STUDY ON THE CONDUCT OF JUDICIAL PROCEEDINGS

SUMMARY

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Prepared by: Mykolas Romeris University research team

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An individual's opinion on the court and justice is influenced not only by the final court decision or media but also based on how the participants were treated during the entire course of the judicial proceedings and the duration of the proceedings. The Consultative Council of European Judges in its opinion No 11 (2008) on the quality of judicial decisions pointed out that a judge should be able to organise and lead the trial in an active and expeditious manner. Proper leading of judicial proceedings is one of the important factors which affects both, the quality of the end result, i. e. judicial decision and the duration of the proceedings.

Legal experts of Mykolas Romeris University (hereinafter - MRU) School of Law and Justice Research Laboratory, implementing the order of the National Courts Administration, which implements the project "Improving the quality, services and infrastructure in Lithuanian courts", financed by the European Economic Area Financial Mechanism for 2014-2021, conducted a detailed qualitative research and prepared a comprehensive scientific study on the conduct of judicial proceedings.

The aim of this study is to improve the quality of the conduct of judicial proceedings thus ensuring more effective implementation of justice.

I. ANALYSIS OF THE CURRENT SITUATION

1.1. Analysis of legislation regulating the conduct of judicial proceedings

Unlike criminal proceedings, the regulation of civil and administrative proceedings has been repeatedly reformed and supplemented with legal rules aimed at ensuring more expeditious and concentrated proceedings. Criminal proceedings have not yet undergone any fundamental reforms; therefore, the question arose as to whether the current regulation characterised by formalism and oral nature of proceedings, which is basically tailored for a single standard criminal case (single episode, single defendant), reflects today's realities, and whether the problems arising from lengthy litigation can be resolved through regulatory changes and/or initiatives to promote judicial skills to conduct proceedings in a focused manner.

The analysis of the relevant legislation has identified the following key issues of the legal regulation concerning the length of criminal proceedings:

- the length of proceedings is determined by a particular form of criminal procedure, namely general criminal proceedings or specific criminal proceedings;
- the Code of Criminal Procedure (hereinafter - CCP) regulates time limits for performing separate procedural acts and for adopting decisions, while no general time limits for the hearing of cases exist;
- there is detailed regulation regarding the examination of evidence in accordance with the requirements of direct examination of evidence and oral nature of proceedings. The regulatory provisions on pronouncement of the indictment, reading out of documents in the case file, listening to audio recordings and viewing video recordings prolong proceedings in complex, voluminous cases, i.e. they limit the flexibility to react to multifaceted procedural situations and to conduct proceedings in a focused manner;
- simplified examination of evidence is an advanced instrument; however, legal regulation provides for limited possibilities of using simplified examination of evidence in cases with several defendants accused of committing one or more criminal offences;
- possibilities of using the written procedure in appellate courts are too narrow under the current legal regulation;
- only one of the specific forms of criminal proceedings – the penal order procedure – is essentially aimed at accelerating judicial proceedings. The use of the penal order procedure, however, is only possible under particularly formal conditions, and there is a need to review this regulation;

- the CCP does not clearly define the powers of the presiding trial judge and the scope thereof; it does not, and cannot, specify detailed conditions for employing various control tools available to the judge (e.g. in which cases and on what conditions closing statements made by a participant in the proceedings can be interrupted; what to do if the prosecutor reads the entire indictment verbatim even though it can be summarised according to the circumstances of the case; at which stage additional organisational and legal measures should be taken in the event of failure to agree on the time of a court hearing with the parties); therefore, the efficient conduct of proceedings mainly depends upon the judge's management, organisational and communication skills. Efficiency is also determined by the fact that the quality of the conduct of judicial proceedings in different cases may vary greatly depending on the preparation of a particular judge for the case and his/her ability to conduct proceedings in a focused manner, not as a result of the application of rules of criminal procedure. Accordingly, it is particularly important to identify problems encountered by participants in criminal proceedings, which may affect the quality of the conduct of criminal proceedings, and to develop practical training and best practice exchange models to improve trial management skills of judges.

1.2. Qualitative research. Summary of the results of interviews and focus groups

In summary, the qualitative research demonstrated that most problems arise in complex, large-scale criminal proceedings, especially at first instance. The legal regulation provided under the CCP was tailored for straightforward criminal cases.

Accordingly, extremely formalistic, inflexible procedural provisions and compliance therewith, without any exception, in all cases take up a certain part of judge's time, which could be spent on focusing on the substance of the case. However, it hardly affects the length of proceedings in straightforward cases. The same cannot be said of voluminous cases, where compliance with these provisions and lack of more flexible forms and tools of criminal procedure make complex criminal proceedings particularly inflexible, thus preventing the court from conducting proceedings in a focused manner.

Based on the analysis of the material of the qualitative research, the following essential categories of issues relating to the conduct of judicial proceedings have been identified[1]:

1) busy schedules/non-appearance of participants in the proceedings;
2) the volume of criminal cases;
3) shortcomings in the conduct of judicial proceedings by the judge: a lack of skills; a lack of motivation and commitment to conduct judicial proceedings in an organised and focused manner;
4) insufficient quality of pre-trial investigation files;
5) too broad understanding of the purpose of an "active" judge, with the consequence that procedural acts that could have been carried out at earlier stages in the proceedings are moved to a court hearing, thus prolonging the proceedings;
6) overburdening the conduct of judicial proceedings with time-consuming actions, which are not always necessary to safeguard the rights of individuals, but are routinely carried out as compulsory part of proceedings: reading out of the full case file (this could take up to several days in large cases), pronouncement of the entire indictment, etc.;
7) turnover of judges, defence lawyers and prosecutors in the proceedings;
8) long duration of expert examinations commissioned by the court, leading to delays in proceedings;
9) insufficient use of forms of simplified criminal proceedings;

[1] These categories have been obtained by means of a qualitative research methodology, involving identifying recurrent codes in replies of the qualitative research respondents, dividing them into subcategories and conceptualising them into the main categories at a more abstract level.

