court hearings with technical means*”. See a presentation under the following link: www.coe.int/t/dghl/cooperation/cepej/source/Crystal_2015/Latvia.ppt. CEPEJ often refers to this example as a good practice in its cooperation programmes with member states.

Concluding remarks on court management and efficiency of courts

1. Data on all the selected first instance courts analysed for the purpose of this report show an overall downward trend in the number of incoming, solved, and pending cases, with positive values (above 100%) of Clearance Rate every year and decreasing Disposition Time over the 5-year period. The overall cost per case in 2016 was of 445 Euro, with a rising trend from the previous years, due to the increasing budget combined with the decreasing number of solved cases. The overall appeal rate is stable (about 11%), while the ratio of decisions quashed or modified in appeal had a slight increase, from 17% in 2012 to 19% in 2016. These indicators do not raise serious concerns. They should be regularly monitored and published at national and court levels.
2. The 9 selected courts (3 regional courts and 6 district courts) are very different in size and performance and show disparate trends. Regional and district courts have variable numbers of incoming and solved cases per judge and cost per case. These first data suggest to have a more in-depth analysis about the allocation of budget and human resources in the courts, which appears to be, at a first glance, quite unbalanced.
3. Data and indicators raise no major concern about the caseload and the length of judicial proceedings in the Latvian selected district courts. Some attention should be given to the age of pending cases in civil and commercial cases, in all the 6 district courts, as well as for the criminal cases, but the problem can be addressed quite easily, just paying some more specific attention to the oldest pending cases. Based on the data collected, the three regional courts selected for this exercise do not show any major problem, as far as the length of judicial proceedings is concerned.
4. The questionnaire on time management should be re-submitted to collect more data. It may be amended with some specific issues that the Court Administration thinks should be dealt with, and should be periodically submitted to the judges and non-judges personnel to collect information useful for better policy design and monitoring of the impact of different activities. The few replies received to the questionnaire in August-September 2017 show that the length of judicial proceedings is constantly monitored, then discussed among the judges, available to other stakeholders and the general public. This is in line with the recommendations developed by CEPEJ.
5. The courts in Riga have several peculiarities that need to be addressed with specific policies, which may not be applicable to other courts. However, the “*transfer of cases*”, currently applied to balance the caseload, should be carefully analysed since it raises some concern.

Generally speaking, European judiciaries do not “*transfer cases*” from one court to another to deal with the excessive caseload. Normally a serious disbalance would not appear overnight and it is possible to anticipate the needs of courts in more resources to efficiently deal with their caseloads and to (re)adjust the human input. Among alternative and provisional solutions to such situations, some judicial systems have increased the number of “*temporary judges*” working in particular courts or particular jurisdictions. In some countries, these judges may be moved from one court to another

(in France, for example, the “*juge placé*” – a judge “attached” to the president of a court of appeal, may be moved between the lower courts in the jurisdiction of the respective court of appeal, to help them cope with peaks in the caseload), or they are recruited to be specifically a “*flying squad*” or “*taskforce*”, to be deployed in the courts under pressure or otherwise assist them.⁹²

A different organisation of the land registry judges may be envisaged to explore the possibility to have a more balanced caseload among all the judges and increase the number of judges for “*ordinary*” matters in Riga, limiting or avoiding the transfer of cases.

6. Even though the situation in Latvia about the caseload and the length of judicial proceedings is good, below is a list of policies that have been tested in Council of Europe member States, and that have been recognised to be quite successful. When choosing among these policies, it is necessary to take into consideration the specific context in which courts operate, that may affect the implementation and the impact. Some of these policies are already applied in Latvia, while others may be considered by the national authorities, and even by individual courts, to further improve the functioning of the court system and the service to the citizens.

- Setting timeframes;
- Strong commitment and judges’ leadership to enforce the timeframes;
- Pro-active case management by the judges;
- Constant monitoring of case processing and quick responses to increased caseload and anticipated delays;
- Clear scheduling of court events;
- Strict policy to minimise adjournments and avoid postponements;
- Specific policy to manage court-appointed experts to avoid delays;
- Active involvement of parties and lawyers in scheduling procedural steps, to avoid unnecessary delays;
- Accountability policies for judges, court personnel, and lawyers, to enforce timeframes and avoid opportunistic behaviours and delay tactics;
- Policy to increase pre-trial settlements, early settlements, mediation and conciliation;
- Some flexibility of the case assignment system;
- Setting a task force to manage unpredictable caseloads;
- Delegation of more responsibilities to clerks and other court staff, taking into consideration their sufficient qualification, to increase the court’s efficiency;
- Post-filing filtering of cases to address them through different paths (i.e. specialisation and, if possible, increasing the ratios of summary procedures);
- Templates for procedural acts and legal arguments etc.

⁹² For more examples and details, see the CEPEJ [Compendium of “best practices” on time management of judicial proceedings \(CEPEJ\(2006\)13\)](#)

7. As mentioned above, CEPEJ promotes the setting of judicial timeframes/targets to improve the length of judicial proceedings. These timeframes may be set by the Court Administration and by the Ministry of Justice, to have a common indicator about the length of judicial proceeding in the whole country, but may be also applied by the individual courts, as an innovative managerial practice.

The setting of timeframes is just the initial step towards a tenacious positive tension to decrease the length of judicial proceedings without any prejudice to the quality of decisions. There is no possibility to improve the length of judicial proceedings without a strong commitment by the president and judges of the court, as well as the whole court personnel towards the accomplishment of the timeframes.

8. Data on the age of pending cases should be collected and analysed, taking into consideration the set timeframes. Ideally, data should be collected as often as possible (ex. every 3-6 months) to monitor the courts' functioning over the year and not just at the end of the year.
9. Judges are supposed to have a more pro-active role in the management of their caseload. For example, judges should be able to set a realistic calendar of events for the case, in consultation with the parties and other participants, whenever possible, and taking into consideration the complexity of the case (e.g. number of witnesses, evidence to be collected, need for expert witnesses, complexity of the legal matter, level of conflict between the parties, timeframes etc.). The trials should be as concentrated as possible. The [Council of Europe Recommendation Rec. 84 \(5\) of the Committee of Ministers to member states "on the principles of civil procedure designed to improve the functioning of justice"](#) advises the establishment of a typical procedure based on *"not more than two hearings, the first of which might be a preliminary hearing of a preparatory nature and the second for taking evidence, hearing arguments and, if possible, giving judgment."* A case management meeting to set a calendar of events can help settlements, avoid unnecessary adjournments, concentrate hearings, and hold the timeframes. The decisions taken during such meetings should be strictly enforced by the judges.
10. An explicit court policy against continuances or postponements should be implemented by the court president and enforced by all the judges. The granting of postponements to lawyers should be limited as much as possible, in order to avoid delaying tactics and keep the scheduled pace of litigation. Courts should promote common practices with regard to lawyers, to avoid postponements, which should be only granted if properly substantiated, and for a limited period of time. This court policy can be issued and enforced through a circular note of the court's president. The most common reasons for postponements should be tracked and discussed by court presidents and judges.
11. Judges should share templates for giving legal arguments in standard cases, to save their time and work. In addition, some common rules for the practice to give legal reasons in writing could be developed and shared among judges, also to avoid excessive and useless length in legal reasoning.

12. Judges and court personnel should be able to monitor constantly their caseload (incoming, disposed of, pending, age of pending case etc.), in order to undertake the necessary actions if the targeted timeframes are not met. The ICT tools available in courts shall be adapted to support this monitoring, to provide statistics and, possibly, warnings if the statutory deadlines or the timeframes risk to be exceeded.
13. The data monitored should be the basis for a report to be used for discussions among all judges and court personnel, to improve the pace of litigation and, more generally, the quality of court's work. Meetings among court staff should take place regularly, possibly every time a report is released. Data on the length of judicial proceedings should also be public and easily accessible.
14. Reports and the experiences related to time management, shared among judges and courts, could also be the basis for training courses for judges and non-judge personnel on these issues.
15. It transpired from the CEPEJ Study n°24 a very good level of development of ICT tools used in support to courts and judicial proceedings, along the need to further improve the related legislative framework. Apparently Latvian authorities take into account the recommendations of the report published in October 2016 and some response actions have been already implemented. It may be recommended to further develop and integrate into the court management system a business intelligence solution that will serve the strategic management of the Latvian judiciary. Dashboards based on real-time statistics should be made available to presidents of courts and judges, in view to the reduction of the lengths of proceedings.
16. Expanding electronic communication between courts, court users and other actors of the justice system, further use of video conferencing to improve the quality of certain services, and development of an ODR accessible to the public at the early stage of a dispute, should be further investigated by the Latvian Court Administration.

E. Quality of the judiciary and courts

a. Fairness of justice. Legal certainty. Clarity of judicial decisions

➤ Fairness of justice

In the case-law of the ECtHR, the fair trial holds a prominent place in a democratic society since this guarantee “*is one of the fundamental principles of any democratic society, within the meaning of the Convention*”⁹³.

- Violations of Article 6 ECHR found by the ECtHR in cases against Latvia and follow-up

Before reporting the main violations of Article 6 ECHR found by the Strasbourg Court against Latvia, it is useful to recall the relevant principles stemming from the ECtHR’s case-law. Equality of arms and the right to an adversarial hearing are two closely related inherent features of a fair trial. Equality of arms requires that each party be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis the opponent⁹⁴, and that a fair balance be struck between the parties. The right to an adversarial hearing means, in principle, the opportunity for the parties to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court’s decision.

In addition, in a criminal case, the right to an adversarial trial requires that the prosecution authorities disclose to the defence all material evidence in their possession for or against the accused⁹⁵. In cases where evidence has been withheld from the defence on public-interest grounds the Court will not itself review whether or not an order permitting non-disclosure was justified in a particular case. Rather, it examines the decision-making procedure to ensure that it complied, as far as possible, with the requirements of adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the interests of the accused.

As it results from Article 6 of the ECHR, litigants have a right to a public hearing because this protects them against the administration of justice in secret, with no public scrutiny. By rendering the administration of justice visible, a public hearing contributes to the achievement of the aim of Article 6 § 1, namely a fair trial⁹⁶. However, the obligation to hold such a hearing is not absolute. In proceedings before a court of first and only instance, especially in criminal cases, the right to a “*public hearing*” under Article 6 § 1 entails an entitlement to an “*oral hearing*” unless there are exceptional circumstances that justify dispensing with such a hearing.

