Europejski Przegląd Prawa i Stosunków Międzynarodowych
Europejska Wyższa Szkoła Prawa i Administracji w Warszawie
nr 1/2026/77

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Strategies to Deal with Backlogs and Delays in the Court System: European Experiences

[Strategie radzenia sobie z zaległościami i opóźnieniami w systemie sądowym – doświadczenia europejskie]

Paper for the Education Session of the 2025 Mid-Year Meeting of the Asian, North American and Oceanian (ANAO) Regional Group of the International Association of Judges (IAJ)
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Toronto (Canada) –Thursday, 15th May, 2025

Abstract

The article illustrates the strategies that the European Commission for the Efficiency of Justice (CEPEJ) has been developing during these last years for fighting backlogs in

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countries belonging to the Council of Europe. In particular, the CEPEJ has recently elaborated a "Backlog Reduction Tool", intended to show how stakeholders in the judicial field should tackle the issues of delays in treating and disposing of cases before courts. In this framework also a special Resource Centre on Backlog Reduction Practices has been set up. The essay shows as well how dashboards can be used in order to assess the current situation and evaluate the compliance with certain targets related to the two main efficiency indicators: clearance rate and disposition time. Also a comprehensive list of possible measures is presented and commented in their pros and cons, such as issuing a "decalogue" of behavioural rules, using e-filing and AI in the organisation of the work of judges, relieving judges of certain (non-judicial) tasks, rationalisation of court network, ADR, transferring the competence to hear certain categories of cases from panels of judges to a single judge, temporary reorganization of courts, etc.

Keywords: efficiency of justice, CEPEJ, backlogs, dashboards, clearance rate, disposition time, e-filing, AI.

1. Introduction. The Awakening of the Awareness on Efficient Case Management in Europe: The European Commission for the Efficiency of Justice (CEPEJ)

The Council of Europe, by setting up, at the end of the year 2002, the European Commission for the Efficiency of Justice (*Commission Européenne pour l'efficacité de la justice* – CEPEJ)[1] marked the dawn of a new era. An era characterised by the awakening of the awareness about the need for efficiency in case management and fight on backlogs in the court systems of the Old Continent. In fact, the CEPEJ was established on 18 September 2002 with Resolution Res(2002)12 of the Committee of Ministers of the Council of Europe, with the purpose of developing concrete measures and tools aimed at policy makers and judicial practitioners in order to:

- Analyse the functioning of judicial systems and orientate public policies of justice.
- Have a better knowledge of judicial timeframes and optimize judicial time management.

[1] See https://www.coe.int/en/web/cepej/home/. On the CEPEJ see Jon T. Johnsen, *The European Commission for the Efficiency of Justice (CEPEJ) – Reforming European Justice Systems* – "Mission Impossible?", 'International Journal for Court Administration' 2012, 4, 3; G. Oberto, Strumenti e documenti CEPEJ per la gestione dell'efficienza e dei tempi dei processi, 2023, available at https://www.giacomooberto.com/Giacomo_Oberto_Strumenti_e_documenti_CEPEJ.pdf; E. Grisonich, *Efficacia e qualità della giustizia in Europa: pubblicato il rapporto 2024 CEPEJ sui sistemi giudiziari europei*, 'Sistema penale' 2024, https://www.sistemapenale.it.

- Promote the quality of the public service of justice.
- Facilitate the implementation of European standards in the field of justice.
- Support member states in their reforms on court organisations.

The CEPEJ also contributes with specific expertise to debates about the functioning of the justice system in order to provide a forum for discussion and proposals and bring the users closer to their justice system.

CEPEJ is made up of representatives of the Ministries of Justice of the 46 Member States of the Council of Europe. In order to pursue the above goals, it has four Working Groups. All the main initiatives and documents of the CEPEJ are elaborated by the said Groups and then brought to the attention of the CEPEJ's Plenary Assembly, for final approval.

These are the aforementioned four Working Groups:

- CEPEJ-GT-EVAL. Its task is that of analysing the functioning of judicial systems and orientate public policies of justice.[2] In this framework, the CEPEJ has set up a continuous evaluation process of the functioning of judicial systems in all the European States, on a comparative basis. This unique process in Europe enables, through the collection of quantitative and qualitative data, to have a detailed photography of the functioning of justice and to measure its evolution. This tool for in-depth analysis enables to orientate public policies of justice. Fruit of this huge work is the biannual report on the European Judicial Systems.[3] A report that, as of 2026, should be edited and published every year. We must also notice that the huge amount of data, referring to the 46 different legal and judicial European systems, are organised in the framework of a comprehensive and comparative database, called CEPEJ-STAT. A database that can be accessed by anybody and offers very different possibilities of data retrieval and research.[4]
- CEPEJ-GT-SATURN. Its task is that of providing a better knowledge of judicial timeframes and optimize judicial time management. In this framework, CEPEJ has been developing theoretical studies, as well as practical tools aimed at professionals for a better knowledge and improvement of the situation of judicial timeframes and time management in courts of the European States.[5]
- CEPEJ-GT-QUAL. Its task is that of promoting the quality of the public service of justice. Beyond the efficiency of judicial systems, the CEPEJ aims to identify the elements which constitute the quality of the service provided to users in order to improve it and aims to develop innovative measures.

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[2] See https://www.coe.int/en/web/cepej/cepej-work/evaluation-of-judicial-systems.

[3] The 2024 evaluation report is available online here: https://www.coe.int/en/web/cepej/special-file.

[4] See https://www.coe.int/en/web/cepej/cepej-stat. In particular, the dashboard dedicated to an overview of all the European Systems (see https://public.tableau.com/app/profile/cepej/viz/OverviewEN/Overview), allows, by clicking on the profile of each Country as it appears on the map of Europe, to get a glimpse of the essential data of each system, and also to compare two or more Countries on issues such as: number of judges, judicial staff, efficiency of judicial systems, etc.

[5] On the purposes of this work, as well as on documents and tools elaborated by CEPEJ-GT-SATURN, see further, under § 6 of this paper.

During these last years the said Working Group elaborated tools such as the Checklist for promoting the quality of justice and the courts, a Handbook for conducting satisfaction surveys aimed at court users, the European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment, etc.[6]

- CEPEJ-GT-CYBERJUST. Its task is that of developing tools with a view to offering a framework and guarantees to member States and legal professionals wishing to create or use Information and Communication Technologies and/or artificial intelligence mechanisms in judicial systems in order to improve the efficiency and quality of justice.[7] This work should be implemented in co-ordination with the work of other Council of Europe bodies in this field, in particular the European Committee on Legal Co-operation (CDCJ) and the Committee on Artificial Intelligence (CAI). The tools developed by the Working Group concern topics as varied as quality criteria for videoconferencing, artificial intelligence used in alternative methods of dispute resolution or enforcement of court decisions or court proceedings in a digital context. The Working Group manages as well a Resource Centre on Cyberjustice and AI, which is a database (easily accessible through an online dashboard) gathering information on AI systems and other advanced cyberjustice tools applied in various European Countries.[8]

Beside the above mentioned four Working Groups, CEPEJ fosters following initiatives:

- Support member States in their reforms of court organisation. The CEPEJ is entrusted with giving targeted cooperation to the Countries which request it in the framework of their institutional and legislative reforms and for organising their justice system.[9]
- Get the users closer to their justice system. The CEPEJ is at the origin of the initiative, together with the European Commission in Brussels, of the European Day of Justice. It has been celebrated each year on 25 October and enables the public, through various events organised by judicial institutions in the European states, to get better acquainted with their justice system and its functioning.[10] Within the framework of this initiative, a European Prize, "The Crystal Scales of Justice", has been created in 2005, aimed at highlighting innovative and effective practices carried out within courts to improve the functioning of justice.[11]

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[6] See https://www.coe.int/en/web/cepej/cepej-work/quality-of-justice. Since 2020 the CEPEJ-GT-QUAL integrated in its mandate the promotion of mediation as a follow up to the work previously conducted by the CEPEJ-GT-MED and continued to develop tools in this area, which can be found on the mediation webpage (see https://www.coe.int/en/web/cepej/cepej-work/mediation).

[7] See https://www.coe.int/en/web/cepej/cepej-working-group-cyber-just.

[8] See https://www.coe.int/en/web/cepej/resource-centre-on-cyberjustice-and-ai.

[9] See https://www.coe.int/en/web/cepej/ongoing-projects.

[10] See https://www.coe.int/en/web/cepej/2024-journ%C3%A9e-europ%C3%A9enne-de-la-justice.

[11] See https://www.coe.int/en/web/cepej/events/crystal-scales-of-justice-prize-form-jury.

- Creating and maintaining a Network of Pilot Courts from European States[12] to: a) support its activities through a better understanding of the day to day functioning of courts and b) to highlight best practices which could be presented to policy makers in European States in order to improve the efficiency of judicial systems. Therefore, the Network is:
    - A forum of information: Pilot courts are privileged addressees of the information on the work and achievements of the CEPEJ and are invited to disseminate this information within their national networks. Within the Network, Pilot courts communicate and cooperate.
    - A forum of reflection: The Network is consulted on the various issues addressed by the CEPEJ.
    - A forum of implementation: some Pilot courts can be proposed to trial at local level some specific measures proposed by the CEPEJ.
    - All such initiatives contribute toward relieving the case-load of the European Court of Human Rights by providing states with effective solutions to prevent violations of the right to a fair trial within a reasonable time (Article 6 of the European Convention of Human Rights). Actually, we must never forget that all the work of the Council of Europe is based on the European Human Rights Convention. The reason why the Council of Europe is interested in the field of Justice is based on the three concepts of independent tribunal, fair trial and reasonable time, enshrined in said Article 6, Para 1, of the above mentioned Convention.[13]

Documents and tools elaborated by the CEPEJ are not legally binding on Council of Europe's member States. However, the practical experience of international associations shows, for example, that "soft law" documents (like the recommendations of the Council of Europe, or the tools of the CEPEJ, or the declarations and resolutions of the International Association of Judges) may serve the cause of persuading political authorities of certain Countries not to implement measures that might have limited the independence of the judiciary. Moreover, in a large number of cases, the European Court of Human Rights has used pieces of soft law to determine the meaning of expressions like "reasonable time", or "independent and impartial tribunal".[14]

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[12] See https://www.coe.int/en/web/cepej/cepej-work/network-of-pilot-courts.

[13] "6.1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (...)".

[14] See e.g. on this topic J. Laffranque, *Judicial Independence in Europe: Principles and Reality* [in:] N. A. Engstad, A. Lærdal Frøseth & B. Tønder (eds.), The Independence of Judges, The Hague, 2014, p. 144 ff.; G. Oberto, Sistemi giudiziari europei a confronto: le criticità italiane, available at https://www.giacomooberto.com/Oberto_sistemi_giudiziari_a_confronto.htm, § 2; G. Oberto, Un nuovo statuto per un nuovo giudice, in Contratto e impresa / Europa 2019, p. 66, also available at https://www.giacomooberto.com/Oberto_Un_nuovo_statuto_per_un_nuovo_giudice_2017.htm, § 5.

