

How to weight a judicial case?

A key indicator for time measurement in courts

After the finalised and published its first version of Judicial Timeframes, the CEPEJ SATURN Centre embarked on a new goal in 2017, this being an in-depth study about the different mechanisms of case weighting adopted in European courts.

The 23rd meeting of the SATURN Centre (April 2018) was an opportunity to review this on-going work. Mr Giacomo OBERTO (Italy), president of the SATURN Centre, and Francesco DEPASQUALE (Malta), member of the SATURN Centre and leader and person responsible for this project of the working group, summarize the first findings.



Interview of Mr Giacomo OBERTO, president of the SATURN Centre, Judge at the court of Turin (Italy)

- There are already a lot statistics and tool of measurement in European courts - how would you define the value of building a new indicator?

GO: Among the many indicators, guidelines and tools elaborated by the SATURN Centre during these eleven years of existence we did not have yet a study and a methodology on how to assign to each and any case its correct "weight." The purpose of this difficult exercise is to build a tool allowing judges and courts to evaluate since the start what is (and will be) the complexity and the possible duration of any single case. The tool could be used by the presidents of courts in order to achieve a fair and reasonable distribution of new cases among all the judges of a given court; court administrators could also use this methodology in order to better organise human and material resources; this new instrument could also be adopted at a higher level (Councils for the Judiciary, Ministry of Justice, etc.) in view of a correct distribution of resources among courts.

- What are the first findings of the SATURN Centre?

GO: First of all, we discovered that the issue of case weighting has already been raised in almost all legal systems of the world. Our task is now to try to extract the best practices and experiences and to try to use them in the drafting of a new document which will contain, on one side, a short summary of the most relevant concrete experiences of case weighting and, on the other side, useful indications on possible methodologies to be adopted. It will be then up to the concerned people and entities (judges, courts, judicial councils, court administrators, etc.) to make choices among the different proposed methodologies.

- Why are there so many differences between all European courts?

GO: Differences among European courts take their origins from very different historical, cultural, social and legal environments. This shows also why the “weight” of similar cases can be very different from country to country. Actually, we have also to take into account the fact that the complexity of a case can derive from three main factors: (a) factual reasons, like e.g. the number of parties, number of witnesses, legal expertise, etc.; (b) legal grounds (e.g.: a cross border dispute, requiring the application of international private law rules); (c) special procedural rules, which can, for instance, make difficult for the judge to understand who is the competent judge, or what kind of concrete procedural steps must be adopted by the court.

- Does it seem mandatory for you to have a single measurement methodology in all the European courts?

GO: I would not say that the adoption of the same system should be mandatory, taken into account the differences to what I have made reference before. However, the existence of at least similar or comparable systems for weighing cases should be desirable. This could actually facilitate comparisons among different courts and legal systems.

- What will be the next steps for the SATURN Centre?

GO: A first draft of the document, prepared by Magistrate Francesco Depasquale with the assistance of our Secretariat, has already been thoroughly discussed during the meeting of 5 and 6 April 2018 in Strasbourg. The final version will be submitted to one of the next Plenary Assembly of the CEPEJ. In October the Network of Pilot Courts of the CEPEJ will also be called to react on the document.



Interview of Mr Francesco DEPASQUALE, member of the SATURN Centre and leader and person responsible for the project on the case-weighting activity, Magistrate at the court of Valletta (Malta)

- As the person leading this project within the SATURN Centre, can you summarize the challenges that you have already to face to conduct this in-depth study?

FD: The Council of Europe includes so many diverse Judicial systems that the first challenge we had was to try and categorize the information provided to us by the different Court administrations, in order to attain a clearer picture of the methodologies adopted and the reasons behind its implementation. Having obtained the necessary information from some key countries of the Council of Europe, as well as from Observer Countries, we were in a better position to assess that one of the main elements which seem to characterise all such methodologies was having a clearly set out Case Category, wherein cases would be classified according to nature and complexity. Such Case Categories, on their own methods, present a great challenge, in view of the

diversity of the judicial systems which exist in the Council of Europe, and we hope that in the near future we will be in a better position to provide useful material on such an important element in the 'case weighting methodology'.