⁹³ ECtHR, *Pretto and Others v. Italy* (Plenary), no. 7984/77, 8 December 1983, § 21.

⁹⁴ ECtHR, *Bobek v. Poland*, no. 68761/01, 17 July 2007, § 56.

⁹⁵ ECtHR, *Rowe and Davis v. the United Kingdom* [GC], no. 28901/95, 16 February 2000, § 60.

⁹⁶ ECtHR, *Malhous v. the Czech Republic* [GC], no. 33071/96, 12 July 2001, § 55.

The obligation to hold a public hearing is less strict before Supreme Courts, provided that a public hearing took place in the previous degrees of jurisdiction⁹⁷.

The analysis of the ECtHR's case-law against Latvia revealed that an issue regarding the fairness of criminal proceedings had been raised before this Court in the case of *Baltins v. Latvia*⁹⁸. The ECtHR found a violation of Article 6 of the ECHR because of the national courts' failure to attempt to obtain access to the prosecution classified documents which were not included in the criminal file and thus to verify information that was in the possession of the prosecution, which would have been necessary for the courts to guarantee a fair trial.

On 29 May 2014, the *Saeima* adopted amendments to the Criminal Procedure Law (the amendments entered into force on 25 June 2014). Pursuant to the said amendments, Article 500 of the Criminal Procedure Law (The Course of Examination of Evidence) was supplemented with § 4, which enhances the competence of judiciary when dealing with admissibility of evidence obtained as a result of special operative measures. In accordance with Article 500 § (4) of the Criminal Procedure Law, upon an arguable claim raised by the prosecutor, victim, defendant or the defence counsel, the trial court must acquaint itself with the materials pertaining to the special investigative measures which had not been included in the criminal case file and which concern the body of evidence used in the criminal proceedings. The court must reflect in the criminal case file and in the respective decisions that materials pertaining to the special investigative measures have been examined by it⁹⁹.

Several applicants placed in detention raised complaints before the ECtHR¹⁰⁰ regarding the violation of their right to a fair hearing and to equality of arms because of the Supreme Court's refusal to allow them to attend the public hearing in which their appeal on points of law was discussed. It seems that, at the time of the events, domestic courts had an overly formalistic approach, namely, when scheduling the court hearing or informing the applicant of the scheduled hearing, they failed to notify the prison administration about their decision regarding the applicant's transfer to the hearing. Therefore, the prison administration was unable to react promptly to the applicant's request to transfer him to the hearing of the Supreme Court. Also, there seemed to be a legal void, since Article 458 of the Latvian Criminal Procedure Law envisaged a right for the parties to the proceedings to participate in the cassation court hearing, but did not specify the duty of the courts to notify the participants about their right to request the participation in the hearing, or the manner or form for the submission of such requests. The Supreme Court had developed its own practice which consisted in notifying the prison administration only if the request to participate in the hearing was expressed in the cassation complaint. With the entry into force, on 1 October 2005, of the reform of the Criminal Procedure Law, pursuant to Article 578, the court must inform the accused who is in detention

⁹⁷ ECtHR, *Göç v. Turkey* [GC], no. 36590/97, 11 July 2002, § 47; *Miller v. Sweden*, no. 55853/00, 8 February 2005, § 29-35; *Hermi v. Italy* [GC], no. 18114/02, 18 October 2006, §§ 58-67; *Jussila v. Finland* [GC], no. 73053/01, 23 November 2006, § 40.

⁹⁸ ECtHR, *Baltins v. Latvia*, no. 25282/07, 8 January 2013.

⁹⁹ See the Resolution of the Committee of Ministers CM/ResDH(2016)191 of 6 September 2016 and the documentation referred to therein.

¹⁰⁰ ECtHR, *Jeronovics v. Latvia*, no. 547/02, 1 December 2009 and *Liepiņš v. Latvia*, no. 31855/03, 25 November 2014.

about his rights to request the participation at the court hearing. Whereas in accordance with Article 583 § (5) and Article 578 § (2) of the Criminal Procedure Law, the participation of an accused in the hearing must be ensured, if the said person has submitted such request to the Supreme Court within 10 days from the receipt of a copy of the cassation complaint or protest.¹⁰¹

Furthermore, thanks to a 2009 co-operation project co-funded by Switzerland, aimed at improving the management and efficiency of the judicial system by developing technological facilities, a videoconferencing system has been installed in at least one room in every court and prison across the country and in the premises of the Court Administration. Thus, videoconference facilities help to reduce costs and better ensure participation at court hearings, particularly as regards prisoners and witnesses.

- Analysis of some other aspects of the Latvian legislation in the light of Article 6 ECHR

Upon a first analysis of the Latvian legal framework governing civil proceedings, it can be observed that the main procedural guarantees subsumed in Article 6 of the ECHR for the respect of the right to a fair trial are ensured in the Latvian legal system. For instance, the right to public hearings as well as the obligation of both courts of first instance and courts of appeal to directly examine evidence and hear witnesses when adjudicating a case, are common rule in civil proceedings, as explicitly recognised by the Civil Procedure Law.

With regard to the rules applicable to administrative proceedings, it is to be noted that the Administrative Procedure Law provides for the written procedure as the general rule, oral procedure being the exception. If, in general terms, this choice should not raise questions of fairness, however, one should bear in mind the fact that, from the perspective of the case-law of the ECtHR, legal actions and thus the subsequent proceedings which are qualified as administrative at national level can be considered as civil claims or even criminal charges. Hence, Article 6 of the ECHR shall be applicable with all the procedural guarantees set forth therein. For such proceedings, the concrete application of Section 112.1, § (4) of the Administrative Procedure Law, providing for the right of parties to submit a request for a hearing, which becomes binding for the court, is therefore of a crucial importance.

In the criminal field, the Criminal Procedure Law imposes the general rule of an oral procedure. However, the law provides for an exception in the case of "*agreement proceedings*"¹⁰², which can be conducted only in written. In this regard, it has to be recalled that the ECtHR does not consider *per se* problematic the waiver of some of the defendant's rights in the plea-bargaining proceedings. However, with specific reference to the right to an oral hearing, in the ECHR's view, the fact that a court examines and approves the plea-bargain during a public hearing, additionally contributes to the overall quality of the judicial review in question¹⁰³. At this stage, it is not possible to formulate a sufficiently informed analysis of the agreement proceedings, with special regard to their compatibility with the right to a public hearing.

¹⁰¹ See the Resolution of the Committee of Ministers CM/ResDH(2017)312 of 4 October 2017 and the documentation referred to therein.

¹⁰² See Article 540.1 Criminal Procedure Law - Trial of a Criminal Case in Writing in Agreement Proceedings.

¹⁰³ ECtHR, *Natsvlshvili and Togonidze v. Georgia*, no. 9043/05, 29 April 2014, § 95.

➤ **Legal certainty and rule of law**

Legal certainty is a primordial requirement for any legal and judicial system in order to respect the right to a fair trial and the principle of rule of law. This requirement translates itself, *inter alia*, in a set of characteristics of laws: accessibility and foreseeability, also known as the “*quality of law requirements*”. According to the case-law of the Strasbourg Court, the law must be “*adequately accessible*” and “*formulated with sufficient precision to enable citizens to regulate their conduct, being able to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty*”¹⁰⁴.

The principle of legal certainty, combined with the rule expressed in Article 6 § 1 of the Convention, that a tribunal must always be “*established by law*”, reflects the principle of the rule of law, which is inherent in the system of protection established by the Convention and its Protocols. Furthermore, as court decisions can elaborate upon and clarify laws, their accessibility, comprehensibility and consistency are aspects which contribute to ensuring legal certainty in a given legal system.

- **Tribunal “established by law” and the possibility of reassignment of cases**

The object of the term “*established by law*” in Article 6 “*is to ensure that the judicial organisation in a democratic society does not depend on the discretion of the executive, but that it is regulated by law emanating from Parliament. [...] Nor, in countries where the law is codified, can the organisation of the judicial system be left to the discretion of the judicial authorities, although this does not mean that the courts do not have some latitude to interpret relevant domestic legislation*”¹⁰⁵. More specifically, in the criminal field, the primary purpose of procedural rules is to protect the defendant against any abuse of authority and it is therefore the defence which is the most likely to suffer from omissions and lack of clarity in such rules¹⁰⁶.

In addition to this, ruling on the guarantee of a tribunal “*established by law*”, the Strasbourg Court emphasised that “*the paramount importance of judicial independence and legal certainty for the rule of law calls for particular clarity of the rules applied in any one case and for clear safeguards to ensure objectivity and transparency, and, above all, to avoid any appearance of arbitrariness in the assignment of particular cases to judges*”¹⁰⁷. Therefore, through the lenses of the ECtHR in the case *Miracle Europe KFT v. Hungary*, the Strasbourg judges found that “*where the assignment of a case is discretionary in the sense that the modalities thereof are not*

¹⁰⁴ ECtHR, *Sunday Times v. United Kingdom* [Plenary], no. 6538/74, 26 April 1979, § 49.

¹⁰⁵ ECtHR, *Coëme and Others v. Belgium*, nos. 32492/96 and others, 22 June 2000, § 98. In this case, the Strasbourg Court found a violation of Article 6 § 1 of the ECHR on two grounds: firstly, because, due to a lack of legislation implementing Article 103 of the Constitution (setting the competence of the Court of cassation), the Court of Cassation introduced an element of uncertainty as to the extent to which rules governing ordinary criminal proceedings would apply and rendered the defence’s task difficult; secondly, because the Court of Cassation also tried co-defendants other than ministers for offences connected with those for which ministers were standing trial, the connection rule not being established by law.

¹⁰⁶ *Idem*, § 102.

¹⁰⁷ ECtHR, *DMD GROUP, a.s., v. Slovakia*, no. 19334/03, 5 October 2010, § 66.

*prescribed by law, that situation puts at risk the appearance of impartiality, by allowing speculation about the influence of political or other forces on the assignee court and the judge in charge, even where the assignment of the case to the specific judge in itself follows transparent criteria. The order in which the individual judge or panel in charge of a certain case within a court is determined in advance, that is, an order based on general and objective principles, is essential for clarity, transparency as well as for judicial independence and impartiality. An element of discretion in the allocation or reassignment of cases could be misused as a means of putting pressure on judges by for instance overburdening them with cases or by assigning them only low-profile ones. It is also possible to direct politically sensitive cases to certain judges and to avoid allocating them to others*¹⁰⁸. Still, the ECtHR recognises the need for organisational measures that enable the administration of justice to avoid undue delays, but recalls that such measures have to be of a kind that satisfies the requirements of the right to a fair trial.

