Explanation for Understanding of the Quality Management of the Courts

I. Introduction

In order to perform the tasks received from the Council for Administration of Courts, on 18 June 2012 the Minister of Justice formed the working group for quality management of the courts of first and second instance, which includes chairmen and experienced judges of the county courts, administrative courts and circuit courts, representatives of the National Audit Office and Supreme Court, and officials of the Ministry of Justice who deal with administration of the courts. The head of the working group is the chairman of the Tartu Circuit Court Kersti Kerstna-Vaks, and the goal of the working group is to agree on the quality management principles for the courts of first and second instance.

Quality management ensures that administration of justice is not only just and fair, but that it looks as just and fair for all participants in the procedure, i.e. observation of the quality management principles ensures administration of justice in the courts according to the established order. Completion of the goal of quality management of the courts, which is to ensure a court decision made within reasonable time and with best quality, at the same time ensuring dignity of the court officials and satisfaction of participants in the procedure, ensures administration of justice in the courts according to the established order.

The created quality management system consists of three parts – good practice of court management (approved at the session of the Council for Administration of Courts of 14 December 2012), good practice of court administration (approved at the session of the Council for Administration of Courts of 13 December 2013) and good practice of court procedure (approved by the XIV ordinary court *en banc* on 13 March 2015). During court *en blanc* sessions that took place in the previous years the head of the quality management working group explained to the body of the judges also the principles of good practice of court management and good principle of court administration.

All given parts are applied independently, however, good practice of court management focuses on best practices of management of courts, observation of which helps to ensure administration of justice in the courts according to the established order. Good practice of court administration is drawn-up based on the principles that ensures inclusion of points of contract of participants in the court administration, as well as the most important activities aimed at development and management of the court system. Based on the Courts Act the following persons are considered as participants in the court administration: the Ministry of Justice as the main administrator and developer of the courts of first and second instance, the Council for Administration of Courts as a consultant and director, and court directors as performers of everyday administration tasks in the courts.

The need to develop good practice of court procedure became apparent first and foremost from the results of the study of satisfaction of participants in the procedure organised by the Supreme Court in 2013, as well as from practice of the European Court of Human Rights in the recent years. Another goal was to try to generally reflect best court practices of Estonian judges.

II. Comparison of the Quality Systems of the Courts of the European States

Before development of specific principles, the working group studied quality management systems of courts of other European states[1], in particular, the quality criteria of the civil courts in Finland and the quality system of the Netherlands. In short, it can be concluded that the general quality management standard of the European court systems (for example, Finland, the Netherlands, Sweden, England and Wales, and France) stands for timely administration of justice and satisfaction of participants in the procedure. In different states the quality management principles are established differently, however,

[1]https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1716655&SecMode=1&DocId=1666264&Usage=2. Quality Management in Courts and Legal Establishments of Eight States of the Council of Europe, CEPEJ (2010)

best efforts are always aimed at improvement of work and increase of effectiveness of the courts. In all analysed states support of chairmen of the courts contributed to development of quality management.

The quality project was launched in Finland in one court already in 1996, but by now the number of the courts participating in the quality project has significantly increased. The substance of the quality projects includes discussions of working groups of respective fields (for example, court procedure, court decision, communication with participants in the procedure and with public, competence of judges, and starting from 2003 also quality of administration of justice), and a conference on quality that takes part once a year. Implementation of the quality standards is voluntary, however, the courts which agreed to that consciously must observe such standards.

In Sweden, there is no common quality management practice – only dialogues take place, the goal of which is not to establish standards, but to improve effectiveness of work of the courts in a practical manner. Another example includes a handbook prepared by the judges, which deals with the following topics: just decisions and motivated reasoning, understandable court decisions and court summons, treatment of people who communicate with the court with dignity, pleasant working environment and atmosphere. The courts establish goals for themselves, and feedback information that they receive is also intended only for the given court itself.