Moreover, the case law of the European Court of Human Rights has somehow prompted even the most "stubborn" Countries (like Italy) to try to introduce measures to fight backlogs and foster efficient case management, as shown by a number of Italian initiatives:[15] some of them will be illustrated in detail further on in this paper.[16]

2. The CEPEJ-GT-SATURN Working Group on Judicial Time Management: Main Tools and Documents

The CEPEJ-GT-SATURN Working Group on Judicial Time Management[17] has been set up in 2007 by CEPEJ as one of the four permanent WGs of it and a Centre for judicial time management. According to its terms of reference, the SATURN is instructed to collect information necessary for the knowledge of judicial timeframes in the member States and detailed enough to enable member states to implement policies aiming to prevent violations of the right for a fair trial within a reasonable time protected by Article 6 of the European Convention on Human Rights.

The Working Group is a European observatory of judicial timeframes, by analysing the situation of existing timeframes in the member States (timeframes per types of cases, waiting times in the proceedings, etc.), providing them knowledge and analytical tools of judicial timeframes of proceedings. It is also in charge of the promotion and assessment of the Guidelines for judicial time management.

The CEPEJ-GT-SATURN works in particular for collecting, processing and analysing the relevant information on judicial timeframes in a repre-

[15] For a general overview see G. Oberto, Study on Measures Adopted in Turin's Court ("Strasbourg Programme") along the Lines of "Saturn Guidelines for Judicial Time Management", available at https://www.giacomooberto.com/study_on_Strasbourg_Programme.htm; F. Contini (ed.), Handle with Care: Assessing and Designing Methods for Evaluation and Development of the Quality of Justice, IRSIG-CNR, Bologna 2017, available at https://www.lut.fi/web/en/school-of-engineering-science/research/projects/handle-with-care; E. Silvestri, Notes on Case Management in Italy, available at https://ssrn.com/abstract=3158105 or http://dx.doi.org/10.2139/ssrn.3158105; D. C. Steelman & M. Fabri, Can an Italian Court Use the American Approach to Delay Reduction?, available at https://www.tandfonline.com/doi/abs/10.1080/0098261X.2008.10767868; L. Verzelloni, Reduction of Backlog: The Experience of the Strasbourg Programme and the Census of Italian Civil System, available at https://www.encj.eu/images/stories/pdf/workinggroups/Timeliness/verzelloni-reduction_of_backlog-the_experience_of_the_strasbourg_program_and_the_cebsu_of_italian_civil_justice_system.pdf; G. Esposito, S. Lanau & S. Pompe, Judicial System Reform in Italy—A Key to Growth, available at https://www.imf.org/external/pubs/ft/wp/2014/wp1432.pdf; Imf, Italy, Selected Figures, Washington, 2014, p. 15 ff., available at https://www.imf.org/external/pubs/ft/scr/2014/cr14284.pdf.

[16] See below, under §§ 9, 11 and 15.

[17] See https://www.coe.int/en/web/cepej/cepej-work/saturn-centre-for-judicial-time-management. Saturn was the Roman god of time. This name was chosen also as an acronym for: "Study and Analysis of judicial Time Use Research Network".

sentative sample of courts in the member states by relying on the Network of Pilot Courts. According to its terms of reference, the Working Group is instructed to collect and share information on time management relevant for courts and public prosecution services and to develop tools, to improve its efficiency in order to enable member States to implement policies aiming to prevent violations of Article 6 of the European Convention on Human Rights, and in particular the right to a fair trial within a reasonable time.

Since its creation in 2007 the CEPEJ-GT-SATURN has elaborated a consistent number of tools and studies, all available in its web site.[18] Among them we may mention the following:

- Time Management Checklist for public prosecution services (12/2024).
- Explanatory note for the time management checklist for public prosecution services (12/2024).
- Backlog reduction tool (06/2023).
- Time Management Checklist (06/2023).
- Explanatory Note for the Time Management Checklist (06/2023).
- SATURN Guidelines for judicial time management (12/2021).
- Handbook on court dashboards (06/2021).
- Implementation guide: Towards European timeframes for judicial proceedings (12/2016).
- Handbook for implementing CEPEJ-SATURN tools (05/2017).
- Report on case-weighting in public prosecution services (12/2023).
- Case weighting in judicial systems – CEPEJ Studies No. 28 (07/2020).
- Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Right, by Ms Françoise Calvez and Nicolas Regis, Judges (France) 3rd edition by Nicolas Regis – CEPEJ Studies No. 27 (12/2018).[19]

[18] See https://www.coe.int/en/web/cepej/cepej-work/saturn-centre-for-judicial-time-management.

[19] In order to fulfil its mandate, the CEPEJ-GT-SATURN is currently working on the following issues:
a. develop guidelines allowing the implementation of a system of case weighting;
b. develop a tool enabling to analyse the timeframes according to the steps of the civil procedure;
c. develop a database of backlog reduction practices;
d. study potential effects of the use of AI tools on court efficiency, in cooperation with the CEPEJ-GT-CYBERJUST;
e. elaborate a study on workload measurement tools in judicial systems;
f. in co-operation with the other CEPEJ Working Groups, carry out a reflection on the feasibility (i) to develop indicators and/or indexes for measuring the quality of justice as well as (ii) to prepare a tool to improve work-life balance in the judiciary;
take into account in its work the identified needs arising from the implementation of relevant co-operation programs and actively contribute thereto.

3. The CEPEJ's Backlog Reduction Tool. Its Main Features. The Resource Centre on Backlog Reduction Practices

During the years 2022 and 2023 the CEPEJ-GT-SATURN elaborated a Backlog Reduction Tool, which was approved by the CEPEJ Plenary meeting in June 2023, so becoming an official document of the CEPEJ.[20]

Starting point of this initiative was, as many other times, a reflection on Article 6 of the European Convention on Human Rights. According to this rule, "everyone is entitled to a fair and public hearing within a reasonable time". The full enjoyment of this right can be hindered by various types of inefficiencies stemming from an inadequate legal framework, inappropriate court network, increasing complexity of cases and insufficient court resources to deal with incoming cases. As a result, the accumulation of pending cases over time leads to delays in court proceedings, creating a backlog of cases and a potential violation of the "reasonable time requirement". Moreover, these delays increase the cost of court proceedings, contribute to legal uncertainty, and have a negative impact on public perception and trust in judicial systems.

Many judicial systems continue to grapple with a backlog of cases, necessitating prompt action by the authorities to remedy the situation and ensure delivery of justice within a reasonable time. This instrument is therefore intended for State and judicial authorities and courts as a tool to reduce backlogs and prevent their recurrence. It outlines a step-by-step methodology for the development of strategies aimed at backlog reduction. By identifying areas where backlogs accumulate, understanding the underlying causes, and proposing measures to address backlogs across different levels of court systems, this tool offers adaptable approaches tailored to the specific circumstances of a judicial system, rather than a fixed set of solutions.

The document starts first of all with some definitions which are essential in order to understand how the tool can work.

For the purposes of this document, "backlog" should be understood as pending cases at the court concerned, which have not been resolved within an established timeframe. For example, if the timeframe has been set at 24 months for all the civil proceedings, the backlog is the number of pending civil cases longer than 24 months. The tool underlines as well that fighting backlog should not result in a decrease of the quality of judicial decisions and services provided to court users.

Another important *caveat* of the tool relates to the fact that the process of fighting backlogs should start from the designation of a lead institution

[20] See https://rm.coe.int/cepej-2023-9final-backlog-reduction-tool-en-adopted/1680acf8ee.

responsible for activities related to backlog reduction. This institution can be an existing body, such as the High Council for Judiciary, Supreme Court, or Ministry of Justice, or a newly created body like an *ad hoc* backlog reduction working group or backlog reduction committee. The designated institution should oversee the whole process starting from analysis and identification of the scope of the problem, through defining targets and measures to reduce backlog, and concluding with the creation of monitoring mechanisms and ensuring sustainability to prevent future backlog accumulation. In addition, it should be responsible for coordination, implementation, and monitoring of backlog reduction activities at the central level, as well as facilitating effective communication with court users and the public.

This institution may be complemented by backlog reduction teams consisting of judges, court managers, and/or non-judge court staff established at the local levels. Finally, it is important to provide the lead institutions with appropriate instruments and resources in order to perform its tasks effectively.

Before delving into other details of the CEPEJ's Backlog Reduction Tool, we must add that, as a natural follow up of the adoption of the tool, in 2024 the CEPEJ-GT-SATURN created a Resource Centre on Backlog Reduction Practices,[21] based on a Backlog Reduction Database.[22]

The Centre serves as a publicly accessible platform providing reliable, up-to-date information on practices implemented by States to address backlogs of cases. The term "practices" encompasses measures, tools, reforms, and all activities geared towards reducing and preventing backlogs in judicial systems.

The Resource Centre and the database aim to:

- support authorities tasked with the planning and implementation of justice reforms by providing an overview of backlog reduction practices;
- foster co-operation among stakeholders from Europe and beyond through information-sharing on effective backlog reduction practices;
- provide practitioners and judicial systems managers with information on successful approaches used in other countries to tackle backlogs and therefore encourage exchanges of good practices.

The database contains therefore relevant information on backlog reduction practices of any part of Europe. The criteria for publication in the database include relevance, implementation, and evidence based. The Database includes measures with a proven record of successful implementation or measures under implementation.

[21] See https://public.tableau.com/app/profile/cepej/viz/BacklogReductionResourceCentre/ResourceCentre.
[22] See https://www.coe.int/en/web/cepej/database-of-backlog-reduction-practices.

4. Main Steps in the Implementation of the CEPEJ's Backlog Reduction Tool. Analysis of the Existing Situation

The concrete implementation of the CEPEJ's Backlog Reduction Tool should be achieved through three main steps: (a) Analysis of the existing situation, (b) Measures to be adopted, (c) Monitoring.

Starting with the first step, which is to say the Analysis of the present situation, it appears necessary to identify size and type of backlog(s) and analyse causes. As remarked in the CEPEJ's tool, understanding the scale of the problem requires collection and rigorous analysis of quantitative and qualitative data. Statistical data should be collected in different areas (e.g. case-flow, length of proceedings, and human and material resources) and at different levels (e.g. system, court, and court department). The collection of data must go hand-in-hand with a comprehensive analysis of the factors contributing to the backlog. This analysis is essential for the design of appropriate remedial measures. It may include the assessment of legislation, availability of human, financial and material resources, court organisation and functioning, and the quality and availability of training for judges and non-judge court staff, lawyers, prosecutors, and other relevant stakeholders.[23] The identification of backlog and the analysis should be coordinated by the above-mentioned lead institution.

Some of the main instruments which may help in diagnosing the situation are, first of all, the so-called CEPEJ efficiency indicators: actually they are certain indicators defined by the CEPEJ that can serve as a starting point for conducting the efficiency analysis in a judicial system. Such instruments are basically the following two:

- Clearance Rate (or "CR"). It is a ratio obtained by dividing the number of resolved cases by the number of incoming cases in a given period, expressed as a percentage, according to the following formula:
  [CR (%) = Resolved cases in a given period / Incoming cases in that given period x100].
  Clearance Rate equal to 100% indicates the ability of the court or of a judicial system to resolve as many cases as the number of incoming cases within the given time period. A Clearance Rate above 100% indicates the ability of the system to resolve more cases than those received. Finally, a Clearance Rate below 100% appears when the number of incoming cases is higher than the number of resolved cases. In such a situation, the number of pending cases will increase. Essentially, the Clearance Rate shows how the court or judicial system is coping with the in-flow of cases.

