

**International Association of Judges; Annual Meeting in Montevideo, Uruguay
1st Study Commission; November 21st to November 24th 2005**

**“Economics, Jurisdiction and Independence”
(«Gestion des juridictions et indépendance»)
Questionnaire**

Country: LITHUANIA

1. "New Public Management" in the Judiciary

1.1 Introduction

New public management (NPM), management techniques and practices drawn mainly from the private sector, are increasingly seen as a global phenomenon. NPM reforms shift the emphasis from traditional public administration to public management.

NPM reforms have been driven by a combination of economic, social, political and technological factors. A common feature of countries going down the NPM route has allegedly been the experience of economic and fiscal crises, which triggered the quest for efficiency and for ways to cut the cost of delivering public services. However, it may well be argued that "fiscal and economic crises" are just used as excuses to push forward political intentions!

NPM refers to two concepts. The most relevant may be the new institutional economics. "The new institutional economics refers to introducing incentive structures (such as market competition) into public service provision. It stresses aggregating bureaucracies; greater competition through contracting-out and quasi-markets; and consumer choice." (Rhodes, 1996.¹)

The NPM style of government involves distinguishing between policy decisions and service delivery. Service delivery, proponents of NPM argue, is best left to "entrepreneurial" governments based on principles like competition between service providers, outcome based performance standards, decentralized authority, market mechanisms and other qualities not traditionally found in government bureaucracy. Rhodes notes that "NPM and entrepreneurial government share a concern with competition, markets, customers and outcomes." (1996)

Key elements of NPM may include

- various forms of decentralizing management within public services (e.g., the creation of autonomous agencies and devolution of budgets and financial control),
- increasing use of markets and (internal) competition in the provision of public services (e.g., contracting out and other market-type mechanisms such as benchmarking),
- increasing emphasis on the quantity of outputs, performance and customer orientation.

1.2 Questions

1.2.1 There are Ideas of NPM which are or are planned to be applied in several countries in the judiciary. They may infringe on the independence of the judiciary and the judge. **Please give a short survey** of certain tendencies or features which may derive from NPM in your jurisdiction.

¹ Rhodes, R. A. W. 1996. "The New Governance: Governing without Government." Political studies XLIV: 652-667.

1.2.2. Please report on the following typical features of NPM. Are they applied in your judiciary? If yes, in what way are they applied? Do you think that they infringe on the independence of the judiciary?

Starting to speak about the listed typical features of NPM and their applicability in the judiciary of Lithuania it should be noted that since the restoration of independence the Constitutional Court of Lithuania has evaluated the concept, scope and content of the constitutional principle of judicial independence in a number of rulings. The new Law on Courts of the Republic of Lithuania² was drafted in accordance with those rulings. Devolution of budgets of the judiciary has already been declared unconstitutional by the Constitutional Court, and therefore is prohibited by the Law on Courts.

Internal competition, benchmarking, emphasis on performance, quantity of outputs or flexible distribution of workload in the judiciary are not common for Lithuanian legal system. Incentives for judges are prohibited by laws.

However, there are some recent initiatives related to customer orientation and quality control of the judiciary. Regulations on periodical evaluation of activities of judges were approved by Judicial Council on 7 May 2004. Those regulations envisage for the periodical evaluation of judicial activities (every 10 years), irrespective of seeking for promotion, as well as for the extraordinary evaluation under the certain prescribed circumstances. The evaluation is carried out by the evaluation commission, consisting of judges of higher instance court (or judges of court where a judge works in case if activities of judges of last instance courts are evaluated). As the system is new it is difficult to assess its real influence on independence of judges. Positive feature of the system is that activities of judges are evaluated inside the judiciary.

Judges of districts courts in Lithuania are firstly appointed for 5 years in order to evaluate their ability to perform judicial functions. Only after this period judge may be reappointed for lifetime. This system is sometimes criticized as violating judicial independence.

Initiatives related to customer orientation mostly focus on publicity of judicial activities and accessibility of judicial protection and do not *per se* infringe on the independence of the judiciary.

2. Costs of the judiciary

2.1 How many professional judges are there in the judiciary of your country? (absolute figure and per 100'000 inhabitants)

There are 751 positions of professional judges (presently there are 727 judges actually serving at the courts), not taking into account the number of justices of the Constitutional Court.

Ratio of 22 judges per 100 000 inhabitants (21 judge per 100 000 inhabitants if taking into account only judges actually serving at the courts)

2.2 How much is the share of the judiciary of the overall annual budget of the state? Indicate the percentage out of the total state budget)?

During the last years, the share of the judiciary of the overall annual budget of the state was:

In 2003 - 1,09 per cent

In 2004 – 0,95 per cent

In 2005 – 0,9 per cent

2.3 Is there any fixed percentage in the overall budget of the state?

No.

