REFORM OF THE SYSTEM OF DISTRICT COURTS IN LITHUANIA – ARE WE REALLY MOVING TOWARDS EFFICIENCY?\(^1\)

(Summary)

The article analyses whether there is indeed an issue of excessively lengthy proceedings and unequal workload of judges in first instance district courts in the Republic of Lithuania. The study is based on the official workload statistics of courts provided by the National Courts Administration. The authors discuss the reform proposed in 2014 to consolidate district courts into larger units, provide their conclusions and recommendations.

**Keywords**: Length of Civil Proceedings; Reform of Courts; Workload of Judges

The system of courts of general jurisdiction currently in existence in the Republic of Lithuania is enshrined in Article 111(1) of the Constitution of the Republic of Lithuania (adopted in the Referendum of Citizens on 25 October 1992)\(^2\) which states that the courts of the Republic of Lithuania shall be the Supreme

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Court of Lithuania, the Court of Appeal of Lithuania, regional courts and district courts. This system, in its own turn, has been taken over from the judiciary system which existed in the inter-war independent Lithuania and was in substance similar (the only difference being that there was the Supreme Tribunal rather than the Supreme Court of Lithuania). There have been considerable discussions before the adoption of the Constitution if it was really worthwhile taking over a rather cumbersome four-tier system of courts from the inter-war Lithuania; such discussions, however, became meaningless after the Constitution came into force. The article will discuss specific aspects of functioning of only one tier of the judiciary – district courts, and will consider recently frequent proposals to undertake a reform in the system of this tier.

There are 49 district courts in Lithuania at present with 491 judges and 340 assistants to judges as of 1 September 2014. Although the effective Law on Courts of the Republic of Lithuania does not prescribe any minimum number of judges in a district court, the established practice is that there should be at least three judges in a district court. Such approach is supported by procedural considerations (the Code of Civil Procedure allows forming a chamber of three judges for hearing complex disputes in district courts; necessity to ensure proper carrying out of the functions of the pre-trial judge during pre-trial investigation, etc.). In order to analyse the real situation related to the workload of judges and the length of proceedings in district courts, we have selected several largest and several smaller courts. The topics chosen have been researched taking into account not only the number of judges but also the number of assistants in courts as they considerably contribute to the effectiveness of work of judges by drafting procedural documents. The period between 2010 and 2013 has been selected for the survey. The survey results are provided in the table below.

Reform of the System of District Courts in Lithuania are we Really Moving Towards Efficiency?

The analysis of the survey results allows several highly important conclusions. Firstly, it can be stated with assuredness that virtually there are no major problems in civil proceedings in district courts of the Republic of Lithuania regarding the right of persons to a case hearing within a reasonable time. All the courts surveyed annually dispose of not less than 98% of the annual case load of the specific court. Not less than 90% of all cases from this number are, in principle, disposed of within the first six months. Hence, there is no basis for statements that Lithuania encounters serious issues regarding lengthy proceedings in first instance courts.

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3 V. Mačys, Civilinio proceso paskaitos, Kaunas 1924, p. 62.
Secondly, it can hardly be said that there is a serious issue related the disproportion of the workload of judges in district courts. As it can be seen from the table above, the annual workload of one judge in major Lithuanian towns (Vilnius, Klaipėda, Kaunas, Panevėžys, Šiauliai) is approximately 370 civil cases. In smaller towns, this average is around 300 civil cases per year. The comparison of these figures, however, cannot disregard the fact that the judge/
assistant ratio in major towns is, on average, 0.8, while in smaller towns – only between 0.3 and 0.5 assistant to one judge. Given the fact that assistants draft procedural documents for judges, such disproportion compensates the existing slight difference in the workload of judges.