[23] We should never forget the teaching of Jean Bodin, according to which "Il n'est de richesse que d'hommes" ("there is no other wealth than people": Bodin, *Les six livres de la république*, livre V, chapitre II).

- Disposition Time (or "DT") is obtained by dividing the number of pending cases at the end of a given period by the number of resolved cases within that period, multiplied by 365 (days in a year), according to the following formula:

  [DT= Pending cases on a given day / Resolved cases on that given day x 365].

This indicator estimates how many days should be required to resolve the pending cases based on the court's current capacity to resolve cases. It is used as a forecast of the length of judicial proceedings. This indicator is not a calculation of the duration of the proceedings, but a theoretical estimate of the time needed to process pending cases.

5. Analysis of the Existing Situation through Statistical Data on Court Cases

To determine more precisely the presence, scope, and location of backlog, it is necessary to collect data on the number of cases and assess the current situation at different court levels. However, relying solely on the number of cases does not provide a complete assessment of the court's situation. Therefore, it is also important to examine the age structure of pending cases and compare that data with the number of incoming and resolved cases, as well as CEPEJ indicators explained above.

The data collection and analysis can be conducted at the following levels:

i) national level (total amount of cases that are processed in all courts);

ii) type of courts (courts of general jurisdiction and specialised courts);

iii) court instance (first, second, and third instance);

iv) case-type (e.g. civil, criminal, and administrative cases) or more detailed types of cases (e.g. litigious divorces, dismissal cases, robberies, bankruptcy, enforcement, gender-based violence, etc.).

The CEPEJ's Backlog Reduction Tool contains a number of tables which might help in schematizing the relevant data.

For example, we may consider the following:

(Individual) Court overview (by case types within one court of any court level)

Reporting period January 1 – December 31 (or any other period)

1	2	3	4	5	6	7	8	9
Case Type	Number of pending cases at the beginning of the reporting period	Number of incoming cases during the reporting period	Caseload (2+3)	Number of resolved cases during the reporting period	Number of pending cases at the end of reporting period	Percentage of increase/decrease of pending cases at the end of the reporting period compared to the beginning of the reporting period	Clearance Rate	Disposition Time
Criminal								
Civil								
Labour								
Family								
Bankruptcy								
Enforcement								
Administrative								
Other types of cases								
Total								
Average per case type								

Another very important analysis is the one concerning the age of cases composing the backlog. This survey can be made by analysing, first of all, the age of pending cases:

Age of pending cases (calendar year)

1		2	3	4	5	6	7	8
Case Type		Total number of pending cases	Pending cases from 2023 (up to 1 year)	Pending cases from 2022 (between 1 and 2 years)	Pending cases from 2021 (between 2 and 3 years)	Pending cases from 2020 (between 3 and 4 years)	Pending cases from 2019 (between 4 and 5 years)	Pending cases from 2018 and prior years (over 5 years)
Criminal	Number of cases							
	Percentage of total							
Civil	Number of cases							
	Percentage of total							
Labour	Number of cases							
	Percentage of total							
Family	Number of cases							
	Percentage of total							
Bankruptcy	Number of cases							
	Percentage of total							

It might be also very useful to analyse the age of resolved cases:

Age of resolved case (calendar year)

1		2	3	4	5	6	7	8
Case Type		Total number of resolved cases	Resolved cases from 2023 (up to 1 year)	Resolved cases from 2022 (between 1 and 2 years)	Resolved cases from 2021 (between 2 and 3 years)	Resolved cases from 2020 (between 3 and 4 years)	Resolved cases from 2019 (between 4 and 5 years)	Resolved cases from 2018 and prior years (over 5 years)
Criminal	Number of cases							
	Percentage of total							
Civil	Number of cases							
	Percentage of total							
Labour	Number of cases							
	Percentage of total							
Family	Number of cases							
	Percentage of total							
Bankruptcy	Number of cases							
	Percentage of total							

This second kind of table is useful in order to understand whether the system (or the court, or the judge/s) is dealing (mainly and with priority) with older cases, in order to reduce the backlog and in this way improving its efficiency, or, on the contrary (as it can happen), it deals rather with newer cases, so aggravating the bulk of the backlog.

6. Detailed Statistical Data on Court Cases. Paying Attention to the Different Case Categories and Levels of Jurisdiction. Tables on the Average Duration of Cases

In order to better understand the reasons of (and the remedies to) judicial backlogs in given situations, it might be useful to have an idea of the above described situations, also considering the different types of cases and the different levels of adjudication. In this framework, we may show here some of the tables suggested by the CEPEJ's Backlog Reduction Tool, concerning the way of reporting the number of backlog cases.

Number of backlog cases during the reporting period (by case type – court level)

1	2	3	4	5	6	7	8
Case type	Number of pending backlog cases at the beginning of the reporting period	Number of backlog cases received during the reporting period	Number of pending cases that became backlog during the reporting period	Total number of backlog cases during the reporting period (2+3+4)	Number of resolved backlog cases during the reporting period	Number of pending backlog cases at the end of the reporting period (6-5)	Percentage of increase/decrease of pending backlog cases at the end of the reporting period compared to the beginning of the reporting period
Criminal							
Civil							
Labour							
Family							
Bankruptcy							
Enforcement							
Administrative							
Other types of cases							
Total							
Average per case type							

Number of backlog cases during the reporting period (system level)

1	2	3	4	5	6	7	8
Court instance	Number of pending backlog cases at the beginning of the reporting period	Number of backlog cases received during the reporting period	Number of pending cases that became backlog during the reporting period	Total number of backlog cases during the reporting period (2+3+4)	Number of resolved backlog cases during the reporting period	Number of pending backlog cases at the end of the reporting period (6-5)	Percentage of increase/decrease of pending backlog cases at the end of the reporting period compared to the beginning of the reporting period
3rd instance							
2nd instance							
1st instance							
Any other type of specialised courts…							

It is also essential to keep an eye on the average duration of cases. This can be done with the help of some of the following tables.

Average duration of pending cases

1	2	3	4	5	6
Case type	Number of pending cases on the date of creation of the report (beginning of the reporting period – e.g. on 1 January)	Average duration of pending cases on the date of creation of the report (beginning of the reporting period – e.g. on 1 January)	Number of pending cases on the date of creation of the report (end of reporting period – e.g. on 31 December)	Average duration of pending cases on the date of creation of the report (end of reporting period – e.g. on 31 December)	Difference in days between 3 and 5 – longer duration (+ days) or shorter duration (- days)
Criminal					
Civil					
Labour					
Family					
Bankruptcy					
Enforcement					
Administrative					

The duration of a pending case (in days) is the period from the date of filing of the initial act until the date when the report is generated. The average is obtained by adding the duration of all pending cases (in days) divided by the number of pending cases. The figures on the average duration of pending cases are generated for a specific date, not for a reporting period. To effectively analyse court performance, it is advisable to compare the values for different dates, allowing for tracking and comparison of data. By doing so, it becomes possible to identify trends and determine whether the average duration of pending cases is increasing (indicating a decline in court performance) or decreasing (indicating an improvement in court performance).

Average duration of resolved cases

Case type	Number of resolved cases in the reporting period	Average duration of resolved cases at the end of reporting period	Clearance Rate
Criminal			
Civil			
Labour			
Family			
Bankruptcy			
Enforcement			
Administrative			

The duration of a resolved case (in days) is the period from the date of filing of a case until the date of resolution. The average is obtained by adding the duration of all resolved cases in days, divided by the number of resolved cases. There are two options for creation of this report: 1) the duration of resolved cases can be calculated from the date of the initial filing to the date of the final decision, regardless of which instance renders the final decision; 2) from the date of the case registration at a particular court instance, regardless of the date of the initial filing, to the date of the decision in that instance (calculation by court instances/phases of the court proceedings, such as first instance, second instance, third instance). Both options are recommended for analysing the duration of cases, as they offer different perspectives. Option 1 provides a holistic view of the overall proceedings. Option 2 allows for a more detailed analysis of case duration within specific instances or phases of the court proceedings.

We must also notice that the above are among the most important indicators for detection of reasons for creation of backlog cases. If these indicators are used on different dates (e.g. on 1 January 2021 and on 31 December 2021), they can give valuable insights on court performance.

To gain deeper insights, it is beneficial to compare information on duration of pending cases with the Clearance Rate. It is important to note that even if

the Clearance Rate indicator is below 100% in a particular period, this does not necessarily indicate an ongoing backlog issue at that point in time. However, if such performance continues over a longer period, it will eventually lead to creation of backlogs. This is why it is important to compare the Clearance Rate level with the average duration of pending cases.

If the duration of pending cases decreases during the observed period, it suggests that judges are likely prioritising the resolution of "older" cases over newly received ones. Conversely, if both indicators show negative trends across compared periods (Clearance Rate below 100% and an increasing duration of pending cases), further analysis is necessary to understand the underlying reasons for the underperformance and backlog creation.

In situation where the Clearance Rate is above 100%, which is usually a positive sign in courts, it is important to compare that data with the average duration of pending cases. If the second indicator is increasing, it implies that judges are resolving "newer" cases and there is a risk of creation of backlog cases, even though they resolve more cases than they receive.

Average duration of resolved cases is another vital indicator for identifying backlogs and excessive duration of cases. If this indicator is increasing in the previous reporting periods, this may signal not only longer case durations but also a potential violation of the right to trial within a reasonable time.

7. The Use of Dashboards

The above reference to the importance of statistical data (and of the spreading of them among judges, courts and justice stakeholders) leads to the consideration of the capital role that dashboards should play in the fight against backlogs. On this subject it is important to point out that in 2021 the CEPEJ officially adopted a Handbook on Court Dashboards, prepared by the CEPEJ-GT-SATURN Working Group.[24]

The document is organised in 6 different chapters and was developed through research and collection of examples of dashboards, also via the Pilot Courts network of the CEPEJ. It outlines the possible contents of dashboards and their layout and provides guidelines for the judiciary on how to set up a dashboard system. It also gives several examples while highlighting that judge-level dashboards are intended to better manage their work time and should under no circumstances be considered tools for performance assessment of judges. Several templates for dashboards and tables, both at court and judge-level, complement the work, so that it can be made readily available to the courts.

[24] See https://rm.coe.int/cepej-2021-8-handbook-on-court-dashboards-en/1680a2c2f6.

Many of the key performance indicators (KPI) composing a court dashboard (like: number of incoming, pending and terminated cases per court, section and judge, disposition time, clearance rate, etc.) can be automatically and easily extracted from the case management IT programmes at all levels (Country, court, judges). Therefore, court dashboards represent now a remarkable tool in the fight against backlogs. In fact, it is certain that the first step in this direction is represented by a detailed and deep awareness about all the elements that may concur to an efficient case management and to the elimination of backlogs.