Similar principles can equally be drawn at the European Union's scale from the case-law of the European Court of Justice¹⁰⁹, with reference to the application of the rules in the Brussels Convention of 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters. It has to be noted that *"respect for the principle of legal certainty, which is one of the objectives of the Brussels Convention would not be fully guaranteed if the court having jurisdiction under the Convention had to be allowed to apply the forum non conveniens doctrine. [...] According to its preamble, the Brussels Convention is intended to strengthen in the Community the legal protection of persons established therein, by laying down common rules on jurisdiction to guarantee certainty as to the allocation of jurisdiction among the various national courts before which proceedings in a particular case may be brought."*¹¹⁰ The European Court of Justice has thus held that *"the principle of legal certainty requires, in particular, that the jurisdictional rules which derogate from the general rule laid down in Article 2 of the Brussels Convention should be interpreted in such a way as to enable a normally well informed defendant reasonably to foresee before which courts, other than those of the State in which he is domiciled, he may be sued [...]"*¹¹¹.

¹⁰⁸ ECtHR, *Miracle Europe KFT v. Hungary*, no. 57774/13, 12 January 2016, § 58. The case concerned the application by a limited liability company, complaining of the national procedure for designating cases to courts other than to the territorially competent ones. In January 2012, the applicant company brought an action in damages against a university following a dispute concerning a construction project. The President of the Budapest High Court requested that the case be reassigned to another court due to the court's heavy work load. The President of the National Judicial Office (NJO), exercising her discretionary power under the relevant legislation, granted this request. The applicant company's claim was ultimately dismissed in September 2013. Meanwhile, the company filed a constitutional complaint arguing that the domestic courts had reached decisions in an arbitrary manner and that it was deprived of a *"tribunal established by law"* as a result of the reassignment. This complaint was declared inadmissible; however, on 2 December 2013 the Constitutional Court, in pursuit of constitutional complaints originating in cases other than that of the applicant, stated that the regulations permitting the President of the NJO to reassign cases among courts were unconstitutional and in breach of Article 6 of the European Convention.

¹⁰⁹ ECJ, *Andrew Owusu v N. B. Jackson, trading as "Villa Holidays Bal-Inn Villas" and Others* [GC], Case C-281/02, 1 March 2005.

¹¹⁰ *Idem*, §§ 38-39

¹¹¹ *Idem*, § 40.

In the light of the foregoing, during the visit to Latvia and discussions with various counterparts, a particular situation attracted the attention of CEPEJ experts. It resulted that the main difficulty as concerns the efficiency of justice resided in the overburdening of Riga's city courts and Regional Court of Riga. According to the general presentation held by the Ministry of Justice, 40 % of all civil cases in Latvia are filed in the jurisdiction of Riga city courts. Besides an increase in the number of judges in these courts, the main "tool" used to tackle this overload is the transfer (reassignment) of cases from Riga district (city) courts or regional court to other district courts or regional courts in the country. This tool was envisaged in the amendments to the Civil Procedure Law brought in January 2014, which should be in force until December 2018¹¹². According to this provision, the transfer (reassignment) can be requested by the president of the overburdened courts and is decided by the president of the court one level higher than the requesting court (namely, a regional court or the Supreme Court).

Therefore, in practice this works as follows for Riga city courts. The President of the Regional Court of Riga (court of appeal) takes into consideration the requests of transfer of cases coming from the presidents of the first instance courts within the jurisdiction of this regional court. The President of the Regional Court of Riga can decide to transfer cases to another first instance court within the same region, or even to a different region. In this latter case, also the president of the other regional court must agree about the transfer of the case in one of the first instance courts of his region. Then, the court notifies the parties about the case transfer and, apparently, there is not any remedy that they can undertake in order to stop such a transfer. The transfer of the case is possible just one time.

During the meeting with the President of the Regional Court of Riga, the experts learned that some categories of cases are excluded from this transfer (for instance, cases related to real estate in Riga) and that the transfer cannot concern cases which Riga District/Regional courts

¹¹² See Article 32.1 "Transfer of a Case Accepted for Examination to Another Court to Ensure Faster Examination of a Case" of the Civil Procedure Law:

"(1) A court of first instance may initiate a transfer of a case of court proceedings by way of action present in its examination to another court of the same instance for examination, except in the case the jurisdiction of which is laid down in accordance with Section 30 of this Law, if examination of the case on the merits has not been commenced and if faster examination thereof may be reached, by transferring the case to another court.

(2) A regional court may initiate a transfer of a case of appeal, which has been initiated regarding a judgement (supplementary judgment) of the court of first instance, present in its examination to another regional court for examination, if examination of the case on merits has not been commenced and if faster examination thereof may be reached, by transferring the case to another court. [...]

(4) The president of the court one level higher shall take a decision on transferring a case from one court to another upon initiation of the president of the court within the jurisdiction of which the case is. If the case present in the examination of a district (city) court is to be transferred to a court located in another court region, the case shall be decided by the president of such regional court, in the territory of operation of which the court initiating the transfer of the case to another court is located. A decision shall be taken in a manner of resolution and shall not be subject to appeal.

(5) The court initiating the transfer of the case to another court shall inform the participants in the case about the taking of the decision referred to in paragraph four of this Section.

(6) If a case has been transferred to other court to ensure faster examination thereof in any of instances of court proceedings, a repeated transfer of the case may not be permissible in accordance with the procedures laid down in this Section."

have already started to examine. Furthermore, according to the President of the Regional Court of Riga, this measure generally does not concern cases where a hearing is needed and, in any case, such hearing can be conducted through a videoconference. It resulted from the exchange of information with the Latvian counterparts that a similar solution has not been enacted with regard to criminal cases.

With regard to the same issue, the view of the Sworn Attorneys, and even of judges' associations, seems rather different. Their representatives affirmed that the transfer can also concern cases where a public hearing is to be conducted, which thus entails for parties, attorneys and witnesses the need to make long trips away from Riga.

Article 32.1 of the Civil Procedure Law does not seem to indicate the criteria according to which the cases to be reassigned are selected, neither the criteria for determining the court of "*destination*". It has been mentioned by several Latvian stakeholders that the Judicial Council adopted detailed guidelines regarding the "*transfer*" of cases here examined, with the purpose to specify criteria and limits. In this regard, it has been stressed that the determination of the court of "*destination*" is made on the basis of a thorough analysis of the workload and timeframes in the courts of other regions, after a consultation of the respective presidents.

At this point, it is necessary to have a thorough look at several aspects in relation to the transfer of cases.

Firstly, it is clear (and it has been frankly admitted by the Latvian stakeholders) that there are no clear criteria in the law or any other written regulation permitting to pre-determine the "*courts of destination*". These are determined by the president of the regional court or of the Supreme Court after the case has been registered with the court which has jurisdiction *ratione loci* according to the general procedural rules. What is more, pursuant to § 4 of Article 32.1, the parties cannot object to the transfer, but are only informed of the decision in this regard, adopted by the president of the regional court or of the Supreme Court.

In the light of the abovementioned principles stemming out of the European courts' case-law, the "*transfer of cases*" scenario might raise questions as regards the full respect of the requirement of a "*tribunal established by law*" as well as of the "*quality requirements*" of the law introducing the "*transfer tool*" to the detriment of the principle of legal certainty. It is worth to underline, though, that such an assessment should be reconsidered if clear and accessible criteria would allow to predict the way cases are selected for transfer and the court of their final destination.

Secondly, and without prejudicing the analysis carried out in Section *D.c. Case and time management*, it cannot be neglected that the "*transfer tool*" entails a certain administrative workload for Riga's jurisdictions. Otherwise, a high degree of swiftness in taking the decision of transfer might cast some doubts on the accuracy of the case-by-case analysis by the President of the regional court or of the Supreme Court (aimed at establishing if the case needs an oral hearing, if the case falls within one of the categories excluded from the possibility of transfer etc.). In this connection, it can be stressed that limiting the "*transfer*" to categories of cases examined only in a written procedure (provided that the right to a public hearing, set forth by Article 6 of the ECHR, is respected) would reduce the impact of the measure on the parties and their lawyers.

In addition, the measure under examination (which should only be applicable until the end of 2018) is clearly not a long-term solution to the problem of overburdening of certain courts. For instance, according to the representatives of the judges' associations, a real solution would be either to permanently transfer judges from the other courts in the country or to re-shape the judicial map in order to merge some of the districts currently part of other regions to the districts in Riga region in order to ensure a more balanced distribution of the case-load. This process seems to be underway.

In the light of the foregoing, the Latvian legislator might consider amending the text of Article 32.1 by taking into consideration the need to specify clear and predictable criteria, rules and safeguards for a fair reassignment of cases aimed at decongesting certain overburdened courts. In addition to these adjustments, the effectiveness and sustainability of the "transfer tool" should be scrutinised.

- Access to laws and case-law¹¹³

As mentioned above, accessibility and foreseeability of laws together with accessibility, comprehensibility and consistency of case-law are aspects which contribute to ensuring legal certainty in a given legal system.

A positive action taken by the Latvian authorities in this direction deserves to be mentioned here. Since 2009, Latvia embarked together with Switzerland on a co-operation project aimed at improving the management and efficiency of the judicial system by developing technological facilities covering three main fields of action. One of these fields of actions consists of two projects on "Improve direct access to the courts through use of new technologies" and "Improve information and service delivery to the inhabitants and business". For this purpose, the Court Administration created a new portal (www.tiesas.lv) for the public, giving access to judgments and decisions of district (city) and regional courts published anonymously. In this regard, it has to be noted that a higher level of access to procedural decisions and *interim measures* is considered desirable by some Latvian stakeholders. The same portal gives access to a variety of electronic forms enabling court users to submit applications to the courts.

With regard to the possibility of researching and accessing the case-law of the different Latvian courts, and in particular the judgments and decisions delivered in the criminal field, the representatives of the sworn attorneys pointed out to the difficulties they encounter due to the fact that such judgments and decisions are anonymised prior to publication. In this regard, firstly, it could be argued that such difficulties may be overcome by the use of research tools such as key-words, the main subject matter or the applicable legal provisions. Secondly, the anonymisation of court rulings prior to their online publication can also be seen from the perspective of the right to respect for private life (Article 8 of the ECHR)¹¹⁴. Furthermore, in the

¹¹³ The use of the term "case-law" is spreading and often refers to the jurisprudence/practice of national courts, as the concept of case-law specific to common law countries is not applicable in the Latvian jurisdiction.

