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THE REFORM OF THE JUDICIAL SYSTEM IN LITHUANIA

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Annotation
The judicial system plays an essential part in the separation of powers. Lithuanian legislation provides a flexible and democratic judicial system for the protection of constitutional rights and freedoms. Yet, the growing need for a more economical, operative and public available judicial system as well as some procedural flaws of the system, mainly concerning the unequal work load among courts and, consequently, judges, demanded its reorganization which has already begun with the merging of district courts in the cities of Vilnius, Kaunas and Šiauliai in January, 2013. The article describes the existing judicial system in Lithuania, discusses the prerequisites of the reform and presents the core of the reform itself – the reorganization of 49 district courts into 12 courts' centers and 5 regional administrative courts into 2 centers for the hearing of administrative cases. Furthermore, the positive shifts in the judicial system, as presented in the concept of the reform are presented. Conclusions, reached on the grounds of the research suggest that the need of the reform was justified and the concept of the reform, though somewhat early to judge precisely, is mainly positive in the light of its specifics and the similar experience of other European states.
KEY WORDS: judicial system, Lithuania, reform, reorganization, district courts, regional administrative courts.

Introduction

The judicial system in Lithuania, established under Art. 11 of the Lithuanian Constitution (the Constitution) (Žin., 1992, Nr. 33-1014) and crystallized in the subsequent legislation, mainly in the Law on courts (Žin., 1994, Nr. 46-851) provides a flexible and democratic mechanism for the protection of individual rights and freedoms. The cornerstone of the functioning of the judicial system is based on principles that grant courts an exclusive right to enforce justice, ensure the autonomy of courts and judges and the supreme role of law in the enforcement of justice (Art. 109 of the Constitution) (Dambrauskienė, 2012). At the same time, Art. 30 of the Constitution provides an inalienable right of an individual to seek justice in Lithuanian courts in case of a violation of constitutional rights or freedoms.

However, the established system is yet to be optimized, considering that some processional aspects of litigation and justice ensuring are far from perfection. The main concern is the unequal work load in different courts and, consequently an unequal distribution of work load among judges. Considering the fact that the overall number of cases heard in courts is growing steadily, such situation impedes the process of justice-making and therefore, a constitutional right of an individual to seek for a proper legal protection in courts. Hence, a reform of the judicial system, which is expected to solve the problems by reorganizing certain elements of it has been initiated, with first active steps towards the reorganization of the judicial system taking place in January, 2013. We also believe that the reform will undoubtedly become one of the most important events in Lithuanian legal system as of a whole in the years coming, since it addresses its key element – the judicial system which plays an essential role in the separation of powers.

The article aims at: 1) discussing the current judicial system in Lithuania; 2) presenting the practical necessity for the implementation of the reform and its essence, as well as providing a general preliminary prognosis of the possible impact of the reform on the quality of the judicial system in Lithuania. The article examines relevant legislation as primary source of information on the legal grounds of the functioning of the judicial system as well as information provided by the National Courts Administration, including some statistical data. The methods used in the research include document analysis, statistical analysis and logical analysis.

Judicial System in Lithuania

As defined in Art. 11 of the Constitution, the judicial system in Lithuania consists of the following elements: the Supreme Court of Lithuania (lt. *Lietuvos Aukščiausiasis Teismas*), the Court of Appeal of Lithuania (lt. *Lietuvos apeliacinis teismas*), regional courts (lt. *apygardų teismai*) and district courts (lt. *apylinkų teismai*). These form the courts of so called general jurisdiction (Law on courts, Art. 12(3)). At the same time, pursuant to Art. 111 of the Constitution, courts of special jurisdiction, arising on the grounds of administrative law, labor law, family law etc. may be established. Currently, courts of special jurisdiction in Lithuania are represented by the Supreme Administrative Court of Lithuania (lt. *Lietuvos vyriausiasis administracinis teismas*) and regional administrative courts (lt. *apygardų administraciniai teismai*) which hear disputes arising from administrative legal relations (Law on courts, Art. 12(4)). Furthermore, there exists a third element, which, although not mentioned in the Art. 111 of the Constitution, is of key importance to the very existence and proper functioning of the Constitution itself – The Constitutional Court, as defined in Chapter VIII of the Constitution (Jarašiūnas, 2007).