Keeping in mind the purpose of the exercise, which is to say to cut the backlogs in court systems and to monitor the situation, in order to avoid that new backlog is created, it is advisable to consider (with the help of *ad hoc* dashboards) an observation period of at least five (or, if possible, even more) years. In this kind of works, actually, it is important to have a clear idea not only about the present and (recently) past data, but also about general trends. In fact, trends are better understood in a longer perspective, than in a time lapse of only two or three years. In fact, if we want to propose effective measures aiming at fighting backlogs, we need to understand whether the most recent data (positive or negative) show a situation which is consolidated in a certain way, or are just the result of temporary and conjunctural events.

The creation of uniform dashboards for Courts, heads of Courts and judges, should be the responsibility of the leading institution of the project of backlog reduction.

8. Developing a Winning Strategy to Address Judicial Backlogs. Setting Targets and Timeframes

Once a clear analysis of the current situation of backlogs has been completed, it is time to plan strategies and measures to tackle with such problems. Actually, the second step of the CEPEJ's Backlog Reduction Tool is represented by the development of a strategy to effectively address backlog. Essential part of this step is the setting of realistic targets to be attained in a given period. Any strategy and/or action plan should contain realistic targets and measures to be implemented in the short, medium, and long-term periods.

It might also be beneficial to pilot a strategy or, parts of it, in a limited number of courts for a limited period of time before its full, system-wide roll-out. Such a piloting phase is beneficial for determining realistic and effective targets and measures, and gives the possibility to make any adjustments needed for their implementation in all courts.

The process of identifying the target is equally important as the target itself. The involvement of members of the organisation (court system / individual court) in this process is crucial. They should share their perspectives on the current situation, envision the desired state in the near future, and reach a consensus on realistic targets and the actions required to attain them.

In cases where there are measurable and easily calculated indicators, it is possible to set related targets. For example, if the court monitors indicators such as the Clearance Rate, Disposition Time, percentage of decrease of the number of pending backlog cases etc., the following targets can be set: reach and maintain a Clearance Rate above 100%, decrease the Disposition Time each year by a certain percentage, decrease the number of pending backlog cases by 20% each year etc.

Another aspect of target setting involves setting timeframes in which cases should be resolved. Timely resolution of cases per court type/court instance/case type can be set as a target. The indicator used is the case processing time. The target may be set at, for example, 90% of the cases have to be handled within a certain number of months (e.g. nine or twelve months). Timeframes can be considered as a practical operational tool since they are concrete benchmarks helping to measure to what extent each court, and more generally the whole judicial system, adheres to the timeliness of case processing and the principle of a fair trial within a reasonable time. It should be noted that the timeframes are not the main cure for reducing the length of judicial proceedings, but they have proven to be a useful tool to assess the courts' functioning and policies, leading to improvements in the duration of proceedings.

The CEPEJ Implementation Guide "Towards European Timeframes for Judicial Proceedings"[25] offers a number of conditions and measures for properly establishing targets and standards. It emphasises that, in addition to the standards and targets set at the higher level (national, regional), there should be specific targets at the level of individual courts. Court management should have sufficient authority to actively set or participate in the setting of these targets.

In setting up realistic timeframes, court management may take into account (maximum and minimum) legally defined deadlines for different procedural steps (e.g. serving documents, filing a response to the legal action by the defendant, setting up hearings and issuing written judgment) in order to calculate minimum and maximum statutory duration of the proceedings. In addition, the average duration of the actual proceedings for the given case type should be taken into account (e.g. criminal, civil, and administrative). The result may provide the basis for determining the desired duration of proceedings that may constitute the framework for setting the timeframes.

[25] See https://rm.coe.int/16807481f2.

When calculating the desired duration of proceedings, court management must respect the principles of Article 6 ECHR and criteria provided by the European Court of Human Rights (ECtHR) in relation to the protection of the right to a hearing within a reasonable time.

Some examples of targets relating to increasing efficiency, reducing the backlog, and shortening the duration of the resolution of cases are displayed in table below.

. A percentage of the cases disposed of in a certain timeframe, usually a year (e.g., 75% of cases should be disposed of in 12 months from the late of filing);

1	2	3	4	5	6
Case Type	Resolved up to 12 months (up to 1 year)	Resolved between 12 and 24 months (between 1 and 2 years)	Resolved between 24 and 36 months (between 2 and 3 years)	Resolved after 36 months (after 3 years)	Total resolved cases in the reporting period
Criminal	Number	Number	Number	Number	
	% of total	% of total	% of total	% of total	100%
TIMEFRAME (targets for criminal cases)	75%	15%	5%	5%	
Civil	Number	Number	Number	Number	
	% of total	% of total	% of total	% of total	
TIMEFRAME (targets for civil cases)	75%	15%	5%	5%	
Labour	Number	Number	Number	Number	
	% of total	% of total	% of total	% of total	
TIMEFRAME (targets for labour cases)	80%	15%	10%	0	
Family	Number	Number	Number	Number	
	% of total	% of total	% of total	% of total	
TIMEFRAME (targets for family cases)	30%	40%	20%	10%	

9. Organisational Measures for Tackling with Judicial Backlogs. The Need of a "Decalogue". No Need to Set Statutory Timeframes for Court Proceedings

Once the above described strategies have been envisaged, an essential part of the second step designed by the CEPEJ's Backlog Reduction Tool consists in singling out all possible legal and organisational measures to be adopted in order to facilitate the attainment of the above described targets and timeframes. Starting from the organisational reforms that might be introduced (very often

without the need to change the statutory framework), we must say that the CEPEJ's Backlog Reduction Tool contains a comprehensive list of such measures. It might be useful to consider here some of the most relevant. However, we have always to take into account the rich variety of judicial and procedural systems, so that some of the suggested measures could not be applicable in some given legal orders, because they might not result compatible with those legislative rules. In any case, beyond the comparative perspective, me must keep in mind that, even among very distant systems, it is not impossible to find some common denominators, both in written rules and in judicial praxis.

In my opinion, an essential part of the strategy should be represented by the introduction of a sort of "Decalogue", similar to the document that was inserted in the "Strasbourg Programme", launched by the then President of the First instance court of Turin (Italy) in 2001, which managed to consistently reduce the backlog of that jurisdictional office. Actually, the "Strasbourg Programme" was the first experiment of case management tested in Italy, aiming at obtaining a significant reduction of judicial backlogs and the acceleration of the treatment of civil cases.[26] As remarked by some legal scholars, "Under the banner of reform headed the "Strasbourg Programme", the court succeeded by April 2009 to reduce the percentage of pending cases older than three years to under 5%, where 85% of its cases were not more than two years old." As an important Italian scholar remarks, "It is worth mentioning that the remarkable success of this delay reduction programme is not the fruit of a major law or structural reform, but of a systematic and tenacious local initiative, which has followed most of the key factors already pointed out by the international literature to fight court delays."[27]

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[26] See https://www.giustizia.it/giustizia/it/mg_2_9_10_2.page#; see also G. Oberto, *Managing Quality and Efficiency of Justice: Italian Strategies in Case Management*, 'Richterzeitung' 2019, 4, available at https://richterzeitung.weblaw.ch/fr/rzissues/2019/4/managing-quality-and_544bc61390.html__ONCE&login=false; also available at https://www.giacomooberto.com/Oberto_Managing_quality_of_justice.htm; Id., *Il «Programma Strasburgo» del Tribunale di Torino e le direttive del* Groupe de pilotage SATURN *della* CEPEJ: *Breve raffronto*, 'Richterzeitung' 2012, 3; as well available at https://giacomooberto.com/studio_sul_Programma_Strasburgo.htm; Id., *Il Consiglio d'Europa e i temi della giustizia*, available at https://www.giacomooberto.com/oberto_consiglio_europa_temi_giustizia.htm; L. Verzelloni, Reduction..., *ibid*.; Team Managemernt Uniupo, Nuovi schemi collaborativi tra Università e uffici giudiziari per il miglioramento dell'efficienza e delle prestazioni della giustizia nell'Italia Nord Ovest, available at https://www.giustizia.it/cmsresources/cms/documents/1nextgen_unipior_modorg_civ_report.pdf; B. Rrugia & B. Biti, *Guaranteeing the Judgment of Civil Cases Within a Reasonable Time as a Requirement of the Right to a Fair Trial in Albania*, 'Academic Journal of Interdisciplinary Studies', MCSER Publishing, Rome–Italy 2014, 3, 3, (Jun.), p. 509 ff.

[27] M. Fabri, *The Italian Maze Towards Trials Within Reasonable Time* [in:] Council of Europe (ed.), The Right to Trial Within a Reasonable Time and Short-Term Reform of the European Court of Human Rights, Round Table organised by the Slovenian Chairmanship of the Committee of Ministers of the Council of Europe Bled, Slovenia, 21–22 September 2009, Directorate General of Human Rights and Legal Affairs Council of Europe Ministry of Justice Ministry of Foreign Affairs Republic of Slovenia, Strasbourg 2009, p. 21; see also A. Bartolini, V. Colcelli, D. E. Zammit, Individual Legal Status: A Tool for Developing European Law?, Proceedings of the Conference on European Dimensions of Individual Status (Malta, 3 July, 2017), University of Malta 2017, p. 107.

The Programme was started first of all through a monitoring activity of the whole backlog. Then the President drafted a circular letter containing several provisions and suggestions for Judges (the so-called "Decalogue"), with the aim of reaching the goal of a relevant shortening of judicial timeframes. The "Decalogue" invited first of all the clerk offices of the court to "map" the seniority of cases (at that time, of course, e-filing systems were not yet in use). Cases pending for more than 3 years had to be marked with a red stamp on the cover of their files, so that judges and clerks could immediately single them out.

A special monitoring programme on processes older than 3 years was created and a president of a section of the Turin Court was tasked to monitor each and any of them. A program for disposal of those cases was drafted; according to this plan, precise deadlines for disposal of those files were set and in case of not compliance with those deadlines, the concerned judges had to provide written explanations. As a general rule, the Strasbourg Programme set the so called rule of "first in – first out", meaning that older proceedings had to be considered as priority cases, to be dealt with and disposed of before "ordinary" cases pending for less than three years. In fact, this rule created a new category of 'urgent' cases, beside the ones that can be argued on the basis of the study of the ECtHR case law.

Moreover, the "Decalogue" consisted in a number of recommendations about good practices to introduce in the management of cases by any judge of the court. "Good practices" means here actions and behaviours that, although not contemplated by the law, may lead to a more efficient case management by encouraging a more responsible use of judicial discretion in handling the processes. So, for instance, one of the most qualifying points of this "Decalogue," was the already mentioned rule concerning the introduction of a sort of "priority principle" in tackling older cases. Judges were as well encouraged to make proposals to parties, in order to settle cases, so "pushing" litigants to reach a friendly agreement. They were also warmly invited to make use of all the procedural instruments to punish parties trying to procrastinate the length of the procedures, as well as to put under pressure court experts who delayed without reasons their reports and expertises. Judges were also invited to choose, among court experts, those who, in previous cases, had given evidence of being able to help parties to reach friendly agreements,[28] and so on.