¹¹⁴ ECtHR, *Z. v. Finland*, no. 22009/93, 25 February 1997, §§ 95-99.

context of the EU legislation on data protection¹¹⁵, the risks of making every court ruling available online were highlighted at the very beginning of the digital revolution and anonymisation of court's judgements was proposed as a possible precaution¹¹⁶.

Furthermore, during the meeting with the representatives of the Supreme Court, the experts learned that the Supreme Court has a special Division of Case-Law. This unit is responsible for the compilation, analysis and publication of Supreme Court's explanatory opinions, as well as for summarising, selecting, processing and publishing the most important judgements on the Supreme Court's website.

- Consistency of case-law

Not only the possibility to access court rulings is of importance for the requirement of legal certainty, but also the consistency of case-law, since “[t]he principle of legal certainty, guarantees, inter alia, a certain stability in legal situations and contributes to public confidence in the courts”¹¹⁷. It is incontestable that “[t]he possibility of conflicting court decisions is an inherent trait of any judicial system which is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction. Such divergences may also arise within the same court. That, in itself, cannot be considered contrary” to the European Convention on Human Rights¹¹⁸. In fact, “a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement”¹¹⁹.

Yet, “the persistence of conflicting court decisions [...] can create a state of legal uncertainty likely to reduce public confidence in the judicial system, whereas such confidence is clearly one of the essential components of a State based on the rule of law”¹²⁰. To this effect, the role of the Supreme Courts and, above all, the good functioning of mechanisms capable to solve “profound and long-standing differences existing in the case-law”¹²¹ are crucial.

The CEPEJ expert team is satisfied with the role of the Latvian Supreme Court in this regard, consisting in the use of several procedural tools aimed at ensuring the consistency of the case-law within the Supreme Court and within the national court system. Firstly, the Plenary of the Supreme Court, as the general assembly of the court's judges, debates current issues on the interpretation of legislative provisions. Immediate questions of interpretation of legal provisions may be considered, in order to ensure the uniform application of the law, not only by the Plenary of the Supreme Court but also by the full bench of the relevant department.

¹¹⁵ At present and until 25 May 2018, the applicable in force legal instrument is Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

¹¹⁶ See *Opinion no 3/99 on Public sector information and the protection of personal data* of the Working Party on the protection of individuals with regard to the processing of personal data: “If special precautions are not taken, case-law databases, which are legal documentation instruments, can become information files on individuals if these databases are consulted to obtain a list of the court judgments on a specific individual rather than to find out about case-law, for example.”

¹¹⁷ ECtHR, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, 20 October 2011, §§ 49-58.

¹¹⁸ *Ibidem*.

¹¹⁹ *Ibidem*.

¹²⁰ *Idem*, § 57.

¹²¹ *Idem*, § 53.

Moreover, the exchange of views with the various counterparts met during the delegation's visit confirmed that, in general, there are no issues concerning the lack of uniformity of the case-law of Latvian courts. Relevant good practices have been mentioned in the meeting with representatives of the Regional Court of Riga, namely the organisation of regular meetings (eventually by video-conference) among the presidents of regional courts to talk about legal and administrative issues, or the follow-up given by the president of the court to the judgments quashed by the Supreme Court, in order to verify if there is a recurrent problem with this category of cases in the court or by the concerned judges.

However, it might be suitable to mention here a few tools that can also contribute to the consistency of case-law, among other purposes. For instance, judges in lower courts could occasionally hold informal meetings in order to discuss the case-law among themselves and eventually, to elaborate guidelines. The research for uniformity of the case-law should equally be pursued among the different courts of the same judicial district, which could be attained by encouraging regional courts to organise, on an annual basis (or more frequently, as the need may rise), joint meetings with judges from the district (city) courts seated in the same region.

Another alternative tool, which can contribute to achieve better consistency of case-law throughout the entire judicial system, is related to organising various training activities for judges. In this regard, the representatives of the Latvian Training Judicial Centre presented quite a rich curriculum of training activities for judges and reported very encouraging participation rates. Such activities could be developed even more in the direction of discussing case-law evolution and analysing trends in the judicial system, eventually also by benefitting from academic input on various legal topics.

- Clarity of court rulings

It goes without saying that judgments of courts and tribunals should adequately state the reasons on which they are based. Reasoned decisions serve the purpose of demonstrating to the parties that they have been heard, thereby contributing to a more willing acceptance of the decision on their part. In addition, they oblige judges to base their reasoning on objective arguments, and also preserve the rights of the defence. However, the extent of the duty to give reasons varies according to the nature of the decision and must be determined in the light of the circumstances of the case¹²². The courts are required to examine the litigants' main arguments and provide legal reasons to the parties' key pleas¹²³. Thus, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision. A lower court or authority in turn must give such reasons as to enable the parties to make effective use of any existing right of appeal¹²⁴.

In the replies to the questionnaire "*Ensuring the quality of justice in the courts of Latvia*" (60 respondents, of which 21 judges), 45 % of respondents answered that there are no, or that there are only partially specific rules and standards used for the presentation of judicial

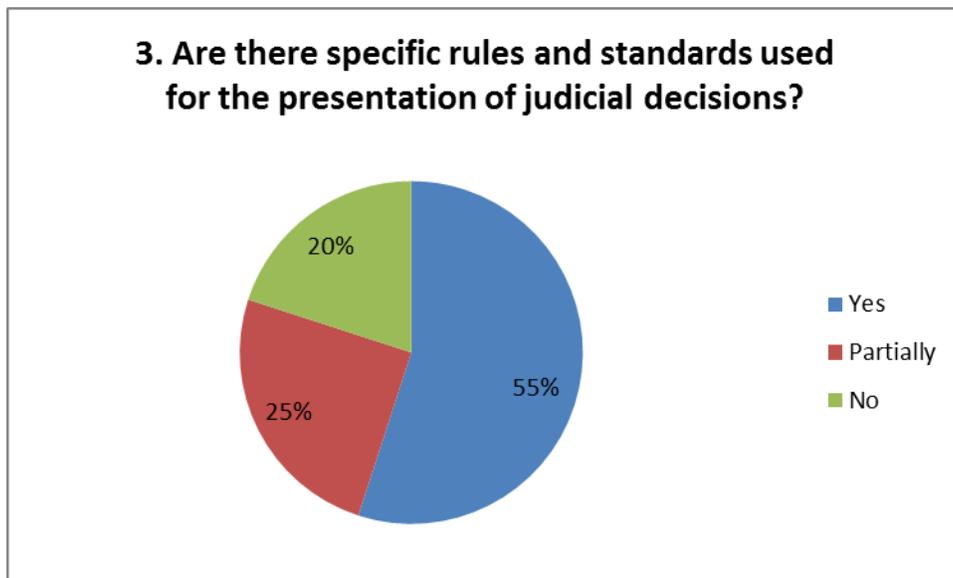
¹²² ECtHR, *Ruiz Torija v. Spain*, no. 18390/91, 9 December 1994, § 29.

¹²³ ECtHR, *Donadzé v. Georgia*, no. 74644/01, 7 March 2006, § 35.

¹²⁴ ECtHR, *Hirvisaari v. Finland*, no. 49684/99, 27 September 2001, § 30 *in fine*.

decisions. In the comments was mentioned that “*there are rules for making judgments, but they only regulate the visual and aesthetic standards of a ruling*”.

Figure 45: Answers to question 3 of the Questionnaire on Quality



When sharing their views on the issue of clarity of court rulings, both representatives of the Sworn Attorneys and of judges’ associations underlined that too many judges are used to a kind of “*copy-paste*” style of reasoning and have a rather formalistic approach in accomplishing their tasks. It seems to be quite a common practice to include entire parts of judgements of the Supreme Court (sometimes not fully relevant to the case under examination). According to the counterparts, such a style of legal reasoning reduces the comprehensibility of court rulings.

A much too formalistic and abstract approach to the duty of motivating court rulings is far from being advisable. In fact, systematically drafting complex and detailed motivations of court rulings, irrespectively of the complexity and difficulty of the case under examination, can affect the comprehensibility of court decisions, not to mention the negative effects on the efficient use of “*judicial resources*”. Motivation of judgments should be seen as a tool to maintain a connection between the judicial power and the citizens in a democratic society, by enabling citizens to have a full picture of the manner in which justice is being delivered in the country. Thus, even in complex and difficult cases, the reasoning should focus on the key points of the case and be comprehensible to the parties assisted by lawyers.

A suitable tool for striking a fair balance between the need for a detailed and solid judicial reasoning and a motivation comprehensible to litigants, could be the use of standardised forms of decisions. Standardised templates can serve to draft simplified decisions and to process repetitive applications¹²⁵. Moreover, the use of a clear and coherent structure, combined with a good system of quotation of the relevant case-law, can contribute to the clarity even of complex decisions. The process of standardisation described hitherto, which should be encouraged

¹²⁵ See CEPEJ [Guidelines on how to drive change towards Cyberjustice](#) (CEPEJ (2016)13, para. 47.

rather than imposed on judges and should leave some room for flexibility, could be combined with the use of ICT tools, both for case management and communication with court users.

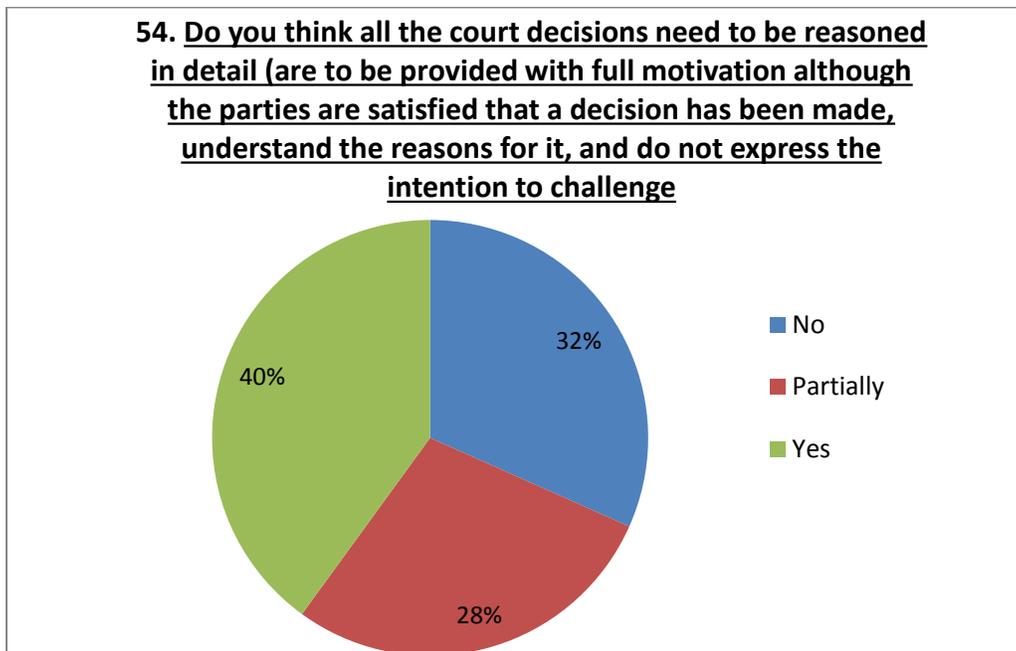
Another relevant good practice has been mentioned in the meeting with representatives of the Regional Court of Riga, namely the “review” of judicial decisions by a professional linguist employed by the court and coaching of judges how to make their writings better structured and more understandable to ordinary people, preserving at the same time the legal meaning and precision.