- In the framework of a SATURN court coaching activity, you chaired in Malta a workshop with representatives of judges, court administrators and ministry of justice. Do you think that all the stakeholders have the same understanding of the benefits of such a methodology?

FD: It is a foregone conclusion that all stake-holders have, as their ultimate goal that of ensuring that there exists in the Country a fair and efficient judicial system wherein the citizens will be able to be given Justice within a reasonable time. As a result, all stakeholders understood that setting up an equitable and fair "case-weighting system" would be of benefit to all. Naturally, all stakeholders had their own expectations from this methodology: The Judiciary expects that this system would allow for a fairer and more equitable distribution of work amongst them whilst also ensuring that they be provided adequate staff and resources to operate efficiently; The Court Administration expects that this system would allow for a more organised and efficient way of administering cases; The Ministry of Justice expects that this system would allow for more accountability on the Judiciary to ensure that Justice is delivered within a reasonable time. Though such expectations may appear to differ at face value, all are intrinsically linked with each other and all appreciated the need to invest time and resources to get an efficient 'case weighting system' set up.

- What are the key steps to build a case-weighting methodology?

FD: As already pointed out further up, an essential element for the methodology to be adopted is that a clear and concise list of 'case categories' be set out, within which to classify the various cases which a Court hears. This list may be a simple list of four different categories, as happens in the Netherlands, where the categories are according to complexity of the case, ranging from simple to very complex. On the other hand, the list may also be of a range of legal issues, as happens in Croatia, where a list of 165 case categories was drawn up.

Having set these categories, one would then have to assess the type of methodology to be adopted, which may be summarised into two main systems: Time-based measurement methodology and Points-based measurement methodology.

The Time-based measurement methodology entails having a group of Judges record every event during the entirety of a case, over a period of not less than 6 months, following which period, all the results are analysed and an indication may be attained as to the duration of every event and, eventually, every procedure, depending on the complexity and nature of the case.

The Points-based measurement methodology, also known as the Delphi Method, entails having a group of Judges set up a system of points for each case category, which system of points would be given accordingly to, for example, the nature of the case, the number of parties involved, the number of legal issues at stake and the value of the claim, to mention some of them.

What is essential about this methodology, however, is that it has to be an ongoing process, as one needs to regularly evaluate the classifications and points given, assessment being also carried out on cases which would have been decided, in order to fine tune the system and ensure that the methodology reflects the realities of the Court at any given time.

- Have you already identified how to drive this change in courts? Due to their workload, some courts could be reluctant to spend time in the construction of another measurement tool?

FD: Having seen the various results attained in countries where the case-weighting system is being implemented, it has emerged rather clear that for this system to succeed and achieve its goals, it needs to be set up and designed by the Judges, as this system would impact principally their method of working. This is being said, as Judges have a tendency to be reluctant to invest their time and energies in a system which they feel they will not benefit from, as a result of which, it is important that the case-weighting system is drawn up and evaluated by the Judiciary, obviously with the help Court Administration who will then be entrusted with implementing the system.

At present, statistics collected by Courts, in general, give a basic and uninformed picture of the number of cases being heard, all cases being classified as 'one' case, irrespective of the nature and complexity of the case. I firmly believe that, with the correct implementation of this methodology, a fairer and more descriptive picture of the work carried out by each judge and Court may be obtained, as each case will no longer be classified as 'one' case, but rather will be given different values in accordance with the nature and complexity of the case. This would render more justice to the Judges and Courts hearing complex cases, as the effort they make in resolving their more complex cases will be clearly outlined.

- Such subject requires skills in very different areas (knowledge of judiciary and rules of proceedings, court management, project management, etc)? Do you think that nowadays judges must develop their knowledge in different fields than law?

FD: In today's day and age, with the advance of technologies and the desire to always improve, it is essential that Judges be trained in both judicial and managerial skills, as they are both essential to ensure that justice be delivered within reasonable time, this being a goal which is certainly of paramount importance to every Judge, as without an efficient and effective Judicial system one will not be able to have a democratic society.