A part of the "Strasbourg Programme" was also dedicated to the need to convince the other main actors of the process, which is to say the lawyers, to co-operate with the Turin Court in fighting against backlogs. For this reason the programme was presented to the local bar and discussed with the lawyers. This was particularly important, in the attainment of the aim to inform them

[28] On this issue see also below, under § 13.

that the "new" priority category, represented by the older cases (to be dealt and disposed with, as already explained, before the others), was not intended to "harm" the position of certain parties in the processes, but was aimed just at the attainment of the overreaching objective to fight the backlog of the court.

We must also add that a part of the Strasbourg Programme consisted in the elaboration of detailed statistics (at a time, we must underline, where such exercises were absolutely unknown by judges and clerks) on the productivity of single Sections of the Court and of the judges. Spreading such data among judges played, in practice, a very important role in making judges aware of the need to get their involvement and active contribution to the successful implementation of the initiative.

Needless to say that the drafting of such "Decalogue" and the spreading of it among courts, heads of courts and judges, should be the responsibility of the leading institution of the project.

Having said this, we must notice that one of the most debated questions in Europe is about the question on whether or not time limits for judicial proceedings should be imposed by law.

In my opinion, it is doubtful that the introduction of procedural statutory timeframes to proceedings (or for some parts of them) would reduce the backlogs. Actually, a procedural legal provision can be made effective only if also sanctions for non-compliance are set. Now, the typical procedural sanction for non-compliance with a given provision is the nullity of the act that has been done not in compliance with the said provision (e.g.: a summon act is null and void when it does not contain all the indications that it should, according to the law).

However, when we talk about judicial decisions, acts and measures, the sanction of nullity would be not only useless, but also counterproductive. Actually, if we consider as null and void a judgement which has been rendered after a certain deadline, this means that the whole case must be re-started from zero. The final result would therefore be the creation of additional backlog, instead of the elimination of it. On the other hand, disciplinary sanctions against judges not complying with the proposed deadlines would result in a number of disciplinary proceedings in which the concerned judges could easily show that the delays were caused by other reasons (as they very often are) and the problem of backlog would not be resolved.

Therefore, strategically, it is far better to act on other levels, like providing (not at the legislative, but at the regulatory level) a set of "recommended" timeframes, together with other measures, like (as it was already explained) the use of dashboards for comparative purposes among judges of the same court (and/or other courts), or spreading among them comparative statistical data, so that each and any judge of a given court can easily understand whether he/she is "in line" with the productivity of "next door's colleague",

etc. The proposed strategy, consequently, should be placed less on the level of legal provisions than on the domain of "moral suasion". Once again, the recommendation we are talking about here should come from the leading institution at national level and/or from the level of the heads of courts and/or heads of court sections.

10. Exchange of Best Practices Between Courts. Training and Allocation of Resources

Another very useful recommendation deals with the exchange of practices between colleagues working in similar circumstances: an activity which may also be organized through regular exchanges between courts or more structured exchanges by collecting good practices at central level (e.g. Superior Council of Justice, Courts Administration Agency, Supreme Court of Justice, etc.). The exchange of good practices should also be part of continuous training programs within national and international training institutes and academies.

We may add at this point that, during the December 2024 Plenary Meeting of the CEPEJ, it has been decided to approve the creation by the CEPEJ-GT-SATURN Working Group of an online data base about Backlog Reduction Practices, which is already available in the web site of the said Working Group.[29]

Training on Case Management and Backlog Reduction Practices should be introduced. Actually, it is essential to provide adequate initial and continuous education for judges and court staff: the initial and in-service judicial educational programmes and coaching should cover aspects related to the length of proceedings, effective court and case management. The in-service training should also include the use of digital tools and case law databases.

In this framework, it is self-evident that appropriate human and financial resources should be allocated: authorities should assess the number of judges and non-judge court staff needed to enable the courts to timely handle incoming and pending cases. Case weighting or other workload measurement tools can help to determine the required number of judges having regard to the volume and complexity of cases.

It could be also useful to implement and/or improve (whenever existing) the systems for measurement of judges' and courts' workload: the introduction of case weighting,[30] or other workload measurement tools generally im-

[29] See the remarks above, under § 3.

[30] On this topic see Cepej, Case weighting in judicial systems – CEPEJ Studies No. 28, https://rm.coe.int/study-28-case-weighting-report-en/16809ede97.

proves the efficiency of handling of cases. Case weighting aims to assess the complexity of cases to measure the workload in courts taking into account the fact that one case type may differ from another case type in the amount of judicial time required for processing. The case weighting methodologies are designed for determining the required number of judges, court staff, prosecutors and/or public defenders; supporting funding and budgetary requests; allocating justice system personnel within the different work units; assigning cases within the courts to ensure balanced allocation among judges within the same court department; setting quotas and evaluation standards; and planning the merger or reduction of work units. There are also other workload measurement tools based, for example, on "quotas" attributing the number of cases the judge should resolve within a certain period of time.

Also reinforcing the specialisation in judiciary could be a relevant strategy: specialisation introduced for courts, judges and court staff can reduce the time needed for processing cases. This measure could ensure a better quality of the work of a single judge specialised in resolving a certain type of cases. Similarly, specialised departments may be introduced in larger courts, where the number of judges is sufficient to ensure that specialisation will not be detrimental to the resolution of other cases. Finally, a court can be specialised for all cases of a certain type in a region (e.g., federal unit) or entire State.

11. E-Filing and Virtual Hearings. Lessons From the Italian Experience. The Importance of AI

One of the recommendations of the CEPEJ's Backlog Reduction Tool concerns the full digitalisation of civil cases. Actually, talking about civil cases, all of them, with only very few exceptions, should always be entirely managed in electronic way, via a system of e-filing. "Physical" hearings in presence should be almost completely banned (except only in very exceptional cases, in which the judge deems useful to hear personally parties/lawyers/experts/witnesses) and replaced by virtual hearings, meaning by this the exchange by electronic means of short notes between the lawyers and the judge. All submissions should be lodged with the Court exclusively in electronic way and hearings, as just said, should be replaced by the exchange (in the e-filing system) of short notes by the parties.

The lesson learnt during the COVID-19 era should be carefully retained. A modern system based on e-filing in civil cases shows how outdated the old kind of civil procedures is. The Napoleonic codes based on oral presentation of arguments before the judge are of no use today and represent a waste of time that modern time courts can no longer afford.

Of course, e-filing systems should be inspired by modern concept of case management and should be created by IT experts under the close monitoring of legal experts. Therefore, they should be able to distinguish, for instance, between documents, acts and submissions which should be automatically sent to the judge and those which only concern clerks of offices, contrary to what has happened, for instance, in Italy, where the creation of such e-filing system by experts totally unaware of legal issues, has caused and is causing unnecessary and painful additional delays.

Having just quoted the unfortunate Italian experience, I would like to dwell now on it, in order to try to see what lessons we might have learnt. Generally speaking, it is true that digitalisation of cases and of case management can have a positive impact on the timely resolution of litigations, more efficient judicial proceedings and cost savings. Examples include: *e-filing* systems, which can facilitate communication between court users and courts and improve internal workflows; ensuring interoperability of ICT systems of the judiciary and other bodies (e.g. prosecution, enforcement system, registers) can save time in obtaining documents and information necessary for efficient management of court proceedings; introduction of a unified and automated reporting system based on ICDP with daily updates and access to relevant data necessary for decision making.

However, there is an important *caveat*, which we may extract from the Italian experience of these last years.

In fact, in Italy, since 2014, a pivotal role has been played by the so called "processo civile telematico" project (which in English can be translated into "On-line Civil Trial" or "Electronic Filing System in Civil Cases"), developed by the Italian Ministry of Justice. This initiative aims at increasing the availability of on-line services building a two-way data and document interchange and application interoperability between all the external users (in particular lawyers and judicial experts), all the Courts' internal users (staff and judges) and all the public administrations involved in civil cases, implementing a high-security PKI (Public-Key Infrastructure) architecture and adopting state-of-the-art technical standards, according to the recently available Italian laws.

Main features of the Italian Electronic Filing System in Civil Cases are the following ones.

(a) for external users (lawyers and court experts) the possibility to:

- create, digitally sign and transmit their own legal acts, submissions and documents to the defined Court, through a high-security encrypted connection, receiving the official timestamp by the Central System and the digital receipt of acceptance by the Court;
- receive service of acts and Court judgments from the Court at their certified e-mail addresses;

- get full access to the information and the electronic acts, regarding their own civil cases, with a wide range of searching criteria, information retrieval functions and conceptual searches.

(b) for judges and their staff, the possibility to:

- receive lawyers' applications, submissions, acts and documents;
- manage and plan duties, activities, hearings and documents related to the proceedings assigned;
- create, digitally sign and transmit to parties' legal acts (such as minutes of hearings) and court decisions (*lite pendente*, provisional, final, etc.);
- set up a database of local case law;
- analyse proceedings' and documents' data, thus enabling the judge to perform a case management activity, checking the flow of incoming and outgoing cases, consistence of the case load, compliance with time frames, etc., so to avoid the creation of undue backlogs;
- for office clerks to automatically insert and upgrade information on each step of the civil procedures, thus avoiding manual data-entry and enabling automatic delivering of official notifications to external users.

(c) in particular, as far as the judge is concerned, every Italian judge is equipped with a so called "judge's console", which is a software instrument, installed on a laptop, that allows:

- searching and managing of all the assigned proceedings (usually using the names of parties and/or the file official registry number);
- managing of a personal and/or group (section) agenda, and planning of all judge's duties and activities;
- receiving, viewing and editing of all electronic files created by the judge him/herself;
- receiving and viewing of all electronic files created and officially sent by the lawyers, such as petitions, acts, submissions, documents, etc.;
- receiving and viewing of all electronic files created and officially sent by Court's experts, such as the written expertise reports and annexed documents;
- defining and creating legal acts (typically decisions and judgements of any kind) using templates and model documents: similarly to the external user, it's a Microsoft Word embedded application which, after the choice from one of the available models and automatic insertion of pre-defined text (according to the chosen model), enables the judge (or his staff personnel) to complete the document directly using Word and, once done, to automatically transform it to .pdf document;
- digitally signing and transmitting the decisions to the Court's staff, which has to "accept" judges' documents and officially deliver and serve them to the concerned parties;
- (as already said) analyse proceedings' and documents' data, thus enabling the judge to perform a case management activity, checking the flow of incom-

ing and outgoing cases, consistence of the case load, compliance with time frames, etc. so to avoid the creation of undue backlogs,

- most of the "judge's console" functionalities are also available from outside the Court (typically for home-work) using an external secure connection (though the Point of Access specifically developed for this use by the Ministry of Justice) to the Internet.

Having so far illustrated the positive aspects of the introduction of the Italian PCT, it is however necessary to point out its flaws, so that other possible systems of this kind may "learn" from such mistakes.