On this point, it is also interesting to note that, in the context of the recent reform of the Civil Procedure Law, the possibility to have “short” judgments delivered for specific categories of civil cases is being debated.

Indeed, a few Council of Europe member states have implemented similar reforms: (i) either only preserving the obligation to provide parties with a summary statement of reasons, with the possibility to further request a detailed statement of reasons (as it is the case for appeal judgments in Poland); (ii) or, providing for the possibility to have a written statement of reasons only upon request (for instance, in Switzerland)¹²⁶. However, such an approach should be decided with caution and be adapted to the different types of proceedings/court rulings, in order not to step to the other extreme and deprive litigants of the right to a reasoned decision as it has been developed in the case-law of ECtHR (as presented hereinabove).

The replies to the questionnaire on quality issues on a related question, whether all court decisions need to be reasoned in detail, were not uniform.

Figure 46: Answers to question 54 of the Questionnaire on Quality



¹²⁶ See the examples presented in the [Good practice guide to improve the functioning of justice](#) (CEPEJ (2016)14), section 5.6.

➤ **Prompt administration of justice/Expeditious proceedings**

Undoubtedly, one important characteristic of an efficient, high quality legal system is that justice is administered promptly. In requiring cases to be heard within a “reasonable time”, Article 6 § 1 of the Convention underlines the importance of administering justice without delays which might jeopardise its effectiveness and credibility¹²⁷. In general terms, Article 6 § 1 obliges the Contracting States to organise their legal systems so as to enable the courts to comply with various aspects of the right to a fair trial.

One of the most recurring violations complained of before the Strasbourg Court by applicants from many member states is the non-compliance with the “reasonable time” requirement of a trial. The Strasbourg Court has thus dedicated a lot of its case-law to highlighting the most common problems and to calling on member states to introduce in their legal systems adequate remedies aimed either at accelerating proceedings or at compensating for the already existing delays.

As far as Latvia is concerned, there are some cases where the Strasbourg Court found a violation of the reasonable time requirement¹²⁸. The outcome of the execution process of these cases, as supervised by the Committee of Ministers, is positive, in the sense that general measures introducing adequate remedies have been adopted concerning both civil and criminal proceedings.

Latvian authorities indicated that on 1 September 2013 amendments to the Law on the Judicial Power entered into force which, taken together with the relevant provisions of the Civil Procedure Law, allow the parties to the proceedings to file motions complaining about the length of proceedings and requesting to accelerate them. According to the Law on the Judicial Power, the president of the court determines the recommended/achievable average periods of time within which the examination of a case should be completed and supervises the compliance by the judges with these standards. If a judge fails to examine a case within a reasonable time limit, the president of the court is authorised to intervene and set a time limit within which the judge should carry out specific procedural activities or to redistribute his cases to other judges.

In the criminal field, the reform of the Criminal Procedure Law introduced the possibility for courts to discontinue criminal proceedings or reduce the sentence in case of excessive length of proceedings. By virtue of the amendments of 12 March 2009 (in force since 1 July 2009), Article 379 § (1) of the Criminal Procedure Law was supplemented with subsection 4, providing that criminal proceedings may be terminated, relieving a person of criminal liability, if it was not possible to complete the criminal proceedings within a reasonable time. By virtue of the amendments of 21 October 2010 to Article 58 of the Criminal Procedure Law (in force since 1 January 2011), a person could be relieved of criminal liability if it was established that his right to the completion of criminal proceedings within a reasonable period had not been observed.

¹²⁷ ECtHR, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, 29 March 2006 § 224

¹²⁸ See *inter alia*, ECtHR, *Lavents v. Latvia*, no. 58442/00, 28 November 2002; *Veiss v. Latvia*, no. 15152/12, 28 January 2014; *Kirins v. Latvia*, no. 34140/07, 12 January 2017; *Kalēja v. Latvia*, no. 22059/08, 5 October 2017.

b. Access to courts

➤ **Access to justice and language interpretation**

As a matter of principle, court users who do not understand the official language of court proceedings in Latvia are entitled to free interpreting services. The Civil Procedure Law¹²⁹ provides that persons who have been granted legal aid are also entitled to use the services of an interpreter, should they not understand the official language of the proceedings. In criminal proceedings¹³⁰, the services of an interpreter shall be ordered by the judge, free of charge, to the benefit of several participants to the proceedings: the defendant, victims and/or their representatives, witnesses, experts or other persons summoned to appear before the court in the criminal proceedings in question. The law goes even further and ensures free of charge access to the assistance of an interpreter also to persons with hearing, speech or visual impairments.

In reply to the question “13. Are the persons who do not understand the official language used in judicial proceedings entitled to an interpreter free of charge?”, of the questionnaire on

¹²⁹ See Article 13 of the Civil Procedure Law - Language of Court Proceedings “[...] (4) For the participants in the case who receive State ensured legal aid or are released from the payment of court expenses, a court shall ensure the right to get acquainted with materials of the case and to participate in procedural actions, by using assistance of an interpreter, if they do not understand the language of the court proceedings.”

¹³⁰ See Article 11 of the Criminal Procedure Law - Language to be used in the Criminal Proceedings: “[...] (2) If a person who has a rights to a defence, a victim and his or her representative, a witness, specialist, expert, auditor, as well as other persons who a person directing the proceedings has involved in the criminal proceedings does not speak the official language, such persons have the right to use the language that such persons understand during the performance of procedural actions, and to use the assistance of an interpreter free of charge, whose participation shall be ensured by the person directing the proceedings. In the pre-trial proceedings, the investigating judge or court shall provide for the participation of an interpreter in the hearing of issues that fall within the jurisdiction of the investigating judge or court.

(2¹) A person who has the right to defence, if he or she does not have the knowledge of the official language, may use the language the person has knowledge of and during the meeting with the defence counsel use, free of charge, the assistance of an interpreter whose participation shall be ensured by the person directing the proceedings, in the following cases:

- 1) to prepare for the interrogation within the pre-trial proceedings or for the trial at a court hearing;
- 2) to draw up a written complaint regarding the conduct of an official who handles the criminal proceedings or regarding amending or revocation of a judgment and application of a procedural compulsory measure;
- 3) to draw up a document necessary for the trial of the case in a written procedure;
- 4) to draw up an appellate or cassation complaint.

(2²) For a person who has the right to defence and who has been applied a security measure related to deprivation of liberty, the participation of the interpreter for exercising of the rights referred to in paragraph 2.1 of this Section shall be ensured by the relevant place of imprisonment. [...]

(6) The provisions of this Section regarding the right of a person to use the language that the person has knowledge of and to use the assistance of an interpreter free of charge shall also apply to persons with hearing, speech or visual impairments. In issuing procedural documents to such persons in the cases provided for by the law, the availability of such documents in the language or the manner which such persons are able to perceive shall be ensured.”

quality issues, 60 % of responses were “*partially*” and 38 % of respondents replied “*yes*”. The comments specified that in criminal and administrative cases the interpretation is ensured free of charge, while in civil cases only persons who are exempt from court fees will benefit of interpretation free of charge. No problems were reported to ensuring timely services.

According to the information provided by the Ministry of Justice, interpreting services are ensured by the courts’ interpreting services (only for Latvian-Russian interpretation) as well as by private providers with whom the Court Administration concludes outsourcing agreements upon need, in particular for the languages not covered by the courts’ interpreting services. Interpreters from the courts’ interpreting services are employees of the courts and are subject to the rules pertaining to work performance evaluation of judicial staff. In 2016, out of 1433 court staff reported by the Court Administration, 116 persons were court translators/interpreters.

At this stage of the analysis, it can be concluded that the essence of the right to a free interpreter is adequately guaranteed in the Latvian judicial system. . However, one remark can be made as regards the quality of interpreting services. It has been reported by the MoJ that in Latvia there is not a dedicated public database of legal translators/interpreters. Furthermore, as it has been explained by the Ministry of Justice, interpreters can only be held liable for intentionally performing interpretation deceitfully, according to the applicable dispositions of the Criminal Law. This situation might cast some doubts on the extent to which the State is capable of ensuring access to adequately trained legal interpreters (especially as regards private interpreters) and consequently, to ensure interpretation services of high quality. Therefore, the Latvian authorities might consider creating a system of certification and registrations of legal translators/interpreters, similar to the one applicable to forensic experts.

As regards ensuring translation/interpretation for particular languages for which there are few specialists, a solution could be that of providing the interpretation service through live videoconferences conducted in the already available facilities in courts or police stations.

➤ **Legal assistance/legal aid**

Legal assistance and state legal aid are tools which contribute to a better access to justice and to a better protection of the rights of litigants. If the ECHR does not provide for a general right to legal assistance or legal aid, Article 6 § 3 (c) of the Convention explicitly refers to the right to legal assistance and to legal aid in the criminal field. As it has been stated by the Grand Chamber of the Strasbourg Court, the right of everyone charged with a criminal offence to be effectively defended by a lawyer is one of the fundamental features of a fair trial¹³¹. However, the right to receive legal aid is not an absolute right, but circumscribed by two conditions: first, the accused must show that he lacks sufficient means to pay for legal assistance; second, the Contracting States are under an obligation to provide legal aid only “*where the interests of justice so require*”.