The quality management system of the Netherlands consists of the following: a) normative part (quality regulations and assessment of effectiveness of each court in five areas – impartiality and fairness, professionalism, treatment of participants in the procedure, consistency of court decisions and common practice, speed of the procedure); b) measurement function (studies of satisfaction of participants in the procedure, judges and officials, as well as regular audits (the persons giving assessments are legal scholars, prosecutors and advocates)); c) appeal procedure (in addition to the procedural right of appeal of participants in the procedure the participant in the procedure has the right to appeal against acts of the court, and the results of adjudication of such appeals reach councils of the courts), and d) assessment of colleagues (the judges visit court hearings of other judges and give recommendations regarding better management of the procedure). Therefore, on the one hand quality management is a tool for courts which helps to receive feedback regarding their work, but on the other hand it is a part of responsibility of the courts towards the council of courts and the ministry. The courts must send information regarding their capacity to the council of courts.

The quality standards created in England and Wales are based on the so-called quality standards of services provided to customers (information and access, issue of documents, timely manner and quality of the service), and ISO 9000 and EFQM standards are taken as the basis. Feedback is gathered for central management, so that the national court administration has information on what is happening in the courts. Naturally, the national state administration does not interfere in court procedures substantially.

III. Explanations of the Principles of Good Practice of Court Management

Chairmen of the county, administrative and circuit courts have agreed to a common position that administration of justice according to the established order is ensured provided that a court decision of the best quality made within a reasonable time is ensured, including treatment of the court servants with dignity and satisfaction of participants in the procedure. Respectively, good practice of court management includes principles which must help to achieve the given goal. Good practice of court management is divided into following three bigger topics: organisation of administration of justice, management of court resources and communication management.

During organisation of administration of justice equal and uniform workload of judges is considered to be especially important. Eventually uniform workload must also ensure reasonable time of procedure and high quality of decisions. Observation of the principles of a reasonable time of procedure in turn means that generally court cases of the same type should be adjudicated with more or less the same speed, so that a participant in the procedure can estimate how much time the court procedure regarding his or her case may take. Administration of justice according to the established order is not possible only through observation of the principle of a reasonable time of procedure – quality of adjudication of court cases is also very important. Good practice of court management also includes considerations on how to ensure high quality of adjudication of court cases.

During management of court resources main attention is addressed to the fields of personnel, finances, economy and information technology. The field of personnel includes as recruiting and training, so motivation of personnel. Distinction is made between recruitment of judges performing chairman's assignments and other court servants. Since competition and election of judges is dealt with by the Supreme Court and the judge's examination committee, the chairman of the court cannot participate in election of a judge. However, the chairman of the court can carry out information work within his or her territorial jurisdiction with regards to availability of the position of the judge and call people to participate in competitions for the position of the judge.

Communication management is based on the communication strategy of the court. Every court named the head of communication of the court and a spokesman judge for the purpose of communication with the media, and in most courts the role of the spokesman judge is performed by the chairman. Among other it was considered necessary to mention in the good practice that participants in the procedure are provided with relevant information while maintaining impartiality. The given principle needed to be emphasised so that the information received in the course of the court procedure from the court does not leave the participant in the procedure with an impression that the decision regarding the matter will be in his or her favour or not. Information provided by the court cannot be of a nature that leaves the participant in the procedure with an opinion regarding the final decision regarding the matter already during the court procedure.

Since court management is divided between the chairman of the court and the director of the court, the good practice established as actions of the chairman of the court only those tasks which he or she must perform personally. However, in case of a task which can be completed with the help of other court servants, the chairman of the court is not stated as a specific person responsible for performance of such task, and wording of the action is impersonal. For example, the chairman of the court cannot delegate to another court servant communication with a judge whose decisions were annulled by a court of higher instance over a certain period of time more often than the average number of annulments.