² Came into force on the 1st of May 2002

2.4 What is the recent development (1995-2005) of finances allocated to the judiciary? Give a short survey

After the restoration of independence of the Republic of Lithuania, the management of a legal system reform was handed over to the Ministry of Justice, while the latter's sphere of authority and range of functions have been significantly expanded. The Ministry of Justice was responsible for drawing up the conditions for the functioning of legal institutions (including courts), and for supervising and coordinating their activities. The Ministry of Justice also had been vested with competence to draft and submit budget of the judiciary.

The Ruling of the Constitutional Court adopted on 21 December 1999, declaring the number of provisions of the then Law on Courts unconstitutional as creating direct and indirect opportunities for the Minister of Justice to interfere with the activities of courts and therein contradicting the constitutional principles of independence of the judiciary, subordination and separation of powers, gave the impetus to review and revise existing legal regulation. Revisionism resulted into drafting a new wording of Law on Courts.

The Constitutional Court has ruled that principle of independence of courts embraced *inter alia* financial independence of courts from the executive. The principle was reflected by introducing a provision that in order to create appropriate conditions to administer justice financial allocations for each court should be embodied in state budget. The funds had to be assigned to each court directly as opposed to the existed order of assigning of financial assignments through the Ministry of Justice.

According to the new Law on Courts of the Republic of Lithuania, budgets are drawn up by the courts themselves. District, regional and regional administrative courts submit their proposals in respect of their budget drafts to the Judicial Council (highest self-government institution of the judiciary) for consideration. The Judicial Council, following its approval of the proposals in respect of the submitted draft budgets, puts them before the Government. The Supreme Court, the Court of Appeals and the Supreme Administrative Court after preparing their budget drafts, put them before the Government directly. The Government prepares the draft budget of the State and submits it to the Seimas for the approval.

Since the year 2001, taking into account the Ruling of the Constitutional Court of Lithuania, every single court has the separate budget line.

Article 11 of the Law on Courts prohibits worsening the financial, material and technical conditions for the functioning of courts provided by law. The material and financial conditions for the functioning of courts may be reviewed only by Seimas (parliament) if the economic and financial situation of the country deteriorates considerably. Material and technical facilities of courts must be in line with the advances of science and technology, taking account of the economic potential of the State.

During the period 1995-2005 the amount of allocations to the judiciary has grown, although the percentage of state budget remained almost the same or even declined (from 68415 thousand Litas (or 1,6 per cent of the budget) in 1995 to 152111 thousand Litas (or 0,97 per cent of the budget) in 2005). The efficient functioning of courts (especially those of lower instances) in Lithuania is still hampered by the lack of necessary technical equipment (computers, typewriters, copying machines) and human resources, caused by the insufficient funding. Some of the courthouses remain in very poor condition, judges work in too small rooms, there is not enough courtrooms for hearing of cases.

During the last years funding of courts was raised in order to introduce the positions of assistants of judges in lower courts.

2.5. Can you report on any cost-cutting measures in the last 10 years (1995-2005)? If yes, give a short description of them (please consider especially changes of court procedures, remedies etc.)

In 1999 there were attempts to reduce the salaries of judges. The decreases of remuneration were challenged in courts by about one-third of all judges as contravening the constitutional principle of judicial independence. In 2001 the Constitutional Court of Lithuania has declared such attempts unconstitutional.

At the beginning of the year 2003 there were discussions about abolishing the system of administrative courts (created in 1999), where one of the main arguments was cost-cutting. Special working group under the aegis of Legal Affairs Committee of the Seimas has rejected the proposal to re-establish a unified system of courts, stating that changing the system of administrative courts would create

unnecessary instability in the judicial system and would not promote faster resolution of disputes. The working group has also concluded that overall benefits of administrative courts system outweigh any need for major changes to its structure.

No other cost-cutting measures were taken or attempted.

2.6. Is there any influence of these cost-cutting measures on judicial independence and jurisdiction? If yes give a short description.

Already in its Ruling of 6 December 1995 the Constitutional Court of Lithuania has stated that “any attempts to reduce salary of judges or other social guarantees or restrictions of funding of courts should be treated as infringement of independence of judges and courts”. The same principle was repeated in the Ruling of the Constitutional Court of 21 December 1999. By its Ruling of 12 July 2001 The Constitutional Court of Lithuania has declared the norms of Law on Remuneration for Work of State Politicians, Judges and State Officials to the extent that it reduces remuneration of judges unconstitutional. The Constitutional Court has noted *inter alia*:

“The protection of judges' salaries is one of the guarantees of independence of judges. Item 6.1 of the European Charter on the Statute for Judges provides that judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions and more generally their behavior within their jurisdiction, thereby impairing their independence and impartiality.”

3. Privatisation of the judiciary

3.1. Are the tendencies to shift competences from the state courts to private arbitration, mediation and "private courts" ("rent a judge")? What are your experiences?

No. Such practice is uncommon in Lithuania

4. Diversa

4.1 Is remuneration for judges dependant at all on their performance (quantity or quality of output)?

No.

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<p>Please send the answers to this questionnaire by E-Mail to the presidency of the First Study Commission and to the Secretariat of the IAJ not later than by 31-07-2005</p>
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