¹³¹ ECtHR, *Salduz v. Turkey* [GC], no. 36391/02, 27 November 2008, § 51.

As for the civil field, provided that the Convention is intended to safeguard rights which are practical and effective, in particular the right of access to a court, Article 6 § 1 may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court¹³². However, this will depend of the specific circumstances of the case.

With regard to the Latvian legal framework as concerns legal assistance/legal aid, first to be noted is the rule that representation by sworn attorneys is not compulsory before Latvian courts. This possibility to choose whether to be represented or not can be seen as a “*democratic tool*” to facilitate access to justice. However, it could be argued that the assistance of a lawyer is an important tool to ensure a real legal debate between the litigants and the judge, with a common background of technical knowledge and communication skills. The litigant who is not represented by a lawyer is practically dependent on the directions given by the judge, the latter having to double his role, also acting as a legal advisor; such a situation might even affect the appearance of impartiality of the judge. From this perspective, the representation of litigants by a lawyer also contributes to a better administration of justice. Therefore, access to legal aid is of great importance.

At this stage of the analysis, several pieces of information attracted the attention of the CEPEJ expert team with regard to legal aid. First of all, as the statistics presented in the CEPEJ European Judicial Systems Overview (based on 2014 data) reveal that the implemented budget allocated to legal aid in Latvia is situated under the European median (Latvia: 0.8245 € per inhabitant, European median: 2.46 € per inhabitant). In 2015, there was only a slight increase in the implemented budget allocated to legal aid (0,8590 € per inhabitant).

The State Ensured Legal Aid Law sets down the legal framework and rules governing legal aid in Latvia. The law provides for the types and extent of legal aid, the amount of payment to be paid to legal aid providers and the reimbursable expenses arising from the provision of legal aid, as well as the procedure of payment. State Ensured Legal Aid Law provides that the State shall ensure legal aid for the out-of-court and in-the-court settlement of matters of legal nature or for the protection of infringed or contested rights of a person, or his interests protected in the cases, in the ways and amounts provided for by the Law. Generally, state legal aid covers legal consultations, the drawing up of procedural documents and representation in court in civil, administrative and criminal proceedings.

From an institutional point of view, the Legal Aid Administration, an institution directly subordinated to the Ministry of Justice, is competent to grant or reject requests for legal aid, to appoint the legal aid provider and to make payments to legal aid providers. Its decisions can be challenged in accordance to the procedural rules specified in the Administrative Procedure Law.

Legal aid can be requested by any natural persons who obtained the status of a low-income or needy person or who find themselves suddenly in a situation and material condition which prevents them from ensuring the protection of their rights (due to a natural disaster or force majeure or other circumstances beyond their control), or are on full support of the State or local government (persons in a special situation).

¹³² ECtHR, *Airey v. Ireland*, no. 6289/73, 9 October 1979, § 26.

The granting of legal aid in administrative proceedings is limited to the matters enumerated in Article 15 of the State Ensured Legal Aid Law and include, among others, appeals in asylum proceedings, appeals against a removal order or a decision of forced return or appeals against a decision concerning the protection of the rights and legal interests of a minor.

In the criminal field, legal aid is granted through the services of state appointed lawyers. The provisions of the law governing the legal aid request are not applicable in the criminal field, but the specific rules in the Criminal Procedure Law. At this stage of the analysis, it was not possible for the experts to become familiar with the detailed provisions contained in the Criminal Procedure Law in order to make an assessment of the manner in which the right to legal assistance and legal aid is being implemented in the Latvian legal system.

Overall, it can be noted that the Latvian justice system provides for a rather low level of legal aid, limited both in terms of available budget and in terms of categories of persons who can qualify to receive legal aid. This aspect should be further analysed in conjunction with the findings of the experts regarding court fees and the possibilities for exemption from their payment.

➤ **Court fees and exemption from payment**

Article 6 § 1 of the Convention guarantees everyone's right to have his civil rights and obligations determined by a court. It thus enshrines a "*right to a court*", of which the right of access, namely the right to apply to a court in civil proceedings, is only one aspect.

However, the right to a court is not absolute, "*it lends itself to restrictions since, by its very nature, it requires regulation by the State, which may select the means to be used for that purpose.*"¹³³ In this respect, the Strasbourg Court reiterated on several occasions that "*it has never ruled out that a financial requirement may be imposed on an individual's right of access to a court in the interests of the fair administration of justice*"¹³⁴. Notwithstanding, "*the amount of the fees, assessed in the light of the particular circumstances of a given case, including the applicant's ability to pay them and the phase of the proceedings at which that restriction has been imposed, are factors which are material in determining whether or not a person enjoyed his or her right of access to a court or whether, on account of the amount of fees payable, the very essence of the right of access to a court has been impaired*"¹³⁵.

In order to bring a case before a Latvian civil court, litigants have to pay court fees (also known as State fee), registry fees and expenses necessary for the consideration of the case (such as expenses of witnesses, costs for translation or publication of documents etc.), while in order to start proceedings before an administrative court, litigants have to pay court fees and a security deposit, which aims at discouraging manifestly ungrounded claims and is fully refunded even if the claim is only partially accepted. The same applies to civil appeal proceedings and to appeals on points of law before the Supreme Court. Court fees are calculated according to the Civil

¹³³ ECtHR, *Weissman and others v. Romania*, no. 63945/00, 24 May 2006, §§ 33-34.

¹³⁴ ECtHR, *Kreuz v. Poland (no. 1)*, no. 28249/95, 19 June 2001, § 59.

¹³⁵ *Idem*, § 60.

Procedure Law and the Administrative Procedure Law. Generally, the amount of court fees is calculated on the basis of a fixed percentage taking into account the value of the claim and the type of the claim (mainly for claims of an undeterminable value). A more detailed presentation of the manner in which court fees are calculated, as well as of the various fixed fees for specific types of claims can be found in *section C.b. Court fees and other fees for court services*, hereinabove.

The system allows for the possibility for certain litigants to be exempted from the payment of court fees. The exemption situations are set forth by article 43 of the Civil Procedure Law, according to which fourteen exhaustively enumerated categories of persons shall be exempt from payment of court costs to the State. Moreover, exemptions apply to various legal fields, namely labour law, family law, criminal law, financial law, insolvency matters. For certain types of claims, although not exempted from payment of court fees, litigants have the possibility to benefit from certain payment facilitations. For instance, in claims pertaining to dissolution of marriage, if a minor child is in the care of the plaintiff, upon the request of the plaintiff, the judge shall postpone the payment of the State fees or divide the amount to be paid into instalments.

Furthermore, Article 43 § (4) of the Civil Procedure Law gives judges a rather large margin of manoeuvre in deciding to exempt a person fully or partially from the payment of court fees, to postpone such an obligation of payment or to divide it into instalments. This possibility must be seen as a democratic measure adopted by the state in order to ensure an effective access to court to all citizens, in line with the standards set in the case-law of the ECHR, as explained above.

Based on the information at their disposal, the experts find it necessary to make the following remarks regarding court fees before Latvian courts.

Firstly, as concerns the amount of court fees calculated as a percentage of the value of the civil claim, the rules applicable for low-value claims are the following: for a claim of a value up to 2134 Euro, the court fees to be paid represent 15 % from the amount claimed but not less than 71,14 Euro; for a claim of a value between 2135 Euro and 7114 Euro, the court fees to be paid are the sum of 320,10 Euro plus 4 per cent of the amount claimed exceeding 2134 Euro. The following table illustrates more clearly the level of State fees that have to be paid for a few hypothetical scenarios of low-value claims.

Table 34: State fees to be paid for (hypothetical) low-value claims

Value of the claim	State fee
50 Euro	71,14 Euro
250 Euro	71,14 Euro
500 Euro	75 Euro
1 000 Euro	150 Euro
2 500 Euro	334,74 Euro

As *Table 34* shows, litigants who wish to bring a low-value civil claim before a court can face the situation of having to pay a State fee which is superior to the value of their claim or represents a significant part of the value of the claim. Moreover, some of the amounts due for high value claims, as described in *section C.b.* hereinabove, namely in *Table 4: Court fees for first instance courts*, seem quite high both in absolute terms and in comparison to fees due in other countries for claims of the similar value. In this context, the report prepared by CEPEJ-GT-EVAL following a visit of the group in Riga in November 2013¹³⁶ reveals that the significant increase of court fees (both in absolute terms and in relation to the budget for the justice system as a whole) was explained by the Latvian authorities as mainly due to an increase in the number of cases brought before courts.

Such a hypothesis raises *prima facie* some doubts as to whether the right to access to a court would be fully respected in such cases, having in mind the abovementioned principles resulting from the case-law of the Strasbourg Court.

Secondly, related to the faculty given to judges to exempt fully or partially from payment, postpone the payment or divide it in instalments (as per Article 43 § (4) of the Civil Procedure Law), the representatives of the Sworn attorneys pointed out the fact that judges make little use of this discretionary power. Nevertheless, in the process of elaboration of the present report, the Latvian authorities suggested that the feedback provided by Sworn attorneys on the issue reflects only partly the pursued judicial practice, given that low-income applicants (who generally benefit from the exemption set forth by the aforementioned Article 43 § (4)) usually are not represented by an attorney in a lawsuit. It is clear that the real practice in this field and its perception by the public is a key factor to dispel the doubts raised above as to the compatibility of the Latvian court fees systems with Article 6 of the ECHR.

Thirdly, as it transpires from the judgement of the ECtHR in the case of *Marina v. Latvia*¹³⁷, at the time when the application was made before the Strasbourg Court, the national courts failed to provide a sufficiently clear and unambiguous interpretation of the procedural provision concerning exemptions from a court fee, situation which entailed a violation of the right to access to a court. Nonetheless, pursuant to the Resolution¹³⁸ adopted by the Committee of Ministers in the context of the process of supervision of the execution of the aforesaid judgment, it resulted that this remains an isolated incident and that general measures have been adopted in order to prevent future similar violations. Amongst the general measures implemented in order to improve the interpretation and implementation of Article 43 of the Civil Procedure Law ("*Exceptions from General Provisions Regarding Court Fees*") in compliance with the Convention's standards, the CM's report cites the dissemination of the ECtHR judgment amongst courts and the introduction of a specific training on the analysis of this judgement in the training programme delivered to judges by the Latvian Judicial Training Centre.

¹³⁶ See the Report [Pilot co-operation process / Peer review on judicial statistics, 5th cycle \(2013\)](#), CEPEJ-GT-EVAL(2013)9Rev, 13 March 2014, section 4.a.