10) technical-organisational obstacles resulting in the deferral of dates of court hearings and/or long breaks between court hearings, precluding the concentrated hearing of the assigned case (workloads of judges; mechanisms for the allocation of cases where a judge handles a very large number of cases with various degrees of complexity simultaneously and is not able to devote sufficient time to each of them, as the working time is divided among many cases).

1.3. Assessment and classification of problems relating to the conduct of judicial proceedings and their underlying causes

Main problems relating to the conduct of judicial proceedings and their underlying causes

The summarised results of the analysis of the relevant legislation and of the qualitative research allow the following conclusions to be drawn:

First, the quality of the conduct of judicial proceedings depends upon the judge's ability to use available legal, organisational and technical instruments leading to high-quality and expeditious proceedings.

Second, the current legal regulation of criminal proceedings is more tailored for straightforward/standard criminal cases (usually involving a single defendant, a relatively small number of participants in the criminal proceedings, concerning a single criminal episode, etc.). The main problems underlying longer proceedings in such straightforward/standard criminal cases include: busy schedules or non-appearance of parties to the proceedings; the commission of an expert examination; the need to issue a search warrant for the defendant; the turnover of judges or other participants in the proceedings; situations where procedural acts and requests by the parties that could have been carried out or addressed at an earlier stage in the proceedings, before the case is referred for trial, are moved to a court hearing, meaning that insufficient use is made of possibilities of preparing for proceedings at an early stage. The quality of the conduct of proceedings in straightforward/standard cases can be improved both by strengthening judicial skills to conduct proceedings in a focused manner and to duly respond to requests by the parties to the proceedings and emerging situations, and by amending too formal regulatory provisions of the CCP (such as reading out of documents in the criminal case file (Art. 290), reading out of statements of the persons concerned (Art. 276), pronouncement of the indictment (Art. 271), etc.).

Third, the abovementioned issues are even more difficult to resolve in complex, voluminous criminal cases and thus significantly prolong the proceedings. This can be explained by the specific features of these cases: given a large number of accused persons in a single case, the timing and schedules of hearings need to be coordinated with several defence lawyers, the prosecutor, victims, their representatives and other participants in the proceedings. Proceedings in particularly voluminous cases take much more time at all stages. The heavy workload of judges and busy schedules of other participants, as well as the need to reconcile the possibilities of all persons to attend result in frequent adjournments of court hearings and long breaks in judicial proceedings. When a court hearing is adjourned or stayed for a longer time, the judge/court has to prepare for the hearing of the same case again and again, which does not allow concentrating attention on the case and conducting proceedings in a particularly focused manner. Moreover, a large number of accused persons make it impossible to use procedural simplifications, e.g. there is no possibility of recourse to simplified examination of evidence (Art. 273 of the CCP), if objected by the other accused. Improvements in the quality of the conduct of proceedings in voluminous criminal cases could only be made through the coordinated provision of organisational and technical possibilities for concentrated and focused proceedings in such cases. Attention should also be given to the analysis of the underlying causes of this problem: whether courts reasonably receive such voluminous criminal cases and whether they could have been split; there is also a need to strengthen judicial skills to examine such case files in a focused manner at the preparatory stage and to take decisions on their scope. This is particularly important as lengthy proceedings in the most complex criminal cases are one of the biggest issues significantly undermining public confidence in the judiciary.

Fourth, some factors contributing to the length of criminal proceedings, compared to other proceedings, are linked to the specific features of criminal cases and regulatory provisions designed to ensure the constitutional rights of individuals, which are binding on the court. Some of these provisions should be reviewed in line with the best practices of the European Court of Human Rights (hereafter – ECtHR), the Court of Justice of the European Union (hereafter – CJEU) and other countries, and replaced by more flexible provisions ensuring both constitutional imperatives regarding the conduct of proceedings and requirements to ensure greater efficiency in proceedings (e.g. increasing the use of the penal order procedure, as well as proceedings in absentia, introducing new possibilities of conciliation, assessing whether the presence of the defendant is required at all court hearings, etc.).

Fifth, there is an issue of understanding the role of the judge at the hearing stage. The court is not a "passive" observer of proceedings. The administration of justice does not depend on what material is submitted to the court. Seeking to carry out an objective and comprehensive examination of all the facts of the case and to establish the truth in the case, the court has the authority to carry out procedural acts on its own or to assign relevant acts to other institutions. On the other hand, this does not relieve prosecutors/pre-trial investigation institutions of their obligation to properly prepare criminal cases. In practice, the purpose of an "active" judge is often misunderstood, so the court receives criminal cases of inadequate quality, while all the factual and legal issues of the case are "planned" to be addressed during proceedings before the court (e.g. the court has to change the substantive facts of the offence set out in the indictment and/or its classification (Art. 256 of the CCP)).

Sixth, the legal regulation of criminal proceedings is characterised by a number of minor formal elements, which take relatively little time in straightforward/standard cases, creating the impression that these elements are not so important; however, as a whole, they take considerable judicial time, which could be used more appropriately.

Seventh, given that the quality of the conduct of judicial proceedings mainly depends upon the judge's skills to manage proceedings, particular attention should be given to the selection of judges and to ensuring that it is a prestigious profession capable of attracting more most talented lawyers, while also paying special attention to continuous development of judicial skills to conduct proceedings and to the exchange of best practices.

Eighth, the 10 essential categories of issues relating to the conduct of judicial proceedings have been identified (see 1.2 above).

The causes of the identified problems are related to regulatory, organisational, technical/financial provision issues or their combination, i.e. integrated solutions may be necessary to resolve the problem, both by taking measures at the organisational/technical/financial level and by revising the current legal regulation.