The judicial system in Lithuania is clearly characterized by the competence of courts which form its elements.

District courts (which can only be courts of first instance) deal with the majority of cases, including: criminal cases, where individuals are accused of misdemeanors (with some exceptions) (Code of Criminal Procedure, Art. 224-225, Žin., 2002, Nr. 37-1341); civil cases, where the sum of the claim does not exceed 150 000 Lt (with some exceptions); individual bankruptcy, etc. (Code of Civil Procedure, Art. 26-28, Žin., 2002, Nr. 36-1340); administrative offences as well as cases related to the enforcement of court decisions (Law on courts, Art. 15). Currently there are 49 district courts in Lithuania.

Regional courts serve as courts of appeal for cases heard in the district courts and are first instance courts for: criminal cases resulting from most of felonies (Code of Criminal Procedure, Art. 225); civil cases, where the sum of the claims exceeds 150 000 Lt (with some exceptions); claims related to non-pecuniary damages to authors' rights; bankruptcy and restructure of legal entities; claims, where a state serves as a party; claims resulting from pecuniary and non-pecuniary damages to the rights of the patients; civil relations resulting from public tenders, etc. (Code of Civil Procedure, Art. 25). At the moment there are 5 regional courts in Lithuania: in cities of Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys.

The Court of Appeal is an appeal instance for cases heard in regional courts and it also hears requests for the recognition of decisions of foreign or international courts and foreign or international arbitration awards and their enforcement in the Republic of Lithuania (Law on courts, Art. 21).

The Supreme Court is the only court of cassation instance for reviewing effective judgments, decisions, rulings and orders of the courts of general jurisdiction. Moreover, it develops a uniform court practice in the interpretation and application of laws and other legislation (Law on courts, Art. 23).

Regional administrative courts are courts of special jurisdiction, established for hearing complaints (petitions) in respect to administrative acts and acts of commission or omission (failure to perform duties) by entities of public and internal administration. Regional administrative courts hear disputes in the field of public administration, deal with issues relating to the lawfulness of regulatory administrative acts, tax disputes, etc. Before applying to an administrative court, individual legal acts or actions taken by entities of public administration provided by law may be disputed in the pre-trial procedure. In this case disputes are investigated by municipal public administrative dispute commissions, district administrative dispute commissions and the Chief Administrative Dispute Commission. The number of regional administrative courts corresponds to the number of regional courts and they are located in the same cities (National Courts Administration).

The Supreme Administrative Court is first and final instance for administrative cases assigned to its jurisdiction by law. It is appeal instance for cases concerning decisions, rulings and orders of regional administrative courts, as well as for cases involving administrative offences from decisions of district courts. The Supreme Administrative Court is also instance for hearing, in cases specified by law, of petitions on the reopening of completed administrative cases, including cases of administrative offences. The Supreme Administrative Court develops a uniform practice of administrative courts in the interpretation and application of laws and other legal acts (National Courts Administration).

On its part, the Constitutional Court is mainly a mechanism of constitutional control, a mean of ensuring the primacy of the Constitution over other legislation and its supreme position in the legal system of Lithuania (Law on the Constitutional Court of the Republic of Lithuania, Art. 1, Žin., 1993, Nr. 6-120).

The reform we are about to describe, however, concerns only two elements of the judicial system – the district courts and the regional administrative courts. Hence, the following chapter will focus on the problematic aspects of these elements of the judicial system and present the substantial features of the reform.