¹³⁷ ECtHR, *Marina v. Latvia*, no. 46040/07, 26 October 2010.

¹³⁸ See the Resolution of the Committee of Ministers CM/ResDH(2015)124 of 10 September 2015 and the documentation referred to therein.

In the same vein, it could equally be envisaged to conceive specific guidelines for judges, for lawyers and litigants on the correct application of Article 43 § (4) of the Civil Procedure Law.

c. Communication with court users. Access to court information. Assessing user satisfaction.

The overarching objective of judicial communication is to create, preserve, and strengthen the public support for the court system by demonstrating the courts' commitment to their mission, vision and values. This support is achieved through meaningful communication between the courts and its audiences. The judiciary and courts' administration have to educate, inform, and teach the public about courts. They have to organise and present the collected data in forms which are comprehensible for judges, court staff, but also for the partners of the judicial system and the public. Each of these target audiences require special attention. The goal of a communication plan is to make information accessible and understandable to everyone. The key to effective court communication is to identify and understand each target audience and surround them with effective messages.

Several Council of Europe instruments consider the communication with court users, and providing the appropriate means to communicate, as key issues for the functioning of a justice system in respect of its democratic values.

The Compendium of Best Practices on Time Management for Judicial Proceedings (CEPEJ (2006)13), published in 2006, sets the importance of access to information for the public as being both a democratic and a court performance issue:

- in § 3.3 it is mentioned that *“Easily accessible and readable data about court performance should be available for public scrutiny, and to improve court transparency and public trust”*.

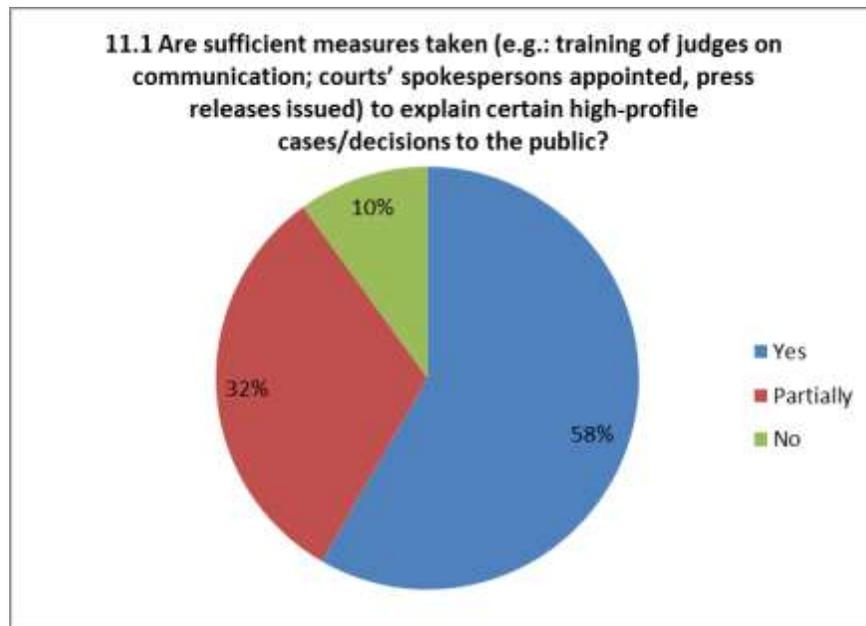
- in § 3.4 it is also emphasise that *“Stakeholders’ expectations and opinions are fundamental to set, develop, and validate the timeframes, as well as to monitor the public perceptions and trust about courts and the administration of justice. Surveys should be periodically conducted at three different levels (state, court, elementary unit) Also users’ groups, focus groups and other techniques can be used for this purpose”*.

The CEPEJ's Checklist for promoting the quality of justice and courts (CEPEJ(2008)2) focuses a few dozens of its questions on aspects related to communication and transparency of court systems. In a similar way the CCJE has issued recommendations on enhancing the public trust and respect for courts through increased transparency and communication, especially in its Opinion No. 7 (2005) *“On justice and society”*.

Latvian authorities take seriously the objectives related to facilitating the communication between courts and the society. The Judicial Council adopted the Court Communication Strategy and Communication Guidelines of the Judicial System, aimed at mutual exchanges among the institutions belonging to the judicial system, and at the communication with the public. The ICT tools implemented in court also facilitate the communication, with court users in particular.

Some respondents to the questionnaire on quality issues considered the level and quality of information delivered to the citizens on Internet being not sufficient, not harmonised and not consistent with the use of social networks, when this practice does exist. It is clear that it would be to the benefit of the courts to implement appropriate communication policies, that improve the image of the justice system in the medias and the within the general population. A challenge which need to be further addressed it that the content of court decisions and rulings are seen as complex and not written and communicated in a way that would facilitate their understanding by the ordinary citizens, first and foremost by the parties themselves.

Figure 47: Answers to question 11.1 of the Questionnaire on Quality



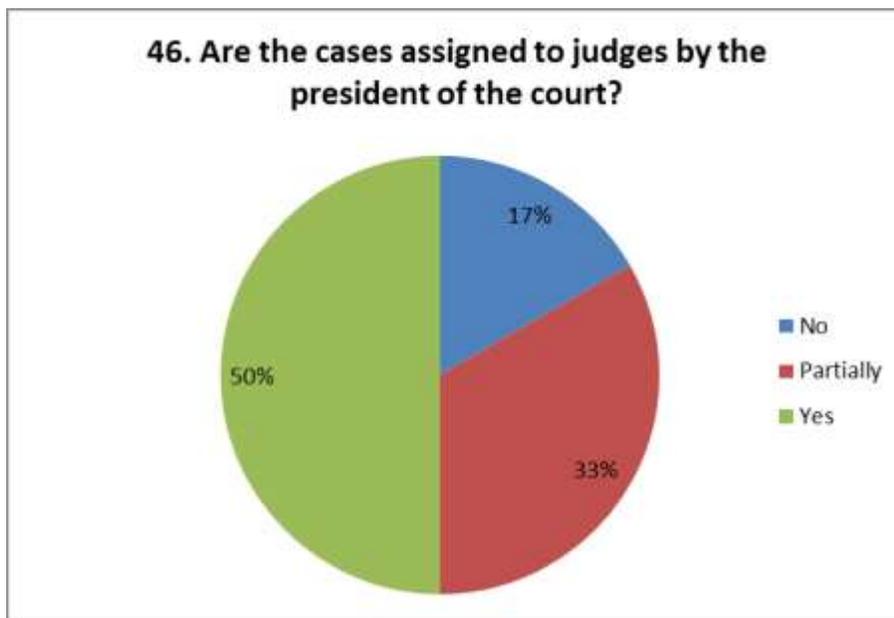
During the interviews conducted by the CEPEJ team, the attorneys stressed that the communication on the cases is not sufficient. The society in general discusses and comments especially the cases that the courts do not explain. It is not seen as a good practice to allow individual judges to comment on the cases that they have to adjudicate or adjudicated. It is preferable that the courts should be able to explain – in particular to the media – issues which may raise questions, for example the proceedings and decisions in cases of high public interest. There may be many ways to communicate with the public: court spokespersons, organisation of “day of open doors”, participation of judges in public debates over (!) general questions, etc. An effort could be made in Latvia in this respect. Despite the existence of court communication officers (or spokespersons) who are trained to address issues with the mass-media, more effort and a better organisation or professionalism is at least expected by the respondents to the questionnaire.

Figure 48: Answers to question 12 of the Questionnaire on Quality



An area of a slight confusion, as it emerged from the answers to questionnaire on quality issues, is about the distribution of cases. The random assignment of cases is a computer-based process and the results are approved by the president of the court and made available to the public on its website. This is a good idea, but some respondents declared that they do not know the software's intervention criteria, so that an effort of pedagogy may be considered, to the attention of judges and of the public, to make sure they understand and accept the process as valid and protecting their rights.

Figure 49: Answers to question 46 of the Questionnaire on Quality

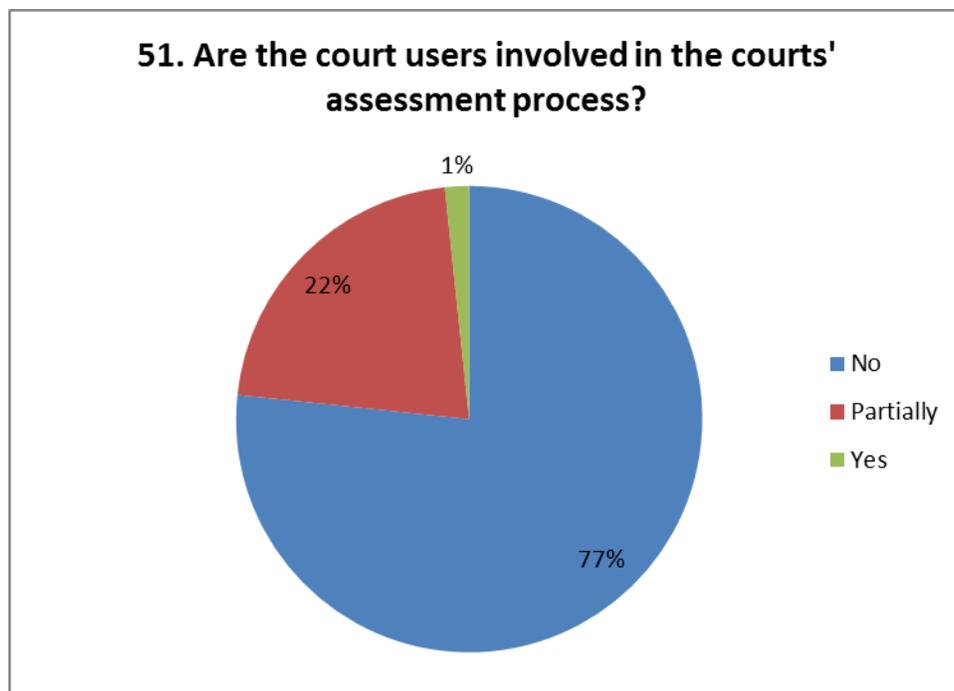


It is a good achievement that in Latvia parties to a case have the opportunity to connect to the courts' website and access information about their proceedings until the decision. For the general public, courts' decisions are made available in an anonymised format.