Classification and prioritisation of problems and their underlying causes

In order to find suitable solutions to the outlined problems, their underlying causes should first be determined. In view of this, the abovementioned fundamental problems relating to the conduct of judicial proceedings can be grouped as follows:

1) problems that can effectively be addressed by organisational measures;
2) problems that can effectively be addressed only through regulatory improvements;
3) problems that can effectively be addressed by technical/financial measures.

Organisational problems relating to the conduct of judicial proceedings, their underlying causes and priorities for addressing them

No	Problem	Causes	Priority (low,

			medium, high)
1.	Busy schedules/non-appearance of participants in the proceedings	Hearings are not held or are postponed, and there are long breaks between hearings as it is difficult to agree on the date and time of a hearing suitable for all participants. Difficult coordination of the schedule of court hearings due to defence lawyers and advocates being busy with other cases. The Information System of Lithuanian Courts (hereinafter – LITEKO) tool for checking the availability of defence lawyers is rather inefficient. The one-month time limit set by the CCP for adjournments (Art. 243 of the CCP) is often not observed. In practice, hearings are often adjourned due to the illness of a participant in the proceedings. This classical problem became evident during the pandemic when medical certificates were issued after a telephone consultation and were accepted by courts without questioning the severity of the illness. It takes time to appoint a defence lawyer in accordance with the state-guaranteed legal aid procedure. Lack of efficient judicial control.	High
2.	Voluminous cases (high number of accused persons; voluminous case files, voluminous procedural documents; redundant data (metadata))	Objective factual circumstances of the case. There is a tendency to create voluminous pre-trial investigation files and to join pre-trial investigations. Inadequate judicial control in respect of the appropriateness of the volume of the case, non-use of the possibility of the case splitting. Shortcomings in the organisation of the preparation of the case.	High
3.	Delays in proceedings due to failure to conduct judicial proceedings in a focused manner	Lack of trial management skills on the part of the judge: inadequate preparation for the proceedings, failure to ensure trial discipline, avoidance of measures to ensure the concentration and focus of the proceedings; absence of motivation and commitment to conduct judicial proceedings in an organised manner. Due to inadequate preparation for the case and organisation, requests of defence lawyers for additional examination of evidence (interviews, commission of expert examinations, reading out of documents, etc.) are granted when not justified. Lack of training (practical, simulation). In order to improve the competence of judges in conducting judicial proceedings, targeted practical training is necessary, e.g. on how to conduct interviews, how to communicate with participants in the proceedings, and how and in which cases to interrupt closing statements without prejudice to the provisions of Art. 293 of the CCP. Lack of exchange of best practices with colleagues from other courts.	High

4.	Insufficient quality of pre-trial investigation files	An objective circumstance, in principle outside the control of the court. One of the reasons: failure to exhaust all available judicial remedies in response to inadequate pre-trial investigation files. This reason is also linked to another issue of treating the role of the active court in an absolute sense, with the growing practice of the court correcting all mistakes made in the pre-trial investigation and carrying out all actions that should have been carried out, but have not been done, at the stage of the pre-trial investigation.	High
5.	Too broad understanding of the purpose of an "active" judge, with the consequence that actions that could have been carried out at earlier stages are moved to a court hearing, thus prolonging the proceedings	The institution of referring a case to the pre-trial investigation to be supplemented is made extremely cumbersome. Lack of high-quality work by prosecutors/pre-trial investigation officers. It has become common practice that all mistakes can be corrected during the court hearing, and court orders to refer the case to a prosecutor are often overturned by higher courts. Inadequate preparation of the case for the hearing on the merits. Not all issues are resolved at the preparatory stage. The issue of the poor-quality material from the pre-trial investigation is not resolved at an early stage and the conduct of judicial proceedings is hampered when these problems are carried to the court hearing. Inadequate preparation skills on the part of the judge, shortcomings in the organisation of proceedings, failure to use all legal instruments under the CCP, and, in certain cases, inaccurate regulation under the CCP. Lack of experience on the part of judges to conduct judicial proceedings.	High
6.	Turnover of judges, defence lawyers and prosecutors in the proceedings	The replacement of the judge leads to a restart of the trial, which prolongs the proceedings.	Medium
7.	Long duration of expert examinations commissioned by the court, leading to delays in proceedings	Objective reasons. Usually, upon a decision to commission an expert examination, the hearing is adjourned and the entire criminal case file is given to the experts. The proceedings are stayed. Opportunities are missed to continue the proceedings by carrying out procedural acts pending the expert report. Absence of judicial controls: inability to influence the priority of expert examinations, especially when they are not complex. Assessment of the appropriateness of expert examinations. In financial cases, judges lack specialist knowledge, which results in expert examinations ordered quite frequently and also repeated. This is also due to the lack of specialisation of judges when handling cases concerning economic-financial or juvenile offences.	Medium

8.	When a judge handles a large number of cases simultaneously, it is not possible to concentrate on the hearing of a particular case in a focused manner	Preparations for a complex case take a lot of time, and if the hearing is adjourned for a long time, the judge has to repeat the same preparatory steps. There is a lack of cooperation between courts in exchanging best practices on coordination of court hearings, scheduling of intensive hearings, etc. The institution of priority cases is underdeveloped. At present, the designation of a case as "fast-track", "complex" or "priority" is not always an efficient tool. There are no clear criteria for what case should be designated as "fast-track", "complex" or "priority". There is no possibility of refraining from assigning other cases to a judge with a priority case during a certain period of time, nor is there any provision as to how the court should deal with the workload of other judges, when individual judges have their workload reduced by assigning "complex", "fast-track" or priority criminal cases to them. Excessive workload of judges in large courts, which prevents them from starting work on a case as soon as it is received. The time allocated between court hearings is also too short (with judges "running between cases"). In addition to the main functions of administering justice, judges in courts of first instance are given a very large number of small technical tasks preventing them from concentrating on the case (such as ensuring the functioning of technologies, etc.).	Medium