The Existing Problems of the Judicial System and the Core of the Undertaken Reform

We have already discussed the main substantial principles of the functioning of the judicial system in Lithuania. Yet, these principle are not the only ones that must be applied to ensure the maximum protection of rights and freedoms, since they do not provide grounds for appropriate procedural guarantees in a truly functioning judicial system. Such procedural principles are set in the aforementioned Law on courts, Art. 34. This Article stipulates, *inter alia*, that "the courts hear cases, pursuant to the principle of […] proper, operative, and cost-effective process". This signifies that the litigation process for the parties must not be time or money consuming, hence, ideally, it should be as quick and financially adequate as possible, but the quality of the process itself must not diminish. However, one must always remember that human and material recourses are not limitless, therefore a fair balance must be struck between interests of the litigating parties and the potential abilities of the judicial system. But what if the judicial system functions at a loss?

In 2012 there were 49 district courts in Lithuania which territorially corresponded to the territories of the municipalities (with some exceptions) and 5 regional administrative courts which heard cases in accordance to the rules of territorial jurisdiction. These rules forced a rather unequal work load for courts and judges in different areas of the state. The Concept of the Reform of Judicial System (the Concept) (1) provided by the National Courts Administration presents an evident example of this situation in two charts (Fig. 1 and Fig. 2). The difference between the work load in district courts is perfectly reflected in the comparison between the districts of Anykščiai and Zarasai as provided in the Concept: although the number of judges in district court of Anykščiai is only 4 and in that of Zarasai – 3, in 2010 and

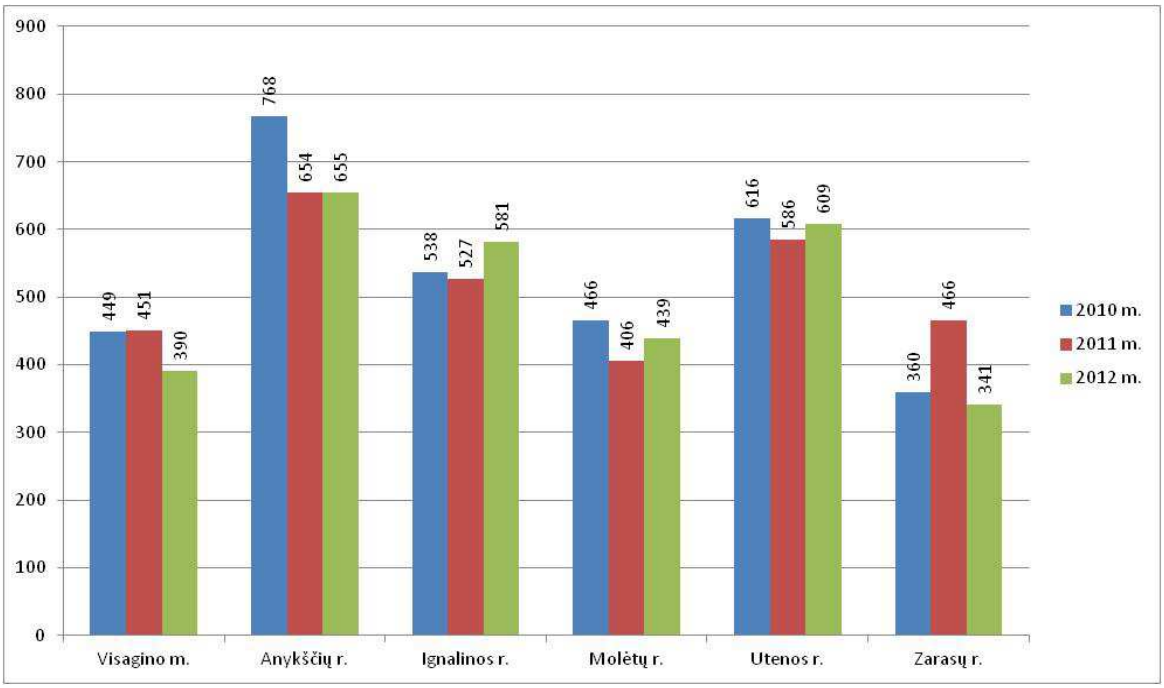

Fig. 1. The average number of cases heard in six different district courts per year