IV. Explanations of the Principles of Good Practice of Court Administration

Good practice of court administration is drawn-up based on the principles that ensure inclusion of points of contract of participants in the court administration, as well as the most important activities aimed at development and management of the court system, in case of observation of which it can be assumed that conditions for administration of justice according to the established order have been created. Based on the Courts Act the following persons are considered as participants in court administration by the working group: the Ministry of Justice as the main administrator and developer of the courts of first and second instance, the Council for Administration of Courts as a consultant and director, and court directors as performers of everyday administration tasks in the courts. Actions of the chairman of the court related to court administration are reflected in the quality standards for court management. Good practice of court administration was developed on the basis of the Courts Act presently in force, and it emphasised that parties to the court administration must not interfere in adjudication of justice.

Uniform principles of financing of courts are of primary importance during formation, conduct of respective procedure and execution of the budget, as sufficient financing of courts is a condition for administration of justice according to the established order. With respect to formation of the budget of courts the working group emphasised importance of engagement of the Council for Administration of Courts at the early stage, so that the Council could participate in formation of the budget already for the forthcoming period.

During conduct of procedure regarding the budget of courts it is important to ensure that the principles of its formation are discussed as a part of consultations between chairmen of the courts and the Ministry of Justice before specific budget negotiations. The working group also mapped a time schedule for the entire budget year in a form which it considers reasonable, and which in the recent years has been used as the basis to a large extent. With regard to execution of the budget of courts the principle of responsible use of the budget is established, and it is considered important that in case

budgets of courts have to be reduced due to a valid reason, the principles of reduction must be discussed as a part of consultations between chairmen of the courts and the Ministry of Justice.

For the purpose of development of the courts it is important that the Ministry of Justice engages more chairmen of the courts than before in development of the field, for example for establishment of the goals of development of the field of courts in the development plan of the ministry. In order for the Council for Administration of Courts to be able to perform its role as a consultant with high quality, the Council must be aware of problems and development of the courts, and it must be able to express its opinion for the project of development plan for the field of courts of the Ministry of Justice. The working group considered it important for the Council to discuss the development proposals embracing the entire court system, so that if necessary the Council could make proposals in the field of legislative drafting to the Ministry of Justice regarding organisation of work of the courts and the codes of procedure.

The central part of good practice of court administration describes uniform principles of court management for court directors. Written principles for management of a court establishment in the field of administration are directly related to the first part of the document (good practice of court management), and together their goal is to alleviate possible problems caused by double management of court establishments. The area of responsibility of a court director is the basis for the wording of the quality standards in the fields of personnel regarding creation of working environment, as well as for responsibility for responsible use of budget funds of the court.

V. Explanations of the Principles of Good Practice of Court Procedure

Good practice of court procedure includes additional principles to those which are already stated in codes of procedure, taking into consideration suggestions which are mentioned in the study of satisfaction of participants in the procedure and stated in different international documents concerning court procedure. Therefore, the working group considered it necessary to mention the given principles in the present good practice document for the purpose of improvement of the court procedure.
The study of satisfaction of participants in the procedure demonstrated that for a participant in the procedure activity of the court must be predictable. If is very important to know already at the stage of deliberations regarding the matter, when the participant in the procedure will receive the respective court decision. Therefore, the judge must be able to assess the level of complexity of the case already at the beginning of the procedure, and based on that also assess how long the procedure regarding the case may last. The judge as the head of the procedure must observe correspondence of the procedure to the agreed time schedule, and make sure that no periods of unjustified inactivity occur during the procedure. If such periods occur, special efforts must be made in order to accelerate the procedure and recover the time lost. Ideally the time schedule of the procedure regarding the case must be agreed already at the beginning of the procedure, and it must be observed further on. On the one hand the agreed time schedule ensures clarity for a participant in the procedure as to when he or she will receive the court decision, however, on the other hand it also allows as professional participants in the procedure (for example, advocates and prosecutors), so the court itself to plan their time better.