Legal problems relating to the conduct of judicial proceedings, their underlying causes and priorities for addressing them

No	Problem	Cause	Priority (low, medium, high)
1.	Overburdening the conduct of judicial proceedings with time-consuming actions which, to the extent intended, are not necessary to safeguard the rights of individuals	The requirements of the CCP with regard to reading out of documents in the criminal case file, listening to audio recordings and viewing video recordings – obtained by means of restrictive measures – at a court hearing, even though participants in the proceedings are familiar with all the material in the case file. The provisions of the CCP are in principle tailored for a standard case (single episode, single defendant) and are not adapted to complex cases involving a large number of defendants: in voluminous cases, reading out of documents in the case file alone can take several days or weeks. Pronouncement of the indictment. The defendants would have already received a copy of the indictment when the case is brought to court. The indictment is usually pronounced in full, which takes a considerable amount of	High

		time, even though it would be sufficient to clarify, at the request of the defendant, any unclear aspect of the indictment. Pronouncement of appeals where the entire appeal is read verbatim. In addition to the main functions of administering justice, judges in courts of first instance are given a very large number of small technical tasks preventing them from concentrating on the case, such as deciding on the extension of restrictions of the right to property every three months. With a large number of cases at the same time, there is a need to keep track of when and in which case time limits need to be extended. Legislation does not provide for the possibility of applying restrictive measures until judgment is delivered (limited to three months).	
2.	Busy schedules/non-appearance of participants in the proceedings	There are no tools to allow more flexibility in situations where a particular defence lawyer of own choosing has no available day(s)/time for hearings for several months due to heavy workload in other cases. A large number of defendants and a duty to ensure their presence at the hearing. It is not possible to take into account the unwillingness/refusal of defendants to attend all court hearings by allowing them to attend only those hearings at which matters concerning them are considered. The application of Art. 246 of the CCP is problematic when the accused person avoids appearing in court. The institution should be modified to provide that a case may be heard in the absence of the accused even if the accused avoids appearing in court and has been duly notified of the place and time of the hearing, i.e. by repealing the provision that the accused is outside the territory of the Republic of Lithuania.	High
3.	Insufficient use of simplified criminal proceedings	The provisions of the CCP restricting the use of the written procedure in appellate courts. The application of the penal order procedure is too narrow, and there is no provision for the possibility of imposing a suspended sentence of imprisonment for a fixed term by means of a penal order. Restrictions on simplified examination of evidence.	Medium
4.	The requirement to hand down a judgment in complex and voluminous cases no later than 45 days from the date of notification of the	To avoid non-compliance with time limits, court judgments are written in advance, thus leaving little time to concentrate on the case.	Low

	time and place of its pronouncement, which is usually impossible to implement		
5.	The problem of resolving recusal issues	In the event of a motion to withdraw, the court hearing is adjourned until the issue of recusal is resolved. The institution of recusal is not prevented from being manipulated, there is no strict response to excessive motions to recuse; there is no possibility of dealing with recusal issues more efficiently.	Low
6.	Problems related to the outdated nature of service of court documents and notices (not making use of email possibilities, sending everything by post, which is particularly difficult due to an increasing number of cases where persons are away or reside outside the Republic of Lithuania)	Out-of-date regulatory provisions on the service of documents by post (the most expensive and inefficient way). This can only be resolved through a combination of legal, organisational and technical measures.	Medium
7.	Lengthy system of appeals against pre-trial investigations	This affects the length of the entire criminal proceedings. The current lengthy tiered system could be simplified, e.g. by appealing against the prosecutor directly to the pre-trial judge.	Medium

Technical problems relating to the conduct of judicial proceedings, their underlying causes and priorities for addressing them

No	Problem	Cause	Priority (low, medium, high)
1.	Problems relating to electronic case paperwork: inconvenience of working without proper equipment and two screens (resulting in all the material still being printed and duplication of work)	Inadequate technical provision, insufficient funding.	Medium
2.	Problems related to information systems and their functionality, e.g. limited functionality of Integrated Information System of Criminal proceedings (hereinafter - IBPS) (no possibility for a higher court to transfer an investigative measure or a complaint to another court via IBPS, only in hard copy form).	Limitations of modern information systems, insufficient adaptation to the needs of participants in the proceedings; reluctance of participants to use existing tools because of their inconvenience or because information contained therein cannot be relied on (e.g. non-availability of an	Medium

	Limited access to the material from the pre-trial investigation, etc. for panel members. Shortcomings in the module of schedules of advocates/defence lawyers	advocate/defence lawyer is not indicated in the module of schedules of advocates/defence lawyers, but, after setting a date for a hearing, it turns out that he/she is busy with another case).	
3.	Problems related to inadequate skills to exploit all available technologies to hold remote court hearings (e.g. a hearing was adjourned as the judge could not ensure that witnesses would not hear explanations provided by other participants in the proceedings); not making use of such functions as break out rooms, not proposing to connect later; not making use of the possibility of remote hearings in cases involving minors, even though the witness is abroad	Skills shortage on the part of judges, lack of targeted practical training.	High
4.	Problems related to the shortage of courtrooms in courts (especially in regional courts) when proceedings involve more defendants or other participants (also relevant for other proceedings)	Inadequate financial/technical capacities of the court system.	Medium
5.	Problems related to the lack of technical equipment in other institutions in the context of organising remote court hearings/interviews	Inadequate financial/technical capacities of other institutions (such as correction houses).	Medium
6.	Problems related to outdated nature of service of court documents and notices (not making use of email possibilities, sending everything by post, which is particularly difficult due to an increasing number of cases where persons are away or reside outside the Republic of Lithuania)	Formal compliance with regulatory provisions, documents are sent by post even when consent is given to be served by email.	High
7.	Problems related to the increasing need for translations, which causes delays in the proceedings	There is no possibility to use machine translation software for major foreign languages. There is no provision that a case can be assigned to a judge only after the necessary translations have been made.	Low

II. MONITORING OF THE CONDUCT OF JUDICIAL PROCEEDINGS

A total of 222 cases of different instances and types were analysed during the monitoring exercise in order to confirm or negate the results of the interviews and focus groups, as well as to carry out a comparative analysis.