Regardless of the existing situation, the necessity to optimise the system of district courts is under discussion in Lithuania. In 2014, the Ministry of Justice received a draft for reorganising the courts of the Republic of Lithuania prepared by the National Courts Administration. The initiators of the reform note in the explanatory letter that “the legislative initiative stems from the need to take measures necessary to increase the effectiveness of administration of justice to allow optimising the workloads of judges and increasing the effectiveness in using the available human, financial and material resources. It should be noted that proceedings are longer in courts with higher workloads; both the rapidity and quality of the proceedings suffer as a result of high workload”. The second consideration necessitating the reform, according to its authors, is “the necessity to create preconditions to one of the measures of effectiveness in courts – specialisation of judges. Whereas more than half of district courts have between 3 and 5 full time positions of judges, specialisation is impossible”. The third reason behind this draft law is related to the changes in the territories of work of territorial police and prosecution units. In order to optimise inter-institutional competence-based relations between the court and other law enforcement institutions, in view of the authors of the reform, it is necessary to tune up their territories, which will ensure a smoother and more effective mutual cooperation between district courts and law enforcement institutions and, at the same time, will create preconditions to more expeditious proceedings.

Lastly, to prove the necessity for the reform its authors noted that “the drafting of the laws is also considerably motivated by the success of the merger of the district courts of Vilnius, Kaunas and Šiauliai cities which took place on 1 January 2013 and by information about the experience of European states in consolidating their courts. The number of first instance courts of general jurisdiction in 2006 in Estonia, for example, was decreased from 16 to 4 district courts (each of them consisting of several court divisions)”. The project authors also pointed out that they followed the Dutch experience where there were 11 courts left to operate after the consolidation of first instance courts.

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Based on these considerations, the following main reform directions have been suggested:

Firstly, to merge the existing 49 district courts into 12 district courts. The existing district courts would not be wound up; they would become a constituent of a large district court – a division (territorial unit of a district court). Once the reform is implemented, court divisions would continue operating in the places where stand-alone courts functioned before. As it has already been mentioned, the authors of the reform believe that the consolidation of courts should create preconditions for equalising workloads and for the specialisation of judges. In addition, such larger courts were also planned to house the economic, financial and human resources of court administrations. Workloads of judges would be easier equalised among the court’s units by referring cases for hearing from one court division to another within the scope of the same court (where this means a more prompt and economic disposition of the case if a dispute to be heard under the written procedure is referred to the division with a lower workload; by referring a judge to hear a case to another court division). At the same time, it is also suggested to make it possible to hold court hearings, where necessary, in the premises provided by local government institutions.

Secondly, with an agreement of the Judicial Council, judges to the constituent divisions of courts would be appointed by the chairperson of the relevant court, taking into consideration the approval from the meeting of judges of the relevant court. When deciding on the issue of appointment of judges to a court division, account would be taken of the workload in the division, the judge’s specialisation, family status, distance between the place of residence of the judge and the division as well as of other relevant circumstances. Such regulation, in the opinion of the drafters, should enable prompt response to any changes in the workload of individual constituent divisions of the court.

Thirdly, the organisational management of the entire court after the consolidation of courts would be vested in one chairperson of the court and his/her deputies; their number would be set taking into account the number of judges. The position of a senior judge was foreseen in some court divisions to help the chairperson of the court organise the administration in the court division. It is suggested to establish the rule that the senior judge of a court division should, with his/her consent and approval of the Judicial Council, be appointed from the judges attributed to the specific division by the chairperson of the relevant court for the term of five years subject to the agreement of the meeting of judges (the draft also envisaged a limitation of the term of office to two consecutive years). The resources necessary for the chairperson of the court to administer the whole
court would be concentrated in the court division when the office of the court is situated.

Fourthly, the amendments to the Law on Courts were expected to legitimise a new self-governance body composed of all judges of the relevant court – a meeting of judges to provide advice to the chairperson of the court on the issues related to the court’s administration (appointment of judges to work for a specific division, appointment of the senior judge of the court, etc.).

Fifthly, in the cases where a major difference in the workload of the constituent divisions of the court is identified by the Judicial Council, the judges who consent to be moved to another court division would be relocated first. In the cases when none of the judges agrees with the referral to the court division where the workload is the highest, a judge with the least years of service in the position of a judge from the court division with the lowest workload would be transferred without his/her consent.