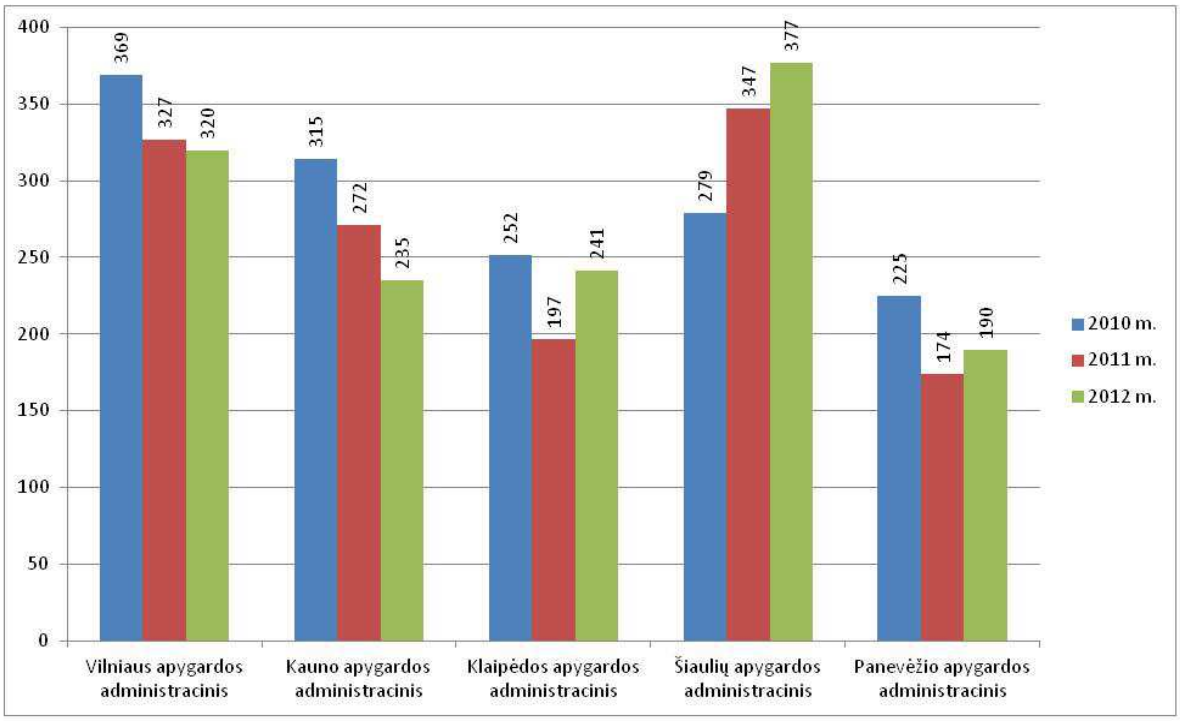

Fig. 2. The average number of cases heard in five different regional administrative courts per year

2012, the number of cases heard in the former was almost twice as high as in that of the latter(!). Thus, as we may easily perceive, the problem of unequal work load among courts and, consequently, judges has been existing for some time and considering that such difference between regions or districts in some occasions is quite considerable, a fact that leads to distortion of the judges' professional stability and the quality of the decisions, which on its part leads to the impediment of the constitutional right of an individual seek for the protection of one's rights in court (Dambrauskienė, 2012), hence it might be concluded that the necessity of an adequate reorganization has been pressing the judicial system for some time.

No wonder, that the National Courts Administration has been closely watching the situation around the judicial system over the last few years, especially bearing in mind, that the overall number of cases in courts has been growing steadily (Dambrauskienė, 2012). It must be also added, that the problem was approached not only by the National Courts Administration, but by other institutions and high state officials as well, including the Minister of Justice J. Bernatonis and the President of the Republic of Lithuania D. Grybauskaitė (2). The President emphasized the existing problems and urged to carry out the reform as soon as possible, expecting it to be fully carried out by the year 2015.