The breakdown by type of the cases analysed is as follows: a total of 166 criminal cases were analysed, of which 141 cases were analysed on the basis of LITEKO data, and 25 cases – by observing court hearings. The monitoring exercise covered criminal cases heard by courts of different instances. Furthermore, 56 cases of other types (civil and administrative) were analysed, of which 51 cases were analysed on the basis of LITEKO data (40 administrative, 8 civil and 3 administrative offence cases),

and 5 cases – by observing court hearings (2 civil, 1 administrative offence and 2 administrative cases).

Taking into account the objectives and scope of the study and the amount of available information from the LITEKO system, the following criteria have been identified for assessing and comparing the monitoring results:

- **Criterion No 1:**
  The occurrence and nature of factors affecting the efficient conduct of proceedings;
- **Criterion No 2:**
  The quality of the management of proceedings by the judge and the use of instruments to ensure the concentration of proceedings;
- **Criterion No 3:**
  The judge's response to the actions/omissions by participants in the proceedings affecting the length of proceedings.

According to criterion No 1 regarding the occurrence and nature of factors affecting the efficient conduct of proceedings, it was found during the monitoring exercise that the efficient conduct of proceedings in criminal cases was mainly affected by objective factors, such as the complexity of a case, the investigation of several criminal offences, the necessity to interview a lot of participants in the proceedings and the volume of a case (particularly relevant in courts of first instance). In courts of first instance, the replacement of the judge and/or change within the judicial panel also had a significant impact, given the frequency of recurrence. In appellate courts, in cases where no examination of evidence was involved, mixed factors, such as non-appearance of participants in the proceedings and the judge's response to this, had a greater effect. Other factors having a greater impact on the conduct of proceedings include court hearings being postponed (in the appellate court) or not being held (in the court of cassation).

The efficient conduct of proceedings in civil cases was mainly affected by an objective circumstance, namely a change in the composition of the court, and by subjective circumstances, namely two preparatory hearings being ordered and the delivery of a judgment being postponed several times. Furthermore, the efficient conduct of proceedings in administrative cases both at first instance and on appeal was mainly affected, in terms of frequency of occurrence, by objective circumstances (large number of participants in the proceedings) and by subjective circumstances (postponed delivery of a judgment on two occasions; 3 to 5 months of case preparation from the time of its assignment to the judge in the summer period). In courts of first instance, an additional objective circumstance is also identified, namely the turnover of judges in the case.

Unlike in criminal cases, neither administrative nor civil hearings have faced the problem of non-appearance of participants in the proceedings.

According to criterion No 2 regarding the quality of the management of proceedings by the judge and the use of instruments to ensure the concentration of proceedings, the monitoring revealed that **the scope of the explanation of rights** is most comprehensive in criminal cases. In civil and administrative cases, the explanation of rights was limited to the right to file the request for removal. It should be noted, however, that the explanation of rights in criminal hearings was also provided in a concentrated form and thus did not have any major effect on the length of the proceedings.

The quality of the judge's preparation for the case affected the efficient conduct of proceedings in all types of court hearings.

The duration of the reading out of the case file had the greatest impact on the length of the proceedings in criminal hearings. The observation of hearings revealed a very low level of interest of participants in this part of the proceedings.

In most of the hearings observed, especially at first instance, the most time-consuming part was **interviews of participants in the proceedings** (both in the criminal cases and in the civil case observed). This was usually the result of either a change of testimony (making it necessary to read out the statements made during the pre-trial investigation) or a superficial interview carried out during

the pre-trial investigation without clarifying all the circumstances to be proved. The quality of the judge's preparation for the case and the degree of the judge's activity during the examination of evidence and interviews of participants in the proceedings was particularly pronounced when observing proceedings in criminal cases at first instance (i.e. when the examination of evidence was carried out). Generally, in appeal proceedings, only the operative part of the judgment of the court of first instance would be read out, and the court would present the main arguments and claims of the appeal. At the end of this, the court would ask the participants in the proceedings whether there was anything else to be read out from the case file or whether an examination of evidence was needed. An examination of evidence was not required in all cases in the appellate court; however, there were cases where the parties had made such requests, which subsequently affected the length of the proceedings. In this case, a very important factor was the quality of the judge's preparation for the case and the rejection of excessive requests.

The problem of scheduling/agreeing on the date of the next hearing was more acute in criminal cases, while it did not cause any problems in the civil and administrative cases observed.

During the observation, such examples of good practice as (a) agreeing on the duration of closing statements, (b) scheduling of hearings, and (c) concentrated presentation of the substance of the case, were observed only in criminal cases. In the meantime, proactive management of court hearings as good practice was observed in all types of hearings.

According to criterion No 3 regarding the judge's response to the actions/omissions by participants in the proceedings affecting the length of proceedings, it was found that non-appearance/inability to appear was a more significant problem namely in criminal cases. This problem was not so relevant in the civil or administrative cases observed.