Let us try and analyse the expediency of the proposed reform and the effectiveness of the measures suggested for implementation. The authors of the reform state that the reform aims at equalising the workload in courts and resolving the problem related to the length of proceedings. As it is apparent from the table above, there is no major disproportion between the workload of judges in major cities and smaller towns in civil matters; approximately 97% of all civil cases are disposed of within the first six months as of the day of submission of a statement of claim to the court. Hence, a real disproportion in workloads and the problem of the length of proceedings in civil justice when administered in first instance courts does not exist. On the contrary, we may be proud that we are among the leaders in Europe according to the ratio of hearings completed within a reasonable time. As it is seen from the table above, higher workload in major towns is compensated by a larger number of assistants to judges.

The reform designers note that when drafting the law they found guidance in the Estonian and Dutch experience in the implementation of the optimisation reforms of the judiciary and in the Lithuanian experience in consolidating courts. Several comments should be made in this regard. In the assessment of the reform implemented in Estonia, we should take into account the fact that two thirds of the Estonian population live in two cities (Tallinn and Tartu). Given such population density in the territory of the state, the consolidation of courts is logical. Meanwhile the situation in Lithuania is different, therefore, an automatic take-over of the Estonian experience would hardly be well-founded. In the Netherlands, as it has already been mentioned, the liquidated courts were no longer in existence after the merger of the courts – it was a reduction in the number of the courts
in its truest form (although certain case hearing locations have been preserved). Considering the wide-spread use of IT in the society and the understanding that lawyers should assist in legal disputes, the reform results achieved offer a reason for Dutch scholars to rejoice over the success and effectiveness of the reform. These two factors are not naturally inherent in Lithuania – older people use information technologies to a limited extent and many of them do not think that lawyer’s assistance is necessary to resolve a dispute. Therefore, such consolidation of courts as in the Netherlands would be likely to cause rather serious problems for older people to exercise their right to effective legal remedies. In terms of the Lithuanian experience in consolidating district courts it may be noted that such experience can hardly justify the necessity of the proposed reform. After the adoption of the Law on Reorganisation of District Courts by the Parliament of the Republic of Lithuania on 11 September 2012 (No. XI – 2208)⁵, it was decided to merge the district courts of the region and city of Vilnius, the region and city of Kaunas, and the region and city of Šiauliai. The merger was based on the fact that the aforementioned courts functioned either in the same building (in Vilnius) or were close to each other. In this regard, there was an apparent rational need to simplify the administration of these courts and merge the areas of their activity. There were no court divisions or other units in the new district courts after the reorganisation. Moreover, it should be noted that the idea of reorganising some district courts was suggested to the legislator as an alternative to the mechanical consolidation of courts, as proposed at that time, and was accepted by the legislator. There are no doubts regarding the justification of the reorganisation of specific district courts in 2013 – the system has been simplified and become clearer to persons (e.g., it is clear to everyone in Vilnius which court hears civil disputes) and its administration has become simpler and cheaper. Hence, the reform implemented proves that it is possible to achieve substantial positive results in the area of the judiciary without any mechanical large-scale restructuring of the entire system. Further development of the system should take two directions:

– firstly, analysis should be continued of the opportunities to merge district courts located close to each other and the areas they serve (e.g., 12 km distance is between the courts of Palanga and Kretinga); and

– secondly, setting aside the requirement for the minimum number of three judges in some courts.

The optimisation of the system of district courts carried out in this way would enable to ensure the existence of a district court close to the person and avoid

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“revolutionary” rearrangements which, in principle, should not be undertaken with regard to the judicial power which is rather conservative in nature, unless there is a high need for that.