As regards the information given to witnesses to a case, some good practices could be shared from the experience of the CEPEJ [“Crystal Scales of Justice” Prize](#). For instance, Norway's Court Administration has established a special service in their court to assist and support witnesses before hearings. More broadly, Portugal is reconsidering its service to users kiosks based both on informatics and ergonomic considerations in the court facilities. France is deploying a *“universal welcome service for users”* that make possible for any person to get information on a case (and soon to interact in his/her case) in any location on the territory, whether this court is competent or not by the law: the service will be provided by the administration of the court anyway, separated from the judge.

Regular evaluation of courts' efficiency and quality is conducted in Latvia. In this regard, users' satisfaction should be one of the key elements of the policies aimed at the evaluation of quality *“standards”*. By collecting information on users' perceptions of the functioning of courts, the court user satisfaction surveys are a useful tool for court managers to know and understand what the expectations are, then to assess the functioning of the court and to plan possible improvements. Although there are indications that satisfaction surveys are conducted in Latvian courts, the answers to a relevant question in the quality questionnaire revealed that this is certainly not an institutionalised, common practice.

Figure 50: Answers to question 51 of the Questionnaire on Quality



d. Mediation (general remarks)

The Mediation Law of Latvia was adopted by the *Saeima* on 22 May 2014. According to an information note presented by the Ministry of Justice of Latvia and drawn up by the Council of Certified Mediators¹³⁹, the first initiatives to introduce mediation started in 2004. The Ministry for Children and Family Affairs and the State Probation Services together with NGOs were among the early adapters of mediation idea and practices. The passing of the Mediation Law marked a new stage in the development of mediation services in Latvia. The law outlined the key mediation principles, defined two categories of mediators (mediators and certified mediators), outlined the phases of mediation and set a framework for court-referred mediation model. The court-referred mediation model was launched together with the institution of state-certified mediators and a new representative body – Council of Certified Mediators. At the beginning of 2018 there were 50 certified mediators in Latvia.

In 2016-2017 two projects were implemented to implement and popularise the mediation practices. Since September 2016 the Council of Certified Mediators and Ministry of Justice have partnered to implement pilot project “*Mediation Desks in Courts*” which provides 1-hour free consultation to any court users interested in learning about possibilities to use mediation in view of solving their disputes. In 2017 another pilot project entitled “*Family Mediation*” provided mediation services to 291 families with minors. Each family could receive up to 5 hours of state paid mediation services, provided by 26 state certified mediators. Apparently, some 65% of all the mediation cases in this project have been finalised with a full or partial agreement between the disputing parties, a result which points to the high potential of mediation in family disputes. It is appreciable that the Ministry of Justice of Latvia secured the means to continue this project also in 2018. It is advisable to study the effect of mediation on court proceedings (in terms of reduction of the caseload) and its impact on economic efficiency for the budget.

On the occasion of the evaluation conducted in view of the present report, Latvian authorities expressed their interest in further investigating the advantages of mediation as a form of dispute resolution in view of actively promoting it, namely in family disputes.

As a matter of principle, mediation can be considered not only a tool to unclog judicial systems and to finalise the proceedings within a shorter period, but as an appropriate means of resolving disputes, especially whenever a given dispute concerns just a part of a wider and complex relation among parties and/or whenever this relation might continue after the resolution of the dispute. In such scenarios, settling the dispute through mediation, rather than through an authoritative court decision, can be in the best interest of the parties. Furthermore, mediation can be quicker and cheaper for the parties than judicial court proceedings. In sum, mediation can contribute to the quality of justice.

Mediation services can be offered to the parties either before the beginning of court proceedings or throughout the judicial proceedings; recourse to mediation proceedings can be either compulsory (if prescribed by law or by court decision) or fully voluntary. Mediation can be carried out by private institutions, specialised public bodies or judges. The informal and confidential character is also essential to its success.

¹³⁹ See http://www.mediacija.lv/?Medi%C4%81cijas_padome

In case of court-attached mediation it is important that the activities conducted by the judge to facilitate the amicable settlement of the dispute do not compromise his impartiality and, in particular, that these activities are not considered by the parties as a kind of anticipation of a judicial decision. Two examples can be provided in this regard. In Belgium, when the Family and Youth Court was set up, provision was made for it to have a division responsible for out-of-court settlements. In this division, the judge does not rule on the dispute but proposes possible solutions to the parties without influencing them. More precisely, the judge-conciliator must assess the possibility that the mediation will bear fruit and forward the case file to an accredited mediator if the parties agree. The pilot project “*Judicial Mediation*”, carried out in the Antwerp District Court of Appeal¹⁴⁰, provided for the creation of a file of mediation different from that of the judicial proceedings, as well as the withdrawal from the case of the judge who was previously involved in a failed mediation.

Possible actions that may encourage such a method of dispute resolution include increasing the amount of information given to citizens on the characteristics and advantages of mediation, ensuring the professionalism of mediators, and providing for incentives, including forms of financial assistance (with regard to costs, legal aid and fees benefits). In countries where they are not standard practice, it would also be desirable to gear lawyers’ training and earnings to the profile of a legal expert who assists his or her clients before legal action is taken, and subsequently, during the various proceedings to resolve the dispute.

For more details, reference may be made to several Council of Europe instruments, in particular: Recommendation (98)1 on family mediation, Recommendation (99)19 on mediation in penal matters, Recommendation (2001)9 on alternatives to litigation between administrative authorities and private parties and Recommendation (2002)10 on mediation in civil matters. With regard in particular to the work of CEPEJ, mention should be made of the activities of GT-MED and the sections on mediation in the reports evaluating judicial systems. CEPEJ adopted detailed guidelines to support implementation of the above recommendations, in particular the [Guidelines for a better implementation of the existing recommendation concerning mediation in penal matters \(CEPEJ\(2007\)13\)](#), the [Guidelines for a better implementation of the existing recommendation concerning family mediation and mediation in civil matters \(CEPEJ\(2007\)14\)](#), and the [Guidelines for a better implementation of the existing Recommendation on alternatives to litigation between administrative authorities and private parties \(CEPEJ\(2007\)15\)](#). Finally, several successful examples of mediation are offered in the CEPEJ [Good practice guide to improve the functioning of justice](#) (CEPEJ (2016)14), Section 6.2.

¹⁴⁰ Special award under the CEPEJ 2005 “*Crystal Scales of Justice*” Prize.

Concluding remarks the quality of courts

1. The measure of reassignment or transfer of cases (Article 32.1 of the Civil Procedure Law) which is currently broadly used in order to tackle the overburdening problem of Riga's courts (district courts and regional court) might raise questions as regards the full respect of the requirement of a "*tribunal established by law*" as well as of the principle of legal certainty. Therefore, the Latvian legislator might consider amending the legal framework, specifying clear and predictable criteria, rules and safeguards for a fair reassignment of cases.
2. In addition, the effectiveness and sustainability of the reassignment of cases as a long-standing solution to the problem of overburdening of certain courts should be thoroughly scrutinised by Latvian authorities. It would be advisable to reallocate resources (human and related financial resources) according to the actual and forecasted caseload, in a way that there is no constant need to redistribute cases. A permanent transfer of judicial units or the adjustment of the judicial map constitute alternative and probably more sustainable solutions to the problem of overburdening of certain courts.
3. No specific issues concerning the lack of uniformity of the case-law of Latvian courts have been brought to the attention of the experts. Several procedural tools currently ensure the consistency of the case-law within the Supreme Court. A special unit created recently ensures the analysis of the case-law and development of thematic synthetises.
4. With reference to the issue of drafting style of reasoning of court rulings, it is not advisable to have a formalistic and abstract approach. Even in complex and difficult cases, the reasoning should focus on the key points of the case and be comprehensible to the parties assisted by lawyers. A choice for introducing the possibility of summary motivations should be decided with caution and be adapted to the different types of proceedings/court rulings, in order not to deprive litigants of the right to a reasoned decision as it has been developed in the case-law of the ECtHR.
5. As it resulted from the analysis of the ECtHR regarding the requirement for a "*reasonable delay*" of court proceedings, the Latvian judicial system generally complies with this requirement and appropriate remedies have been enacted in order to prevent undue delays.
6. Generally, the essence of the right to a free interpreter is adequately guaranteed in the Latvian judicial system. Still, additional efforts could be made in order to ensure higher quality of translation services.
7. As concerns the granting of legal aid, it can be noted that the Latvian justice system provides for a rather low level of legal aid, limited both in terms of available budget and in terms of categories of persons who can qualify to receive such aid. The topic may deserve a further in-depth evaluation.

8. The level of court fees before Latvian courts might be considered *prima facie* as problematic. Article 43 § (4) of the Civil Procedure Law gives to judges the faculty to apply exemptions to the obligation to pay court fees or to apply payment facilities to persons in need: the judicial practice concerning this faculty seems highly relevant in order to assure the compatibility of Latvian court fees with the right of access to a court, set forth by Article 6 of the ECHR. Bearing in mind past difficulties in the application of this legal provision, it could be equally envisaged to conceive and disseminate specific guidelines for judges, lawyers and litigants on its correct application.
9. There seems to exist a need for disseminating the prerequisites, meaning, objectives and methods of conducting court user satisfaction surveys in Latvian courts. The CEPEJ Handbook for conducting satisfaction surveys aimed at court users in Council of Europe member states (CEPEJ(2016)15)) may be a good starting point in this process. The satisfaction surveys for different target groups should be properly adjusted to their objectives, but it is important to apply a consistent methodology and to regularly repeat them in order to evaluate the progress. The results of the surveys should be carefully analysed and the key findings shall be followed up by action to improve the quality of court services.
10. Efforts have been put in the creation of a cluster of services that would push Latvia ahead of the average situation of European court systems. Developing new services, coming from the use of artificial intelligence, may be considered as well in the near future, to complement the current offer. Still, beyond the availability of services, more pedagogy is probably expected by the users.
11. The Ministry of Justice of Latvia and the relevant partners, including mediators, courts and judges, are encouraged to continue the development and dissemination of mediation practices as an alternative to court proceedings. Along with making available and accessible the mediation services, it is essential to promote a “*mediation culture*” – a common acceptance of dispute resolution through cooperation and effective communication, and enhancing the individuals’ responsibility for their disputes and reaching long-lasting solutions. In this regard CEPEJ provides guidelines and shares the information on good practices in Council of Europe member states.

Appendices:

Results of implementing the CEPEJ questionnaires:

Part 1: Ensuring the independence of the judiciary and impartiality of judges in Latvia;

Part 2: Assessment of judicial time management tools implemented in the courts of Latvia;

Part 3: Ensuring the quality of justice in the courts of Latvia.