Judges in all types of cases would swiftly deal with the requests they received, either immediately in the courtroom or by making a short break and retiring to confer. There were no manifestly unfounded requests to delay the judicial proceedings. In criminal cases, the length of proceedings was affected by **the reading of the indictment**. In the cases observed, judges did not comment on the detailed reading of the indictment. The duration of the reading out of the indictment depended on the number of defendants and the number of articles of the Criminal Code charged, ranging from three minutes **up to three hearings.** It is therefore obvious that it is a serious factor affecting the length of proceedings in voluminous cases.

The duration of closing statements had a considerable effect on the length of proceedings in both the criminal and one of the civil cases observed. Judges basically did not take any active steps with regard to prolonged statements or repetitions, either in the criminal cases or in the civil case. Accordingly, the proactive behaviour of judges observed at the Lithuanian Court of Appeal in agreeing in advance with defence lawyers to prepare their closing statements for the next hearing and to do so in a concentrated manner is considered good practice. In summary, the monitoring of the conduct of judicial proceedings confirmed the conclusions of Part 1 of the study that some of the essential problems affecting the efficiency of proceedings are related to busy schedules of participants in the proceedings, difficulty to agree on the dates of hearings and/or non-appearance and voluminous cases.

The case monitoring exercise also confirmed the results of the interviews and focus groups that the length of criminal proceedings can also be affected by inadequate actions at an earlier stage - the pre-trial investigation. In two of the criminal cases observed, longer proceedings were clearly caused by the poor quality of the pre-trial investigation or its individual actions, such as incomplete interview of the defendant during the pre-trial investigation, and incomplete investigation of the elements of the criminal offence.

The results of the interviews and focus groups demonstrated that criminal proceedings are often prolonged by the reading out of the full case file and/or the pronouncement of the entire indictment. Usually, such cases involved two or more defendants and/or multiple criminal offences. However, the results of the observation of court hearings confirmed this finding only in part. In some court hearings, indictments were summarised, with the prosecutors limiting themselves to reading the

description of the criminal offence in detail and listing the articles of the Criminal Code charged. The pronouncement of the indictment ranged from three minutes to three hearings. The results of the monitoring of court hearings show that the pronouncement of the indictment and the listing of documents in the case file are to be regarded as formal and relatively time-consuming procedural acts. Accordingly, the duration of such acts is prolonged in cases involving several defendants and/or multiple criminal offences. The comparison of the conduct of proceedings in courts of different instances (to the extent possible in the context of very different proceedings, when looking solely through the prism of the quality of the judge's conduct of the proceedings) showed that, despite differences in the legal regulation applicable to different types of proceedings, one of the key factors in all types of cases is the judge's ability to conduct and manage the proceedings efficiently, as well as the judge's preparation for the proceedings.

Additional observations that became evident during the monitoring exercise:

The use of the main court resources related to the workload of judges was notably ineffective in some cases when coordinating the dates of next hearings. This was particularly noted in criminal hearings at the Lithuanian Court of Appeal, where on a few occasions a three-judge panel, in the presence of several defendants and several defence lawyers, took about half an hour to agree on the date of the next hearing. Judges should handle matters exclusively related to the administration of justice, while other solutions should be found to deal with organisational and technical issues.

III. GOOD PRACTICES OF FOREIGN COUNTRIES

The causes underlying longer criminal proceedings in Lithuania, such as the complexity of cases, the workload of the court, the difficulty of organising court hearings where a criminal case involves multiple participants in the proceedings, and inefficient management of judicial proceedings, are not exclusive to Lithuania, but also apply to other countries. However, the study also highlighted a number of other important factors that are crucial to the conduct of criminal proceedings within a reasonable time limit, namely the lack of judges and court staff. This means that in order to ensure the efficient conduct of proceedings in criminal cases, it is necessary not only to review rules of criminal procedure and to strengthen the ability of judges to conduct proceedings in a proactive manner, but also to assess the workload of judges/courts and to respond in a timely manner.

Two general directions in which reforms of criminal proceedings undertaken or being undertaken in the countries studied have been identified:

- The first direction: seeking to distinguish between relatively simple offences, by making their investigation as informal as possible and using various simplified forms, including bargaining ones, and complex cases; in complex cases, applying a set of measures to ensure the concentration of judicial proceedings: from not assigning other cases to the judge so that he/she could concentrate and focus his/her attention on a single case at a time to strengthening judicial skills to conduct proceedings in such cases;
- The second direction: seeking to adapt judicial proceedings to the digital age, developing various forms and templates, and abolishing excessive, formal requirements of judicial proceedings.

Taking into account the possible scope of application of the regulation of criminal procedure and good practices of other countries in Lithuania under the existing constitutional doctrine, **the following good practices are highlighted and recommended to be considered for implementation in order to ensure a more efficient conduct** of criminal proceedings:

1. Increasing the scope of application of simplified proceedings by extending the use of the expedited procedure, the penal order procedure and the abridged examination of evidence that are currently applied in criminal procedure in Lithuania. The establishment of some form of plea agreement (bargaining) procedure might also be considered (although plea agreement procedure is widely used in Estonia, Canada and the Netherlands, the Estonian example

should be taken as a model, as it is more suitable for the Lithuanian context and gives a broad discretion to the court to approve such agreements[2]);