Another argument the reform authors use to support the necessity for the consolidation of courts is an opportunity to optimise the number of support staff in courts (merger of accounting departments would make it possible to cut down the number of employees; the same is applicable to maintenance personnel). This argument is also highly doubtful. Firstly, nobody has estimated whether and how much in financial terms the concentration of, for example, accounting departments in the central office of a court would be reasonable (what would be the cost of communication between the court divisions, how much time the dispatching of papers would take, etc.). If it is decided to leave several from the above-referred employees in the court divisions, the economy of costs would most likely be so insignificant that it would hardly justify the proposed reform. It may be asked eventually whether the same goal cannot be achieved by other much milder means. In our opinion, such possibilities certainly exist. With minor amendments to the Law on Courts and without changing the established system of district courts, in principle, the function of public procurement could be transferred to the National Courts Administration or to regional courts. The same is applicable to accounting services of courts. Smaller courts could employ specific specialists only part time. Thus, there are sufficient methods to ensure the same goals of personnel optimisation without substantial restructuring of the system of district courts. This in its own turn means that there is no immediate necessity to implement the proposed reform.

The draft suggests that a district court should consist of court divisions to be administered by the senior judge appointed by the chairperson of the court. As it has already been mentioned, a court division should, in fact, be retained in all locations where district courts functioned before the reform. Hence, nothing should change for people in territorial terms. The true goals of this structural change of the courts are different. It is sought in this way:

(a) to improve opportunities for the specialisation of judges;
(b) where there is disproportion in the case load, to facilitate its redistribution among court divisions or the transfer of judges to other divisions;
(c) necessity to tune up the activity areas of courts with the activity areas of prosecutor’s offices and police offices; and
(d) where necessary, to ensure an easier process of liquidation of individual court divisions.
In terms of the specialisation of judges, support should be expressed to the idea that the effectiveness of specialisation in a larger court is always higher (the more judges in a court, the more diverse specialisation opportunities). On the other hand, as judges will continue working in separate court divisions after the introduction of the model proposed, their specialisation is likely to change the existing principles of case “movement” within the court, common to people. It is known to everybody today that most often a case is heard by the court of the place of residence or domicile of the respondent and that the case will be heard by the court (in terms of a location) where a statement of claim has been submitted. After the introduction of specialisation it is fully likely that a statement of claim will be submitted to one court division and it will be heard at another court division. Whereas the specialisation of judges is approved by an order of the chairperson of the court, such system would lack stability and can cause confusion among “customers”. Furthermore, such system would increase the distance between the case hearing and the residence of a person.

The draft suggests to establish the rule that it will be possible to have the case heard by a judge attributed to another court division if this means a more rapid and economic hearing. It means that, following the principle of prompt and economic proceedings, it will be possible to refer the case hearing from one court division to another. It should be noted that a similar procedure to refer the proceedings from one district court to another had already existed in the Code of Civil Procedure before 1 October 2011 when it was revoked after the coming into force of the amendments to Article 35 of the Code of Civil Procedure. This provision was cancelled on the grounds that a rather easy possibility of the transfer of proceedings without more extensive argumentation poses a risk of abuse and of potential violations of the right of individuals to have access to court as guaranteed by law. When such a rule exists, a guarantee that a civil case will be heard at the court expressly identified by the law becomes easy to circumvent. The rule suggested in the draft seeks, in principle, to return to the regulation which has already been set aside, by liberalising it even more.

It follows from the regulation proposed that, in case the Judicial Council identifies a major difference in the workload in the constituent divisions of the court and none of the judges of the court agrees to be relocated to work to another court division, a judge with the least years of service in the position of a judge from the court division with the lowest workload should be transferred. The rule as such could exist, however, the drafters have not discussed the whole range of issues related to such transfer. It remains utterly unclear whether the relocated judge retains a possibility to return to the court division from which he/she has
been transferred after the workload becomes normal; whether it will be also possible to transfer him/her for the second and third time in case there are no new judges in the court and he/she remains the only one with the least years of service; whether he/she gets a compensation for the costs of relocation, whether his/her spouse gets a compensation for the loss of employment, etc. It follows that the questions raised must be answered in order to legitimise the possibility to transfer judges to other court divisions without their consent.