How could the reform of the judicial system contribute to the solving of the mentioned problems? According to the Concept, the aim of the reform is to create legal and organizational backgrounds which would improve the efficacy of the judicial system and contribute to the process of court decision-making. Accordingly, the reform defines six goals to be achieved: 1) to make the court decision-making process more operative and of higher quality by unifying the work load of courts and judges; 2) to make courts more accessible to the public by ensuring the possibility of going to court on an individual domicile basis; 3) to concentrate human and material resources which are needed for the administration of the judicial system; 4) to promote the autonomy of the judges; 5) to promote the specialization among judges; 6) to tackle existing drawbacks of the organizational cooperation between courts and other law enforcing institutions.

The practical implementation of the reform considers the undertaking of procedures of both legal and organizational character. The organizational procedure, according to the Concept, presumes that existing district courts and regional administrative courts have to be merged into 12 district courts' centers (instead of 49 district courts existing in 2012) (Fig. 3) and 2 regional administrative courts (instead of 5 existing) respectively (Fig. 4). This means that the courts, which are about to merge, will loose the status of a legal entity, though the courts themselves will remain as well as the courts' staff, that will pursue with their working places, except for the administrative positions (the latter include the position of a court' chairman, deputies and chancellor) which will be abolished in those courts that will loose autonomy. In other words, the chain of now-autonomous district courts will evolve into a system of 12 district courts' centers in Vilnius, Kaunas, Klaipėda, Šiauliai, Panevėžys, Marijampolė, Alytus, Utena, Trakai, Tauragė, Telšiai and Plungė and their subdivisions, consisting of all former courts (*See* Fig. 3), with an analogical procedure following in case of regional administrative courts, presuming that such courts in Kaunas, Klaipėda, Šiauliai and Panevėžys will merge into a single court which will have its headquarters in Kaunas and subdivisions in the other three cities (*See* Fig. 4).

On its part, the legal procedure involves the preparation of a legal base for the reorganization process, mainly including the adoption of a range of relevant new legal acts and the revision of the existing ones, particularly, the aforementioned Law on courts and a variety of procedural legislation.

This reorganization of the two elements of the judicial system is expected to bring the following benefits:

First, due to the centralization of the autonomous courts into larger centers, the work load in different subdivisions of the same center will be equalized, since all these subdivisions may potentially be chosen to hear a certain case falling under the jurisdiction of the center. The decision to assign a case to a specific subdivision will depend on a centralized computer program which will analyze the questions of jurisdiction taking into account the work load among judges in each subdivision.

Moreover, judges will be granted mobility, allowing them to travel to other subdivisions, if a certain case must be heard in a certain territorial region due to the specifics of the case itself or of the parties' interests. What is more, judges will be able to travel to those regions which have no subdivisions. In this case, municipalities are expected to provide proper venues for court hearings, e.g. in municipal meeting halls, etc. This, of course, will have a positive impact on the accessibility of courts to public, especially having in mind, that parties will have the opportunity to hand the procedural documents to any subdivision, while the number of chambers, open for case hearings, is planned to increase.

Another expected positive organizational and financial effect of the centralization is related to the decreased administrative apparatus and at the same time the expansion of the judges' autonomy – the creation of a new body, the assembly of all judges of the same courts' center which will have the power to adopt certain procedural decisions. Moreover, the reform is expected to positively effect human resources of the judicial system on a global scale – accountants, IT specialists, interpreters and translators, etc. will be able to carry out their functions in such a way, that *all* subdivisions of the courts' center will be provided by their services properly. The first step towards the reorganization of the judicial system in Lithuania might be counted from 1 January, 2013 with the merging of four district courts of the city of Vilnius into one and the two district courts of the city of Kaunas and Šiauliai respectively undergoing the same merging procedure. Preliminarily, the timeframe of two years is provided for the reorganization process. Of course, it is still too early to tell whether the reform will justify itself, but whatever the results turn out to be, the reform, no doubt, will be the major concern in legal circles in Lithuania, since the object of the reform, the judicial system, plays an essential part as an element of the separation of power.