2. When extending the application of simplified proceedings, the issue of appeal restrictions in those categories of cases should also be considered;
3. Strengthening the preparatory stage. Consideration should be given to recommending the organisation of preparatory hearings in certain categories of cases and the drafting of a detailed methodological guide consolidating good practices on the preparation for court hearings: what questions should be addressed, in which cases the entire proceedings should be scheduled, how to determine the expected length of proceedings and the number of necessary hearings; discussing the power of the judge to comment on the relevance of evidence, the possibility of requesting justification as to the relevance of the list of evidence and/or pointing to the summoning of excessive witnesses, ordering the parties to comment as to how many court hearings are likely to be needed to handle the case, etc.);
4. The comparative analysis highlighted good practices that also allow for a written appeal in the appellate court. It is proposed to assess the possibility of the written procedure in the appellate court in certain cases in Lithuania;
5. Assessing the increasing practices in various countries of hearing certain witnesses and defendants by videoconference (not as an exception during a pandemic, but as a normal procedural rule, at the court's discretion); Developing further the possibility of participating in court hearings by videoconference;
6. Expanding the use of criminal proceedings *in absentia* in Lithuania following the Dutch good practice, subject to safeguards in the Lithuanian context;
7. The optimisation of the scope of judgments, without forgoing the writing of a reasoned judgment in proceedings (based on the constitutional doctrine of the Republic of Lithuania), but focusing in the judgment on essential circumstances of the case, evidence in support of the offence and the charge, and the choice of the penalty;
8. In the context of improving the conduct of proceedings in Lithuania, it should be considered to strengthen the procedure for assigning cases to judges to be heard at court hearings and to assess the possibility of adopting, to the extent possible in the context of the current situation and the workload of courts in Lithuania, good practices in Norway and partly in Canada, according to which a judge handling one complex case has to close it before taking another case. This would ensure that the judge can concentrate on a single case without being torn by several proceedings. The introduction of this tool could be used only in conjunction with other organisational measures which ensure that the workload could be redistributed to the judge if an adjournment is necessary due to unforeseen circumstances; for example, having set up the so-called NOTO departments discussed in the analysis, in which smaller cases could be concentrated, thus allowing the other departments to concentrate on more complex cases without interruptions, a judge who becomes available (due to adjournments) could join the team of such a department, etc.;
9. Promoting the use of the so-called process plan, including the time required to handle the case and a timetable, in larger and complex cases. The advance scheduling of proceedings with the participants (for example, the prosecution says it will need 4 to 5 hearings, the defence says it will need 4 hearings, and the judge, after assessing the case, may immediately foresee that 8 hearings will be needed, taking up 6 weeks in the schedule of hearings, e.g. January to February, without scheduling any further court hearings for this judge during that period, see, for instance, Canada). Again, this process requires flexibility, i.e. there should also be a system in place to deal with situations where an unforeseen event (for example, sickness) occurs

[2] Experts are aware that there have already been initiatives to introduce the institution of plea agreement (bargaining) in Lithuania, but this has not been approved. However, as the situation changes and a wider understanding is gained that various modified versions of the standard plea agreement (bargaining) model are possible, including with judicial review and other safeguards, it would be worth revisiting this issue.

during the scheduled 6-week period and court hearings need to be adjourned. In the interests of efficiency, it should be provided how the judge's workload is to be adjusted in such cases;
10. Seeking to ensure that the judge hearing the case deals only with matters directly related to the administration of justice at the hearing, consideration should be given to adapting the Canadian model regarding the appointment of a person responsible for the efficient criminal case management;
11. Evaluating the potential of computer technologies for efficient scheduling, assigning hearing dates and courtrooms;
12. Strengthening cooperation between the courts and the prosecution service (in the Lithuanian context, enhancing forms of mutual cooperation would also be relevant because prosecutors who participated in the focus groups in the study repeatedly emphasised that they lacked respect on the part of the judge at court hearings and often felt being unreasonably moralised);
13. Strengthening cooperation between the courts and the police. For example, in Finland, it is a common practice that if the defendant does not show up, the court can ask the police to immediately go the defendant's home and bring him/her before the court. Also, often lawyers or even the injured parties can tell the court where the defendant is likely to be, and the police can go and pick him/her up;
14. Flexible organisation of the work of judicial assistants by assigning them to different courthouses and allowing them to work remotely;
15. Practical experiential training on the conduct of proceedings (simulation of a trial or its separate stages) together with lawyers and prosecutors. Promoting the exchange of good practices during judicial training in order to ensure a uniform approach towards the conduct of a court hearing in criminal proceedings and possible actions to ensure the expediency of proceedings (in which cases and how to discipline non-appearances, avoidance of excessive procedural acts (reading of the indictment, pronouncement of the entire indictment, etc.)); promoting the sharing of good practices among the courts with regard to the best scheduling and case management tools in the course of training.
16. Encouraging courts to implement their own regional quality improvement projects; promoting the organisation of pilot projects in a number of courts in order to assess the feasibility and practical applicability of the proposed changes.

IV. METHODOLOGICAL RECOMMENDATIONS

These methodological recommendations are aimed at increasing the efficiency of the conduct of judicial proceedings, promoting and strengthening judicial skills to conduct proceedings in an active manner.

The focus is criminal cases, but some organisational-technical recommendations also apply to civil and administrative cases.

The study showed that a key factor for the efficiency of proceedings in all types of cases is the judge's ability to conduct proceedings, the judge's preparation for the proceedings and some other factors; thus, the methodological recommendations are divided into three parts: (a) recommendations concerning the preparation for court proceedings; (b) recommendations concerning the efficient conduct of proceedings at court hearings; and (c) recommendations that are not directly related to the conduct of judicial proceedings, but affect or are likely to affect it.

In order to ensure more expeditious proceedings, it is recommended to strengthen the preparatory stage through the following measures:

- ✓ developing a practical guide for judges on how to prepare a case for court proceedings, including good practices and options for procedural decisions in specific situations;
- ✓ organising experiential training for judges on the preparatory stage (for example, by involving participants in simulations of preparatory hearings);
- ✓ strengthening the role of the judicial team, in particular that of a judicial assistant, in preparing for court proceedings;

- ✓ placing more emphasis in the preparatory stage on the effective coordination of dates of hearings with participants in the proceedings, including through the use of technological tools (for example, the Module of Schedules of Lawyers);
- ✓ addressing the optimisation of the workload of judges and resources (for example, by reviewing the "judicial map");
- ✓ introducing the criterion of the experience of judges when assigning complex cases to judges.