We also consider as strange the argument of the drafters that the proposed consolidation of courts aims at tuning up the activity territories of courts with the territories of prosecutor’s offices and police offices, which have already changed. It seems to us that, based on their significance and position within the structure of state authorities, it is in particular the prosecutor’s office and the police who should adjust the aspects of their territorial activities with the activity territories of courts and not to the opposite.

And, lastly, there is a goal which has not even been stated although it presumably existed – an easier procedure for liquidating court divisions. In the Draft Law on the Establishment of District Courts and Determination of Activity Territories thereof, the authors of the draft also indicated the court divisions which will constitute the district courts that will function after the reorganisation. Hence, from the formal perspective, in order to liquidate a district court or individual court divisions an amendment to the law would be necessary. From the psychological point of view, however, it is always easier to wind up a structural unit of an organisation than the whole organisation. Furthermore, it should be noted that, once the concept of a court division is established, most likely it will no longer have such strong constitutional protection as a district court because Article 111 of the Constitution does not refer to any court divisions.

An important new element suggested by the draft authors is the system of administration of court divisions. According to the authors of the reform, a court division should be led by the senior judge appointed by the chairperson of the court. It is provided for in the draft that the senior judge of a court division should, with his/her consent and approval of the Judicial Council, be appointed from the judges attributed to that division by the chairperson of the relevant court for the term of five years subject to the agreement of the meeting of judges. Senior judges should assist the chairperson of the court in organising the administration in the court division. As in the case of the situation discussed above, the draft authors virtually deconstitutionalise the entity administrating the court because Article 112 of the Constitution refers only to the procedure of appointment of chairpersons of the court by providing that they shall be appointed by the President of the Republic
upon advice of a special self-governance body of judges (Judicial Council). Article 74 of the Law on Courts stipulates that the same procedure as that followed for the appointment of chairpersons of district courts shall be used to appoint their deputies. It is obvious that court divisions constituting a district court will have to carry out virtually all functions of the court, therefore, it is reasonable to ask why it has been suggested to change substantially the appointment procedure of the officials administering the court and to deviate from the existing tradition that not only the judicial power should be involved in the appointment of these officials. Moreover, it is provided for in the draft that the senior judge does not receive any remuneration for the duties he/she holds. It only envisages that the workload for the senior judge should be reduced accordingly. In our view, such regulation is likely to lead to a number of issues. Firstly, an increase in the powers of the chairperson of the court will mean a considerable deviation from the principle that the chairperson of the court is not so much a superior but *primus inter pares* (first among equals) who carries out certain functions of administrative nature delegated to him/her by law. It was the implementation of this principle that has been consistently strived for during all years of the independence, at the same time seeking to renounce finally the soviet administration tradition of the judiciary and ensure real independence of judges. The right of the chairperson of the court to appoint senior judges undoubtedly increases the administrative powers of the latter subject to the chairperson’s opinion about one or another judge of the court. The implementation of the system proposed would pose a risk that the system of the power vertical and its centralisation would be put in place through the chairperson of the court. For example, it would not be very difficult for the President of the Republic to appoint 12 loyal chairpersons of district courts who, in their own turn, would appoint loyal senior judges in court divisions. On the other hand, it is provided for in the draft that a senior judge shall be appointed by the chairperson of the court taking into account the opinion of the meeting of judges of the court. This new feature, in our view, could be at least a partial safeguard against the above-referred risks, however, the regulation proposed is not flawless in this regard as well. Whereas it intended to have more than one division in the court, it is hardly likely that the judges of one division will know the judges of other court divisions well. Therefore, there is a realistic risk that the advice of the meeting will become a formal assent to the chairperson’s will. In order to reduce the risk of formalisation of the approval process, it should be envisaged that advice to the chairperson should be given by the meeting of judges of the relevant division and that voting should be secret. Lastly, the term “senior judge” used in the draft law does not seem proper to us. This may lead to an im-
pression that this judge is more important compared to others, with more powers and authority, which in its own turn would mean a deviation for the principle of the equal status of judges. Hence, it would more correct to devise and suggest a different name and a different procedure of appointment of this judge not to increase the administrative powers of the chairperson of the court (it would be possible, for example, to establish that this judge is appointed only by the meeting of judges of the relevant division).