Considering practice of the European Court of Human Rights, it is important to monitor the entire duration of the procedure from the beginning until the end, and if possible, duration of the pre-trial procedure must also be taken into consideration. Such necessity is based on practice of the ECHR. ECHR in its decisions where the problem was breach of the principles of a reasonable time of procedure, has pointed out that when duration of the procedure is calculated, the entire duration of the procedure must be taken into consideration. Also, ECHR in its decisions has quite frequently considered criteria for assessment of a reasonable time of procedure[2]. In respective decisions ECHR found that when a reasonable time of procedure is assessed, it is necessary to also consider that exactly is at stake for the person, and the procedure regarding the given case must be organised based on that. Also, ECHR in its decisions has stated which court cases must be given priority, i.e. in the course of procedure regarding which cases it must be taken into account what is as stake for the person and, respectively, whether the procedure must be conducted as priority. The working group

[2] http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf, criteria of assessment of reasonable time in civil cases, Arts. 283 – 301;
http://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf, criteria of assessment of reasonable time in criminal cases, Arts. 192 – 200.

also found that it is necessary to agree on the matters, adjudication of which is of especially high importance to the participant in the procedure, and the respective principle is also included in the good practice. The good practice also includes examples of court cases which could be considered as priority, however, in practice it can be agreed by any court *en banc*, and it can definitely be stated in the work distribution plan of the court.

It is also important to ensure communication with participants in the procedure. As one of problems participants in the procedure named the circumstance that often they are not informed what stage the procedure regarding their court case is at. Due to this reason the working group considered it necessary to also include communication with participants in the procedure in the good practice. The judge communicates with participants in the procedure on the basis of the code of ethics. Constant information exchange must exist between the court and participants in the procedure, so that the participants in the procedure are able to remain informed of any significant aspect which would influence adoption of the court decision. For example, a participant in the procedure could be informed of substitution of the judge during the procedure, or he or she could be informed of abrupt increase of workload of the judge, etc.

As the role of the judge as the head of the procedural group has significantly increased compared to the previous years, and the judge must manage work of the team which assists him or her (clerk of a court session, law clerk), the working group considered it necessary to include in the given document also the matter of cooperation and communication with the court officials. Communication with the court officials is generally also based on the code of ethics, however, it is additionally mentioned that the orders given by the judge to the court official must be specific and understandable. Also, the judge must give instructions and feedback regarding work results of the procedural group in order to ensure the best performance of the work duties.

The Council for Administration of Courts has given recommendations to the courts regarding communication with the media, and therefore the working group did not consider it necessary to repeat them. However, since due communication with the media is also a part of high-quality court procedure, the working group considered it necessary to mention this area in the document as well.

VI. Legal Effect

The goal of quality management is to achieve more effective work of court establishments, including activities of judges and court officials, i.e. activities (timely court procedure) and results (high-quality court decision) of the entire court system are directly related to quality management.

Good practice of court management and good practice of court administration are created for providing help to managers of different levels.

Good practice of court procedure was created in order to help first and foremost those judges who are only starting their work, however, all judges of first and second instance are taken into account. Also, if necessary, good practice allows chairmen of the courts to give recommendations to judges for more effective conduct of procedure.

The Council for Administration of Courts at its meeting of 19 September 2014, where support for draft document on good practice of court procedure was expressed, among other also included considerations that the court procedure must be not only lawful, but, first and foremost, smart and effective[3], which means that despite the requirements stated in codes of procedure the court procedure does not always have to meet expectations of the participants in the procedure. To sum it up, it can be said that the codes of procedure establish the so-called minimum standard, however, if good practice of court procedure is observed, maximum effectiveness of court procedure can be ensured.

[3] http://www.kohus.ee/et/kohtute-haldamise-noukoda/istungite-protokollid. Minutes of the 77th session of the Council for Administration of Courts.

The working group would like to separately stress that disregard to the given practice does not create legal effects, i.e. it does not serve as a basis for assessments of work of a judge and it cannot be relied upon in disciplinary procedure. Decision to observe the good practice in court procedure means that the judge wishes to adjudicate court cases as well as possible, and to conduct the court procedure in a way that the participants in the procedure (irrespective of their role in the procedure) are treated with dignity, and work of the court officials is effective.

The given good practice of court procedure is a very general document which allows every court to complement and specify it in a way that it can correspond to the needs of this particular court.