Though the true and objective assessment of the reform lies in the relatively near future, it must be pointed, that the Concept of the reform is not something entirely new. The Concept was prepared, having regard to the experience of other European states, including the Netherlands, Denmark, Poland, etc. Moreover, an active example of *de facto* analogical reform of the judicial system in another Baltic state, Estonia in 2006 has shown, that such reform is worth of undertaking, since the efficacy of Estonian judicial system has sufficiently improved in the course of just two years following the reform (*See* the Concept).

Fig. 3. The territorial division of the district courts after the reform

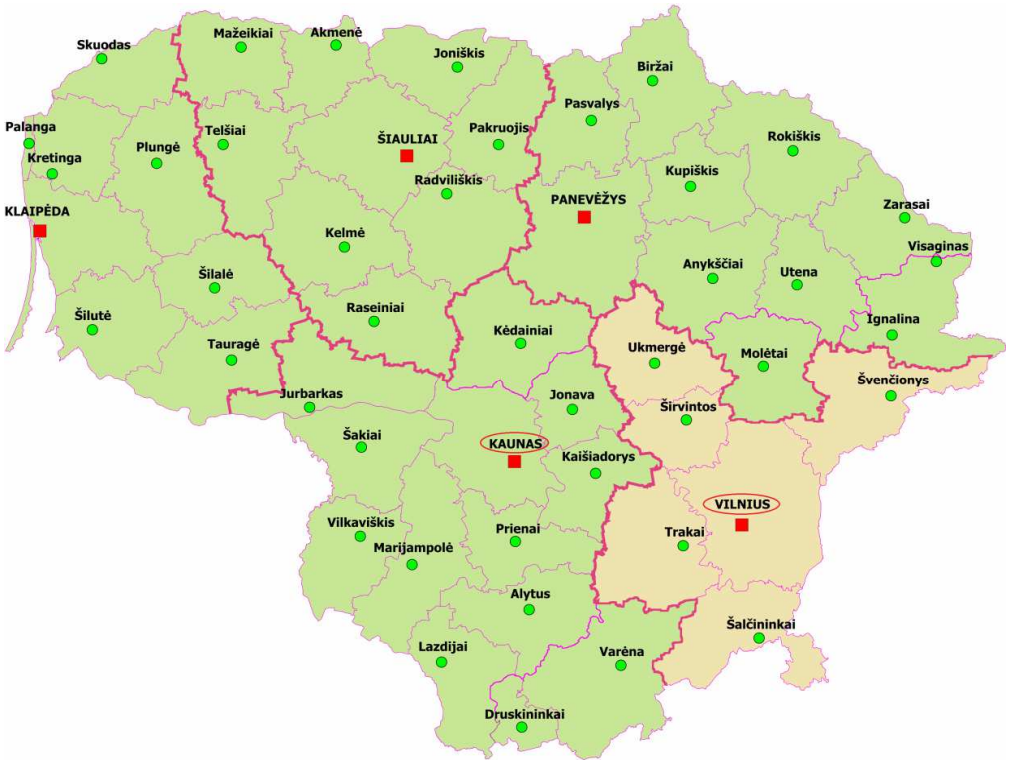

Fig. 4. The territorial division of the regional administrative courts after the reform

Besides, the structural evaluation of district courts' merging in Vilnius, Kaunas and Šiauliai, though not yet fully assessed, has demonstrated, that in the light of the decrease of administrative apparatus, the reorganization is quite justified. At the same time, there has been no evidence that the parties, or the judges had experienced any inconveniencies. Such inconveniences, no doubt, could arise in the future, but they most probably will not

be regarded more than a technical obstacle. E.g., if a central computer program, responsible for the distribution of cases among subdivisions failed, problems would inevitably arise, since the process of the distribution would become uncontrolled, hence only human intervention could solve the problem. Still, problems of such character should not be regarded as serious obstacles in the development of a centralized judicial system, since its obvious benefits greatly outweigh the possible drawbacks. For those reasons, the urgent need to reorganize the judicial system in Lithuania has to be accepted and the reform itself fully welcomed.