- First of all, the Italian system is very slow, it often breaks down; even when it works, it is really time consuming.
- Secondly, the system is conceived in such a way to inform and alert the judge of each and any event which takes place in the proceedings: at least 60-70% of them are events which do not involve judge's activity, but only have to do with the staff (e.g. the lawyers paid the fees which must be paid for lodging a petition with the Court; the file has been transmitted to the public fiscal registry offices to pay taxes on the judgments rendered by the judge; the staff sent a copy of an act to a lawyer, etc.).
- The system does not allow making a distinction between events directly concerning the judge (e.g.: a petition made *lite pendente* for provisional measures to be urgently given by the judge) and events not concerning the judge at all (see the previous point). Therefore, the judge has to click on the file each time he/she receives information on a new event affecting the case, just in order to painstakingly try to understand if this new event requires (or does not require) an intervention by him/herself: the final result is clearly a consistent loss of time for the judge, as this activity has to be repeated tens and tens of times every single day.
- System can be at times very cumbersome. The official editing, signing and delivering procedure for judicial acts (such as interim decisions, final judgments, etc.) is really complex and time consuming: one has to click many times on different areas of the screen, to wait for different replies from the system, to log in with the pw, to check for possible mistakes of the automatic system, etc., whereas, before the implementation of this current IT system, it was much easier to simply print the decision and hand it over to the staff! The simple signature (any single signature!) of an act requires at least 7 (seven!) different steps and clicks by the judge.

In a nutshell: the Italian Electronic Filing System in Civil Cases is requiring at present days, when compared to the previous "traditional approach", a much higher level of attention, culture, effort, stress, fantasy and good will by judges, who are called now in Italy to do also the job of the staff. Just to complete the above information, the typewriting of the minutes of the hearings in the e-filing system is done by the judge, for lack of staff. Moreover, in

order to properly work, the Italian system requires not only the "good will" of judges, who must accept the idea of changing the way they have been working for years or decades, but also the constant assistance of technical staff, duly trained to solve all the possible problems which arise every day from the use of this technology. It requires as well that the judge be assisted also (what in Italy is absolutely not the case) by the "traditional" kind of staff/clerks, who may help him/her in the preparation of cases: looking for precedents and case-law, trying to summarize and very often to understand the meaning of the hundreds and hundreds of (many times absolutely useless and unreadable) pages of the lawyers' submissions, select among the redundant pieces of information provided by the IT system on each and any case, what are those on which the judge is called to take a decision, drafting and checking the minutes of the hearings, etc.

It must be added that, despite the above mentioned and described compulsory system of Electronic Filing System in Civil Cases, digital recording of court proceedings is not yet foreseen in Italy. Therefore we still rely on the drafting of written minutes, which should be made by clerks, according to the Italian Code of Civil Procedure. However, as already explained, this activity is entirely done by the judge. Yet another clear anachronism of the Italian system!

Needless to say that the present AI revolution could be of much help, if only the Italian Ministry of Justice wanted to "open" its views to the modern world. Just to give an example, during a recent meeting of the Network of Pilot Courts of the CEPEJ, a delegate from the Prague (Czech Republic), informed the assembly that in his Country the local Government has equipped each and any judge with a free (and recommended!) access to the "Copilot" system implemented by Microsoft. This AI system does for the judge all the preparatory work, creating summaries of parties' submissions, as well as of the evidences and expertises collected during the trial phase of the proceedings. Finally, it elaborates also a draft reasoning of the judgement, that the judge has of course to check and approve (or modify) and to sign.[31]

Of course, AI can be of use for reducing timeframes not only in the adjudication phase of proceedings, but also in the delicate process of case management. Here, AI could—up to a certain extent—"replace" the lack of judicial staff in the "triage" work I described above, by separating those pieces of information which must reach the judge, so allowing him/her to have a clear idea about claims, rights, reasons and torts at stake, from those events which, on the contrary, are irrelevant for the judge, as they display no effect on the adjudication of the case. At the same time, AI could help the judge in organising

[31] For more information on this issue see e.g. M. Dunn, How the Microsoft Cloud and AI are Transforming Court Operations, available at https://www.microsoft.com/en-us/industry/blog/government/public-safety-and-justice/2023/12/13/how-the-microsoft-cloud-and-ai-are-transforming-court-operations/.

his/her agenda, avoiding unnecessary overlapping etc. AI is as well of help in enhancing communication across agencies and jurisdictions, or in delivering smart and secure hybrid hearings, improving court operations, growing capacity, and driving savings through enhanced productivity tools that benefit court employees and the public through machine learning and analytics.[32]

The performance of this kind of tools has also been tested, for instance, by the Czech Bar. To evaluate the language models, a set of 1,840 bar exam questions from the Czech Bar Association were used. These questions covered commercial, civil, criminal, constitutional, administrative law, and legal practice legislation. Bar exam takers usually receive 100 randomised questions and must choose the correct answer from three options. Passing requires accurately answering at least 85 questions. Therefore, the experiment followed a similar procedure. Five rounds of testing were conducted, with each round containing a set of 100 questions to different models of AI. Thus, each system faced a total of 500 identical questions.

The test results clearly demonstrated that combining a proficient language model (GPT-4) with intelligent integration of resources is effective. WAIR application not only substantially outperformed all language models, but also surpassed the 85% threshold mandated by the Czech Bar Association in all five testing rounds. In contrast, none of the evaluated language models achieved success in any trial. The testing showed the level of ability of the language models and WAIR app to comprehend the legal issue and select the right option using their own knowledge. It should be noted, however, that the evaluation of language models and legal skills as such is considerably more complex. For instance, such assessments did not examine written argumentation skills, utilising resources, persuasiveness, speed or cost. Regardless, the test findings have shown us that we should keep evaluating AI and creating our own solutions.[33]

This complex process has to be implemented having always in mind the limits that common sense and legal orders are trying to draw for this new kind of activities. Limits that, for reasons of space, cannot be explained here, in a moment in which a reach literature is being elaborated on this theme in any part of the world.[34]

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[32] For an example see D. H. Yamasaki, Orange County Superior Court Modernizes Case Management Systems Data to Better Serve Community, available at https://www.microsoft.com/en/customers/story/1576760116852361985-occourts-government-azure-en-united-states.

[33] See D. Kovář & J. Nečas, How Will AI Language Models Cope with Czech Law? Will It Pass the Bar Exam?, available at https://en.havelpartners.blog/how-will-ai-language-models-cope-with-czech-law-will-it-pass-the-bar-exam.

[34] On the delicate issues related to the use of AI in the judicial activities see G. Oberto, Artificial Intelligence and Judicial Activities: the Position of the European Commission for the Efficiency of Justice (CEPEJ), 20 October 2024, available at https://www.iaj-uim.org/iuw/wp-content/uploads/2024/09/Giacomo_OBERTO_ARTIFICIAL_INTELLIGENCE_AND_JUDICIAL_ACTIVITIES.pdf. As for the guidelines which are elaborated in Common Law Countries on the use of AI in the legal field see e.g. Courts and Tribunal Judicia-

12. Reducing the Size of Submissions (and the Size of Judgments' Reasonings)

Some European legal systems are currently experiencing the setting by law a certain number of limitations of the number of pages for lawyers' pleadings, sometimes also limiting the remedies for cases with a minimum value (not exceeding a certain amount).

The envisaged provision is really wise, as—following the complexification process currently characterising all European legal systems—lawyers tend to "flood" judges with mountains of papers, most of them completely useless. The extent of this phenomenon is today so worrying, that we could even dare to say that the real quality of a good judge, at present days, is the ability to discover (possibly not in biblical times!), among the hundreds and hundreds of useless pages, that one "hidden" part of the submissions, where are located those no more than two or three lines that, typically, contain the "key" to the solution of the case.

However, as a sort of "counterbalance" to that despicable tendency, also judges seem to follow the same trend. We happen to read, many times, reasoning of judgements which resemble more to a law treaty, than to the resolution of a concrete dispute. Once again, we face an issue of legal and judicial training, as judicial training institutes do not seem to grasp the importance of teaching to (both newly appointed and senior) judges the technique of concentrating in a few sentences the essence of the *ratio decidendi*.

We may point out here that this very issue is tackled by the CEPEJ in the "Revised SATURN Guidelines for Judicial Time Management (4th revision)"[35] in the following textual way: "E. 12. The reasoning of judgments—The reasoning of all judgments should be concise in form and limited to those issues requiring to be addressed. The purpose should be to explain

ry, United Kingdom, Artificial Intelligence Guidance for judicial Office holders, available at https://www.judiciary.uk/wp-content/uploads/2023/12/AI-Judicial-Guidance.pdf; The Law Society of New South Wales, Court Protocols on AI, available at https://www.lawsociety.com.au/AI-hub/court-protocols-ai; Supreme Court of Victoria, Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation, available at https://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation; Courts of New Zealand, Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals, available at https://www.courtsofnz.govt.nz/assets/6-Going-to-Court/practice-directions/practice-guidelines/all-benches/20231207-GenAI-Guidelines-Judicial.pdf; Canadian BAR Association, Guidelines Relating to [AI] Use, available at https://www.cba.org/resources/practice-tools/ethics-of-artificial-intelligence-for-the-legal-practitioner/3-guidelines-relating-to-use/. See as well Unesco, Draft Unesco Guidelines for the Use of AI Systsems in Courts and Tribunals, available at https://unesdoc.unesco.org/ark:/48223/pf0000390781.

[35] See https://rm.coe.int/cepej-2021-13-en-revised-saturn-guidelines-4th-revision/1680a4cf81.

the decision. Only questions relevant to the decision of the case should be taken into account."

To be more precise, we should also bear in mind that one of the reasons why reasoning of cases tend to be longer and longer (and of course more time consuming) is that judges who desire to climb the steps of a system unfortunately still conceived in a "hierarchical" way (whereas no hierarchy at all should exist among judges!), tend to think that elaborated reasoning of cases will help them to be better assessed when applying for a "higher" post. For this reason, the High Council for the Judiciary should adopt regulations on the need to consider as a preference criterion in the assessment of judges the ability of the candidate judge to "superior" or managerial functions, to issue exhaustive but concise explanations of the *rationes decidendi* of their judgements. Same should be true for the assessments of candidates to posts of judges and newly appointed judges in the selection process.

13. Improving the Management of Court-Appointed Experts (or Translators, Interpreters)

Another relevant possible recommendation, that does not require any statutory reforms, focuses on a remarkable point of the fight against court backlogs. This time, the focus is cast on the improvement of the managing of court-appointed experts. The document suggests correctly to introduce centralized/regional/court registers, to provide a better overview of the availability of court-appointed experts. This could also ensure a better division of tasks between available experts, thus avoiding delays. The signing of protocols with experts (e.g. scientific institutes) may help to prevent delays in the preparation of expert opinions.

Actually, one the most relevant aspects of the managing of court-appointed experts resides in the criteria judges should follow in order to get the best results from the use of court experts. The first rule in this field is to avoid legal or regulatory rules imposing (as it was and still is unfortunately intended by some dull ministry of justice officers in Italy) a sort of "automatic rotation" of all registered experts. Experience shows that very few are those experts who possess all the qualities which may help a judge to reduce his/her backlog. It is therefore up to the judges to "discover" what (few) legal experts in the different fields (medicine, mechanics, chemical, real estate, etc.) show those qualities that might really provide good solutions of court claims.

In fact, the first requirement to be looked for, is for the expert to be independent-minded, as well as to be able and strong enough to "resist" the

attempts that many lawyers do in order to "convince" them to draw their reports in a given way, rather than in another. So, it may happen (and it did happen, unfortunately, too many times) that unscrupulous lawyers try to influence the court-appointed experts, threatening them in many ways, like, for instance, with the perspective of suing them in court for alleged "mistakes" in their expertise, and so on.