This general outline of one of the initiatives proposed in Lithuania in order to reform the system of district courts leads to the following conclusions:

– considering the disposition time of civil cases, there is no necessity to undertake any major steps in reforming the system of district courts;

– the goals of the reform authors may be achieved without a cardinal reform of the system of district courts, i.e. by further merging district courts located at a close distance to each other, setting aside the requirement for the minimum number of three judges in district courts, regulating the number of assistants to judges accordingly; if necessary, public procurement and other functions could be centralised at the level of regional courts or in the National Courts Administration;

– the stability of the system of courts and the conservatism of its functioning is, at the same, one of the guarantees of a stable functioning of the State. With this in mind, the system of courts functioning in the State should, in principle, be changed only when proper functioning problems its encounters cannot be solved in any other way.

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Reform Systemu Sądów Rejonowych na Litwie – czy na pewno zmierzamy ku większej efektywności?

(Streszczenie)

Artykuł zawiera analizę proponowanej reformy systemu sądów rejonowych na Litwie, a także ocenę rzeczywistej potrzeby przeprowadzenia reformy wskazanych sądów pierwszej instancji. Możliwość przeprowadzenia reformy w tym zakresie rozważana jest w oparciu na oficjalnych statystykach Krajowej Administracji Sądowej, dotyczących obciążenia sądów. Analiza wyników badań statystycznych pozwoliła stwierdzić, iż nie ma poważniejszych problemów w zakresie realizacji prawa osób do rozpoznania sprawy w rozsądnym terminie w postępowaniach cywilnych prowadzonych w sądach rejonowych Republiki Litewskiej. We wszystkich badanych sądach ilość załatwianych spraw kształtuję się na poziomie nie niższym niż 98% ich rocznego wpływu do danego sądu. Co najmniej 90% wszystkich tych spraw jest, co do zasady, załatwianych w okresie pierwszych sześciu miesięcy. Stwierdzono też, że dysproporcja w obciążeniu pracą sędziów w sądach rejonowych nie stanowi na Litwie istotnego problemu. Roczne obciążenie pracą jednego sędziego w największych litewskich miastach (Wilno, Kłajpeda, Kowno, Poniewież, Szawle) to ok. 370 spraw cywilnych.

W mniejszych miastach średnia to ok. 300 spraw cywilnych rocznie. Podkreślono również, że stosunek liczby asystentów do liczby sędziów kształtuje się w największych miastach na poziomie 0,8, zaś w mniejszych miastach – jedynie pomiędzy 0,3 a 0,5 asystenta na jednego sędziego. Głównym założeniem planowanej reformy jest dokonanie połączenia sądów, w wyniku którego z 49 istniejących sądów rejonowych ma pozostać 12. Istniejące sądy rejonowe nie uległy likwidacji; stałyby się częścią składową dużych sądów rejonowych – ich jednostkami organizacyjnymi (wydziałami zamiejscowymi sądów rejonowych).

Autorzy dochodzą do wniosku, iż biorąc pod uwagę czas załatwiania spraw cywilnych, nie ma konieczności podejmowania żadnych poważniejszych kroków zmierzających do reformy systemu sądów rejonowych. Cel reformy może być osiągnięty bez radykalnych zmian w systemie sądów rejonowych, tj. poprzez dalsze łączenie sądów rejonowych mających siedziby w niewielkiej odległości od siebie, odrzucenie wymogu minimalnej liczby trzech sędziów w sądzie rejonowym, odpowiednie unormowanie liczby asystentów w stosunku do liczby sędziów oraz – jeżeli okaże się to potrzebne – scentralizowanie zamówień publicznych oraz innych funkcji na poziomie sądów okręgowych albo Krajowej Administracji Sądowej.

Słowa kluczowe: czas trwania postępowania cywilnego; reforma sądownictwa; obciążenie sędziów