Conclusions

The growing need for a reform has been looming over the judicial system in Lithuania for some years. Significant differences in courts' and judges' work load as well as a need for a more public-friendly access to the judicial system led towards a substantial reorganization of the system, which resulted in the reform of first instance courts, both district and regional administrative. The reform presumes the reorganization of 49 district courts into 12 courts' centers, though neither the actual number of courts nor judges will be decreased. The same fate awaits another element of the judicial system, the 5 regional administrative courts, that will be merged into 2 centers for hearings of administrative cases. The overall effect of the reform is expected to be positive, since the work load in courts and among judges will be equalized, the courts will work more operatively and efficiently, at the same time becoming more accessible to the public, while the administrative apparatus will be reduced. Though it is still early to evaluate the undertaken reform, considering the experience of other European states and the reform of Estonian judicial system in particular, mainly positive effects of the reform are anticipated.

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TEISMŲ REFORMA LIETUVOJE

S a n t r a u k a

Teismų sistema vaidina labai svarbų vaidmenį valdžių padalijimo koncepcijoje. Lietuvos teisės aktai nustato lanksčią ir demokratišką teismų sistemą, užtikrinančią konstitucinių teisių ir laisvių apsaugą. Tačiau, vis augantis ekonomiškesnės, operatyvesnės ir atviresnės teismų sistemos sukūrimo poreikis, kartu su kai kuriais procedūriniais šios sistemos trūkumais priverčia ieškoti būdų sistemai reorganizuoti. Šis procesas jau prasidėjo 2013 m. sausį, reorganizavus visus 4 Vilniaus m. apylinkių teismus į vieną stambesnį teismą. Panašiai buvo reorganizuoti miesto ir rajono apylinkių teismai Kaune ir Šiauliuose.

Straipsnis apžvelgia dabartinę teismų sistemą Lietuvoje, aptaria reformos priežastis ir pristato pačios reformos esmę – reorganizuoti teismus kaip juridinius asmenis, stambinant 49 apylinkių teismus į 12 centrų bei 5 regioninius administracinius teismus į 2 centrus administracinėms byloms nagrinėti. Iki šiol, viena iš didžiausių Lietuvos teismų sistemos problemų buvo skirtingas darbo krūvis teismuose, kuris palyginus tam tikrus valstybės regionus, skyrėsi vos ne dukart. Akivaizdu, jog turint omenyje bendrą tendenciją, jog teismų krūvis nuolat didėja, toks nevienodas darbo krūvio paskirstimas teismuose yra visiškai nepageidautinas, nes jis ne tik trukdo puoselėti teisėjų profesijos stabilumą, bet ir sukuria neigiamas procesines pasekmes teisminio proceso šalims. Reikėtų atkreipti dėmesį į faktą, jog Nacionalinei teismų administracijai rengiant šios reformos koncepciją buvo atsižvelgtą į kitas Europos valstybes. Pavyzdžiui, panaši reforma buvo įgyvendinta Estijoje, kur pasiteisino per labai trumpą laikotarpį.

Atliktas tyrimas leido prieiti prie išvados, jog reforma yra būtina ir pateisinama. Tuo tarpų, vertinant reformos koncepciją, pažymėtina, jog nors dar kiek per anksti įvertinti ją iš esmės, jos bendras preliminarus vertinimas yra teigiamas, atsižvelgiant į reformos specifiką ir kitų Europos valstybių, ypač Estijos sukauptą patirtį vykdant tokio pobūdžio teismų reformas.

PAGRINDINIAI ŽODŽIAI: teismų sistema, Lietuva, reforma, reorganizacija, apylinkių teismai, apygardų administraciniai teismai

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