The second quality is the ability of the expert to convince the parties to friendly settle the case. Just to provide for an example, the great majority of civil cases in Italy are based on conflicts of medium or small value, that with a little bit of good will and intelligence could be easily avoided, sparing to the parties the disproportionately enormous amounts of the lawyers' fees. Once again, the experts have to show their ability to convince the parties of the advantages for them to find an agreement, even though their lawyers "work against", simply because they are seeking their own interest and not the interest of their clients.

The third quality of the expert is to be strictly compliant with the timeframes assigned by the judge. As prescribed by the SATURN Guidelines on Judicial Time Management,[36] experts "should also submit their opinions by the date laid down in the decision of the judge". The same principles prescribe that, "18. If an expert encounters particular difficulties in completing an assignment, they should immediately notify the judge and request an extension, so that the decision granting the extension can be given before the initial deadline has expired. 19. In addition, if the initial deadline expires without an extension having been granted, the expert should immediately answer the first request for an explanation made by the judge. 20. When experts fail to complete an assignment within the agreed time, their remuneration may be reduced, or they may be replaced. 21. Where lists are available, if experts cause delays in several procedures, their place on the list of available experts may not be renewed, or they may be withdrawn or deleted from that list. 22. While late delivery of an opinion is not a ground of nullity and does not render the opinion null and void, the expert's professional civil liability may be incurred in respect of any damage caused by the delay".

All the above rules show that the judge has a particular duty to check that the experts fully comply with the deadline for the completion of their reports.

[36] See "Part IV: guidelines for Court-appointed experts."

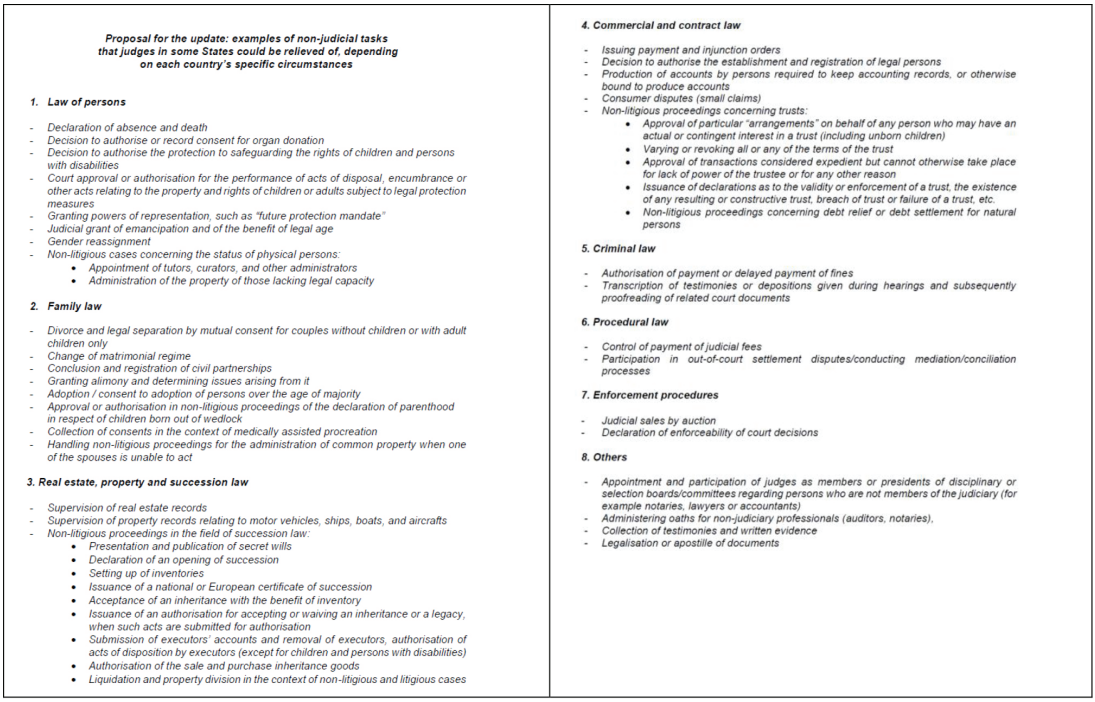
14. Statutory Measures Affecting the Organisation of the Judiciary and of Courts. Relieving Judges of Certain (non-Judicial) Tasks

Passing now to examine some possible statutory and legal reforms, we notice that the CEPEJ's Backlog Reduction Tool correctly points out that authorities are encouraged to consider the possibility of transferring certain tasks from judges to non-judicial court staff or other institutions (e.g. notaries, mediators, etc.). In this process a balance has to be struck, taking into account the importance of the separation of powers in a democratic society. In this framework, we have to point out that Recommendation (86)12 of the Committee of Ministers of the Council of Europe to member States "On measures to prevent and reduce excessive workload in courts and its appendix" may provide some guidance in this respect.

We must add, at this point, that, unfortunately, Recommendation (86)12 of the Committee of Ministers of the Council of Europe's Committee of Ministers to member states "On measures to prevent and reduce excessive workload in courts" and its appendix date back to a very distant time (1986) and do not reflect any more a situation which has radically changed in these last decades.

This is why CEPEJ, on the basis of a thorough work done by the CEPEJ-GT-SATURN Working Group, has approved, in June 2023, at its 40th Plenary meeting, an "Opinion on possible update" [(CEPEJ(2023)7] of said Recommendation and decided to submit it to the European Committee on Legal Co-operation (CDCJ), in accordance with Article 2.1.e. of Appendix 1 to Resolution Res(2002)12 establishing the European Commission for the Efficiency of Justice (CEPEJ). Although this activity of updating has not been finished yet by the CDCJ, the CEPEJ opinion can be considered *per se* as final and contains an extended number of non-contentious matters, in which judges could be easily replaced by other law professionals and practitioners (notaries, lawyers, clerks, etc.).

Just to give an idea of the extent of this exercise, the document contains following 8 chapters: 1. Law of persons, 2. Family law, 3. Real estate, property and succession law, 4. Commercial and contract law, 5. Criminal law, 6. Procedural law, 7. Enforcement procedures, 8. Others. In order to facilitate the understanding of the width of the field which could be covered by this "de-jurisdictionalisation" process, we may copy here below the table annexed to the draft recommendation as an enclosure.



Proposal for the update: examples of non-judicial tasks that judges in some States could be relieved of, depending on each country's specific circumstances

1. Law of persons

- *Declaration of absence and death*
- *Decision to authorise or record consent for organ donation*
- *Decision to authorise the protection to safeguarding the rights of children and persons with disabilities*
- *Court approval or authorisation for the performance of acts of disposal, encumbrance or other acts relating to the property and rights of children or adults subject to legal protection measures*
- *Granting powers of representation, such as "future protection mandate"*
- *Judicial grant of emancipation and of the benefit of legal age*
- *Gender reassignment*
- *Non-litigious cases concerning the status of physical persons:*
  - *Appointment of tutors, curators, and other administrators*
  - *Administration of the property of those lacking legal capacity*

2. Family law

- *Divorce and legal separation by mutual consent for couples without children or with adult children only*
- *Change of matrimonial regime*
- *Conclusion and registration of civil partnerships*
- *Granting alimony and determining issues arising from it*
- *Adoption / consent to adoption of persons over the age of majority*
- *Approval or authorisation in non-litigious proceedings of the declaration of parenthood in respect of children born out of wedlock*
- *Collection of consents in the context of medically assisted procreation*
- *Handling non-litigious proceedings for the administration of common property when one of the spouses is unable to act*

3. Real estate, property and succession law

- *Supervision of real estate records*
- *Supervision of property records relating to motor vehicles, ships, boats, and aircrafts*
- *Non-litigious proceedings in the field of succession law:*
  - *Presentation and publication of secret wills*
  - *Declaration of an opening of succession*
  - *Setting up of inventories*
  - *Issuance of a national or European certificate of succession*
  - *Acceptance of an inheritance with the benefit of inventory*
  - *Issuance of an authorisation for accepting or waiving an inheritance or a legacy, when such acts are submitted for authorisation*
  - *Submission of executors' accounts and removal of executors, authorisation of acts of disposition by executors (except for children and persons with disabilities)*
  - *Authorisation of the sale and purchase inheritance goods*
  - *Liquidation and property division in the context of non-litigious and litigious cases*

4. Commercial and contract law

- *Issuing payment and injunction orders*
- *Decision to authorise the establishment and registration of legal persons*
- *Production of accounts by persons required to keep accounting records, or otherwise bound to produce accounts*
- *Consumer disputes (small claims)*
- *Non-litigious proceedings concerning trusts:*
  - *Approval of particular "arrangements" on behalf of any person who may have an actual or contingent interest in a trust (including unborn children)*
  - *Varying or revoking all or any of the terms of the trust*
  - *Approval of transactions considered expedient but cannot otherwise take place for lack of power of the trustee or for any other reason*
  - *Issuance of declarations as to the validity or enforcement of a trust, the existence of any resulting or constructive trust, breach of trust or failure of a trust, etc.*
  - *Non-litigious proceedings concerning debt relief or debt settlement for natural persons*

5. Criminal law

- *Authorisation of payment or delayed payment of fines*
- *Transcription of testimonies or depositions given during hearings and subsequently proofreading of related court documents*

6. Procedural law

- *Control of payment of judicial fees*
- *Participation in out-of-court settlement disputes/conducting mediation/conciliation processes*

7. Enforcement procedures

- *Judicial sales by auction*
- *Declaration of enforceability of court decisions*

8. Others

- *Appointment and participation of judges as members or presidents of disciplinary or selection boards/committees regarding persons who are not members of the judiciary (for example notaries, lawyers or accountants)*
- *Administering oaths for non-judiciary professionals (auditors, notaries),*
- *Collection of testimonies and written evidence*
- *Legalisation or apostille of documents*

15. Other Possible Statutory Measures: Rationalisation of Court Network, ADR, Transferring the Competence to Hear Certain Categories of Cases from Panels of Judges to a Single Judge; Temporary Reorganization of Courts

Another possible (legislative) measure that might be needed is the rationalisation of the court network: carrying out court mapping and, if necessary, redefine judicial maps, to ensure that the optimum level of efficiency and quality is achieved. The process should take into account the creation of backlog in courts. The objective is to maximise the service level of justice while optimising operational costs and investments.

It might be of help also introducing and/or promoting appropriate use of ADR, such as arbitration, court-annexed mediation, or conciliation: i) arbitration is a procedure by which the parties select an impartial third person known as arbitrator to determine a dispute between them, whose decision is binding; ii) mediation is a structured and confidential process in which an impartial third person, known as a mediator, assists the parties by facilitating

communication between them for the purpose of resolving issues in dispute. Mediation may be mandatory, either as a pre-requisite to the institution of proceedings, or as requirement of the court during proceedings; and iii) conciliation is a confidential process by which an impartial third person, known as a conciliator, makes a non-binding proposal to the parties for the settlement of a dispute between them.

Another possible legislative reform aiming to reduce the excessive burden on judges and give them more time to deal with the cases assigned to them, could consist in transferring the competence to hear certain categories of cases from panels of judges to a single judge. Panels of judges should remain competent for the most complex, voluminous or sensitive cases, as collegiality is a factor that can enhance the quality of decisions.