Particular attention should be given to promoting the use of the Process Plan, including a schedule of hearings, to organise proceedings in voluminous and complex cases.

In the preparatory stage, it is recommended to enhance the use of an alternate judge in voluminous cases in order to manage risks associated with a change within the judicial panel.

The length of criminal proceedings can be affected by inadequate actions at the stage of the pre-trial investigation. It is therefore recommended to make more efficient use of legal instruments allowing a case to be referred back to the prosecutor when the pre-trial investigation has not been carried out properly.

Seeking to ensure that the judge hearing the case deals only with matters directly related to the administration of justice at the hearing and is able to concentrate on the case, it is proposed that more technical functions, including the coordination of dates of hearings, should be delegated to a court clerk or to a person specifically designated for organising criminal proceedings (based on the Canadian model). Moreover, the researchers propose to consider introducing the concept of linear (continuous) proceedings (based on the Norwegian and, to a certain extent, Canadian good practices) where a judge handling one complex case has to close it before taking another case.

The study found that the quality of the conduct of judicial proceedings depends directly upon the judge's ability to apply all procedural measures in a principled manner, preventing any procedural abuse and delay, as well as to apply the available procedural legal instruments and technological tools flexibly. It is therefore recommended that judicial competences should be enhanced and that judicial training programmes should include the following elements to strengthen practical skills: simulation of the conduct of judicial proceedings, psychological and leadership training, and the use of electronic tools and technologies.

It should be noted that the analysis of the relevant legislation and the focus groups, as well as interviews with judges showed that organisational, technical and methodological measures may be insufficient to increase the efficiency of proceedings. In order to address the problems raised in the study and to enable the full implementation of the recommendations made for a more efficient conduct of judicial proceedings, the study proposes specific amendments and supplements to the Code of Criminal Procedure, such as shortening the stage of the pronouncement of the indictment and documents in the case, the possibility of hearing the case in absentia, plea agreement, etc.

The results of the interviews and focus groups showed that criminal proceedings are often prolonged by the reading of the entire indictment and the pronouncement of the full case file, listing all the documents. It is therefore proposed that the provisions of the CCP should be revised to provide that the prosecutor shall only state the substance of the charge in court and to waive the formal listing of the full case file.

The study put particular emphasis on the practical application of simplified criminal proceedings and new possible forms, for example, the establishment of the plea agreement (bargaining) procedure in the CCP based on foreign (for instance, Estonian) good practices.

It was also found that, due to restrictions contained in the CCP, only a very limited number of criminal cases on appeal are heard in accordance with the written procedure. However, the written procedure not only allows for a rational use of State resources and resources of persons participating in the proceedings, but also clearly contributes to the implementation of the principle of expeditious proceedings. Thus, the researchers propose to expand the possibilities of written appeal by removing certain restrictive conditions of the CCP, such as the possibility of using the written procedure only with the consent of all the parties to the proceedings, as well as the duration of closing statements.

The authors of the study also propose possible amendments and supplements to other legal acts approved by the Judicial Council and the Minister of Justice concerning the allocation of cases,

the regulation of the workload, the organisation of remote court hearings, the use of technologies in courts, and the principles of writing court decisions, in order to effectively implement the methodological recommendations.

It should be noted that effective procedural cooperation presupposes better preparation for court proceedings, and better planning and management of the proceedings during the trial. Thus, it is proposed that police officers, prosecutors and lawyers actively participate in/organise joint experiential training on the conduct of proceedings (in the form of simulation of a trial or its separate stages) together with judges.

Unlike in civil and administrative proceedings where the use of remote proceedings is the rule, in criminal proceedings such an option is applicable only in exceptional cases where this cannot be done in accordance with the regular procedure, despite technological and regulatory possibilities for a more frequent use of the remote form. It has been noted that technological possibilities are not always actively used in practice, also due to a lack of skills. Accordingly, it is recommended to strengthen the skills of participants in the proceedings in this area and to develop a detailed, visually appealing practical guide for participants in the proceedings with specific illustrations of the use of imaging technologies in judicial proceedings.

The study also points to other factors, which do not necessarily have a direct impact on the efficiency of judicial proceedings but which may be linked with the observance of the principles of judicial proceedings, the quality of the court's work, and the image of the court.

Initiatives developed and implemented by the judicial community itself, as a rule, are best placed to address the challenges and expectations of the community, and can therefore be a good tool for improving the work of courts (for example, professional standards developed by the Dutch judicial community in appropriate categories of cases). It is proposed to promote internal initiatives within the judicial community which would contribute to the quality of the work of courts and thus to the efficiency of judicial proceedings.

The experience of other countries (for example, the Netherlands) shows that pilot projects allow for a swifter and more efficient start of implementing the change, saving resources by avoiding mistakes in immediately large-scale projects. It is therefore recommended to step up the use of pilot projects to implement changes in judicial activities.

It is recommended to promote, within the framework of the current legal regulation, the use of an increasingly widespread practice in other countries of hearing witnesses and defendants by videoconference (not as an exception, but as a normal procedural rule, at the court's discretion), to develop the possibilities of participating in court hearings by videoconference, and to make better use of effective e-tools.

V. AMENDMENTS TO THE LEGAL ACTS

The following amendments and supplements to the CCP are provided in the study:

- concerning the proceedings using electronic communication technologies (amendment of Article 8^2 of the CCP);
- concerning pronouncement of the indictment and reading of case file (amendment of Articles 271, 290 and 324 of the CCP);
- concerning the proceedings *in absentia* (amendment of Article 246 of the CCP);
- concerning the written appeal proceedings (amendment of Article 325^1 of the CCP);
- concerning the plea agreement (bargaining) procedure (introducing new chapter in the Section XXI of the CCP).