This very same measure was adopted by the Italian legislator many years ago with the Legislative Decree of 19th February, 1998, No. 51, with positive results under the viewpoint of reduction of backlogs. However, having mentioned the pros, we cannot underestimate also the cons of such a reform. In particular, we must underline consequences like the loss of uniformity in the case law of a given court, the loss of a precious moment of self-training of younger judges, represented by the discussions in chamber with the older members of the panels. Such setbacks can be partially repaired by regular meetings among judges of the same court and/or section, what however brings about the inevitable need to devote a certain part of the judges' (already very busy) working time to such initiatives.

Finally, we cannot avoid mentioning another negative situation that took place in Italy as a consequence of the introduction of the single judge in all the courts of first instance. We must refer here to the deterioration of relations between judges and lawyers. Actually, once this reform was introduced, lawyers immediately understood that now they had to deal with just one (and no longer three) judges for the decision of their petitions. It happened therefore that the most "enterprising" and "pushing" of them (not all of them, of course, but a certain, non-negligible, percentage of them) started to try to exert forms of (direct or indirect) pressures on judges, on how they should conduct trials and decide cases, also by trying to contact Presidents of courts and sections, just to make judges understand how they should "behave" in given cases.

It goes without saying that, before that legal act, such "initiatives" were deterred by the very fact that cases had to be decided by a panel of judges and exerting pressure on a panel is technically much more difficult than doing it with a single judge. Of course, this problem touches aspects and delicate questions that cannot be dealt with in this expertise: let us think e.g. to the issue of the "careerism" of Presidents of Sections and Courts who, for quiet living and desire not to have problems with the local bars—what might somehow hinder

their *cursus honorum*—prefer tolerate such preposterous behaviours. However, despite such risks, we must consider the above mentioned proposed reform as surely "positive", at least under the viewpoint of reduction of judicial backlogs, up to the point that it could be nowadays defined as "unavoidable".

Another suggestion of the CEPEJ's Backlog Reduction Tool concerns the possible need of temporary reorganization of courts. According to this idea, if the court determines that there is a large backlog of cases, which may jeopardize the timely consideration of new cases, the court may temporarily set up (or require) backlog processing sections. Such divisions should be limited in time until the backlog is cleared. The laws of some States allow such sections to include retired judges in exceptional circumstances.

In this framework it could be of use to refer to the Italian experience of the so called "sezioni stralcio" (or sections for the liquidation of the backlog). In fact, in accordance with the Italian Act No. 276 of 22 July 1997, provisional sections (*sezioni stralcio*), specially responsible for dealing with cases pending before the civil courts on 30 April 1995, became operational in November 1998. These sections were composed of one career judge and at least two aggregated honorary judges, coming from the ranks of (in service or retired) lawyers, notaries, university law professors and researchers.

This initiative was successful and was also praised, for instance, by the Committee of Ministers of the Council of Europe in its Interim Resolution DH (99) 437 (adopted by the Committee of Ministers on 15 July 1999, at the 677th meeting of the Ministers' Deputies), as well as by the Interim Resolution ResDH(2005)114, concerning the judgments of the European Court of Human Rights and decisions by the Committee of Ministers in 2183 cases against Italy relating to the excessive length of judicial proceedings.[37]

16. The Third (and Final) Step of the Monitoring Reduction Strategy: Monitoring the implementation process

The third step (the first two being, as pointed out above, the analysis of the existing situation and the adoption of concrete measures) suggested by

[37] On the positive experience of the "Sezioni stralcio" see e.g. G. Ferrante, Non è mai troppo tardi. Spunti di riflessione per la riforma della giustizia civile, p. 10 ff., available at https://www.hennaion.it/wp-content/uploads/2019/11/Ferrante-Giuseppe-Spunti-e-riflessioni.pdf; F. Di Majo, Tre anni di esperienza delle sezioni stralcio, 'La Pazienza' 2001, 73 (Dec.), p. 48 ff.; see also the Relazione to the Italian parliamentary bill No. 2840/XIV, available at https://leg14.camera.it/_dati/leg14/lavori/stampati/sk3000/relazion/2840.htm. A moderately positive assessment of the work of the Sezioni Stralcio was given also by the General Prosecutor before the Supreme Court of Cassation in his inaugural speech for the year 2004 (see F. Favara, Relazione sull'amministrazione della giustizia nell'anno 2004, p. 14, available at https://www.cortedicassazione.it/resources/cms/documents/2005_relazioneAG.doc).

the CEPEJ's Backlog Reduction Tool as an essential element in the strategy to address the backlog problem, is the implementation of the strategy. This step includes establishing a regular monitoring mechanism to track the fulfilment of the targets and the implementation of the defined measures. This monitoring should fall within the remit of the institution leading the backlog reduction process. Here again, statistical data and indicators are indispensable for monitoring, as they provide insights into the progress achieved and serve as the basis for necessary adjustments in the strategy.

Monitoring is the process of tracking progress towards achievement of targets and implementation of measures over a period of time. It includes identification of shortcomings and challenges, lessons learned, and collection of good practices identified during the implementation phase. Monitoring helps to identify adjustments needed to achieve desired results.

In order to set up effective monitoring mechanisms, the following questions should be considered:

i) WHO is responsible for monitoring the strategy's implementation?
A lead institution should be appointed to be responsible for monitoring the implementation of the overall strategy. Usually, the designated lead institution responsible for backlog reduction activities will also oversee monitoring.[38] Communication should focus on the actual results stemming from backlog reduction activities, presentation of implemented measures, and potential benefits for court users. Communication is particularly important in gaining support for the strategy's implementation.[39]

ii) WHAT data, indicators, targets and measures should be monitored?
It is here relevant to identify statistical data and indicators which should be monitored to determine if targets have been reached. Creating statistical reports and following data and indicators can give an initial picture of the progress achieved. Once again, the use of dashboards could be very effective.[40] Reports on court/s performance could and should be drafted, along the example set by table 16 of the CEPEJ's Backlog Reduction Tool.

iii) WHEN should monitoring be performed?
Creating statistical reports and comparing values of the data and indicators in regular periods is an efficient way of tracking results of backlog reduction efforts. Although the targets will usually be set as annual, the strategy can define shorter monitoring periods (e.g. six-months).

[38] See the above, under § 3.

[39] For more details on how to effectively organise communication with the public and the media, you may refer to the CEPEJ Guide on communication with the media and the public for courts and prosecution authorities (available at: https://rm.coe.int/cepej-2018-15-en-communication-manual-with-media/16809025fe).

[40] See above, under § 7.

COURT PERFORMANCE REPORT – PER CASE TYPE or AT THE JUDGE LEVEL

Table 16: Comprehensive report on court performance

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Case type	Number of judges by case type	Number of pending cases at the beginning of the reporting period	Number of pending backlog cases at the beginning of the reporting period	Percentage of pending backlog cases in the number of pending cases at the beginning of the reporting period	Number of incoming cases during the reporting period	Number of received backlog cases during the reporting period	Percentage of received backlog cases in the number of incoming cases	Average number of incoming cases per judge	Caseload in the reporting period	Number of backlog cases in the caseload	Average caseload per judge in the reporting period	Average number of backlog cases per judge in the reporting period	Percentage of backlog cases in the caseload	Number of resolved cases during the reporting period	Number of resolved backlog cases during the reporting period	Percentage of resolved backlog cases in the number of resolved cases	Average number of resolved cases per judge	Average number of resolved backlog cases per judge	Clearance rate	Number of pending cases at the end of the reporting period	Number of pending backlog cases at the end of the reporting period	Percentage of pending backlog cases in the number of pending cases at the end of the reporting period	Percentage of increase/decrease of pending backlog cases at the end of the reporting period compared to the beginning of the reporting period
1																							
2																							
3																							

Regular monitoring will give the institution in charge an opportunity to timely identify whether the implementation has progressed towards fulfilment of targets or not.

iv) HOW should the strategy be monitored?

At the end of each stage of monitoring of the strategy's implementation, the responsible institution(s) should determine if its implementation is satisfactory or not. If the statistical data and indicators show expected progress towards fulfilment of the targets, it will be a signal that its implementation is proceeding according to plan, requiring no further intervention in most cases. However, in some instances, the responsible institution(s) may consider adjusting the targets to a higher level if they appear to be too low. In the event of insufficient progress in the strategy's implementation, indicating setbacks and unmet targets, the responsible institution(s) should examine if any adjustments are needed. It could also be useful to draft a checklist for monitoring implementation measures, alongside the one proposed by the Table 17 of the CEPEJ's Backlog Reduction Tool.

Table 17 - Checklist for monitoring implementation of measures

The following table gives an example of a checklist that might be used for monitoring implementation of measures

MEASURE (1)	STAGES OF IMPLEMENTATION OF MEASURES (2)	DEADLINE (3)	INSTITUTION RESPONSIBLE FOR IMPLEMENTATION (4)	ACCOMPLISHED (5)
Measure 1 – Transfer of cases to less burdened courts	Adopting plan of transfers based on statistical analysis	31.03.2024	Supreme Court	
	Communicating the plan to the parties and public	30.06.2024	Supreme Court	
	Transferring cases and commencement of trials	31.12.2024	Individual courts	
Measure 2 -				

Abstrakt

Artykuł przedstawia strategie opracowane w ostatnich latach przez Europejską Komisję ds. Efektywności Wymiaru Sprawiedliwości (CEPEJ) w celu zwalczania zaległości (zatorów) wynikłych z nagromadzonych spraw w krajach należących do Rady Europy. W szczególności CEPEJ opracowała niedawno „narzędzie redukcji zaległości", którego celem jest pokazanie, w jaki sposób podmioty działające w dziedzinie wymiaru sprawiedliwości powinny rozwiązywać problemy związane z opóźnieniami w rozpatrywaniu i rozstrzyganiu spraw przed sądami. W ramach tych działań utworzono również specjalne centrum zasobów poświęcone praktykom zmniejszania zaległości (zatorów). W artykule pokazano również, jak można wykorzystać pulpity nawigacyjne do oceny bieżącej sytuacji i uzyskania zgodności z określonymi celami związanymi z dwoma głównymi wskaźnikami efektywności: *wskaźnikiem* rozpatrywania spraw oraz *czasem* rozpatrywania spraw. Przedstawiono ponadto wyczerpującą listę możliwych środków wraz z omówieniem ich zalet i wad – takich, jak: wydanie „dekalogu" zasad postępowania, wykorzystanie elektronicznego składania dokumentów i sztucznej inteligencji w organizacji pracy sędziów, zwolnienie sędziów z niektórych (nieorzeczniczych) zadań, racjonalizacja sieci sądów, alternatywne metody rozwiązywania sporów, przeniesienie kompetencji do rozpatrywania niektórych kategorii spraw z zespołów sędziowskich na pojedynczego sędziego, tymczasowa reorganizacja sądów itp.

Słowa kluczowe: efektywność wymiaru sprawiedliwości, CEPEJ, zaległości, tablice wyników, wskaźnik rozpatrywania spraw, czas rozpatrywania spraw, elektroniczne składanie dokumentów, sztuczna inteligencja (AI).

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