

CEPEJ Experts' review of the Judicial Map Reform in the Slovak Republic

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Introduction

The Action "Continued support to a well performing Slovak judiciary" was carried out with funding by the European Union via the Structural Reform Support Programme and in cooperation with the European Commission's DG Reform Support Service.

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1 The Ministry of Justice of the Slovak Republic has launched the process of reforming its judicial map,
2 in that regard a working group within the Slovak judiciary under the guidance of the Analytical
3 Centre of the Slovak Ministry of Justice developed possible scenarios of court map reforms (among
4 other measures to improve judiciary and access to justice) which resulted in the finalisation of the
5 document “Judicial Map Reform” in November 2020.

6 The results were subsequently presented by the Ministry of Justice in a row of workshops within the
7 judiciary, ending with a press conference held on 23 November 2020, during which the Minister of
8 Justice presented the reform to the public and explicitly took political responsibility for the
9 implementation of the reform.

10 The goal of this experts’ opinion is only to assess if the proposal elaborated by the Slovak authorities
11 is in line with the CEPEJ Guidelines and previous recommendations.

12 This “experts’ opinion” with recommendations is thus mainly based on the document “Judicial Map
13 Reform” submitted to CEPEJ Secretariat by the Analytical Centre of Ministry of Justice of the Slovak
14 Republic.

15 An online meeting was also held on 2 December, between the CEPEJ experts, the CEPEJ project
16 coordinator and the Analytical Centre’s representatives and experts in order to gather additional
17 information and clarifications related to the judicial map reform. Moreover, some sections of the
18 document “Odporúčania pre tvorbu novej súdnej mapy Vypracované v rámci Analýzy systému
19 súdnictva 2020, Blok C” published on the website of the Ministry of Justice were also made available
20 to CEPEJ experts on 4 December with a “Google translation” (therefore not always fully
21 understandable) from Slovak to English.

22 This “experts’ opinion” is also based, as requested, on CEPEJ tools, in particular, “Guidelines on the
23 creation of judicial maps to support access to justice within a quality judicial system”, as well as on
24 the recommendations of the “Report on efficiency and quality of the Slovak Judicial System” carried
25 out by CEPEJ in 2017.

26 The purpose of this opinion is not to check the data, and their reliability, that have been used by the
27 Slovak authorities for the preparation of the judicial map reform. These data and their reliability are
28 thus taken for granted.

29 Furthermore, this experts’ opinion does not want and cannot get into the political priorities,
30 evaluation, and legitimate discretion, which are always embedded in the complicated decision-
31 making process to redesign the judicial map.

32 33 **The proposed Judicial Map reform of the Slovak Republic**

34 According to the documents prepared and submitted by the Slovak authority, the **main goals** of the
35 proposed reform are:

- 36 • Increasing the credibility, efficiency, and quality of the judiciary, while improving better
37 conditions for its actors (judges and staff) to achieve these goals.¹
- 38 • Improving the quality and predictability of court decisions.²
- 39 • Guaranteeing the best accessibility.³

¹ Ministry of Justice of the Slovak Republic, *Judicial Map Reform*, November 2020, p.10.

² *Ibidem* p. 12 and 44.

³ *Ibidem*, p.5.

- Decreasing the length of judicial proceedings.⁴
- Savings in the judiciary without compromising citizens' rights.⁵
- Judges and court staff will be more resistant to external or internal attempts to influence, since the work in a larger team, and cases will be assigned randomly.⁶

These goals will be **reached through** the judicial map reform which entails:

- Specialisation of judges in civil, criminal, family, and business matters.⁷
- Establishment of separated administrative courts and related specialized judges.⁸
- Affirm the principle of real random case assignment to judges.⁹

In brief, the proposed reform designs the following **new setting of the Slovak courts**:

30 new first instance district courts, including two "city courts" such as Bratislava and Kosice, instead of the current 54 first instance courts.

Four new commercial/business courts (Trnava, Banská Bystrica, Prešov, plus Bratislava Municipal Court) instead of the current eight locations. There will be three district courts in the cities where the courts of appeal are located plus Bratislava Municipal Court, whose territory has a large business activity (one fourth of registered offices of legal persons in Slovakia).¹⁰

Three new courts of appeal (Prešov, Banská Bystrica, Trnava) instead of the eight current regional courts.

Three new administrative first instance courts (Nitra, Žilina, Kosice) with a completely different dedicated jurisdiction instead of the current eight administrative departments within the eight regional courts.

One new Supreme Administrative Court.

One business register in Žilina.

What **is not going to change**, again in brief, are the seats and the jurisdiction of the following courts:

- Constitutional Court (Košice),
- Supreme Court of the Slovak Republic (Bratislava),
- National Specialised Criminal Court in Pezinok.
- National ("causal jurisdiction") Enforcement Court (Banská Bystrica).

All the others "causal jurisdictions" will be avoided and devoted to the first instance district courts.

The criteria and principles to be applied in the proposed design of the new judicial map can be singled out based on the reports that we were able to take into consideration.

The **size** of the first instance district courts should at least allow three specialised judges for the macro-categories civil, criminal, and family matters.¹¹

⁴ *Ibidem*, p.12.

⁵ *Ibidem*, p.13.

⁶ *Ibidem*, p.13.

⁷ *Ibidem*, p.10.

⁸ *Ibidem*, p.13.

⁹ *Ibidem*, p.4.

¹¹ *Ibidem*, p.19.

1 **Simplicity is an important factor** “which manifested itself in practice, for example, in the same
2 districts being designed for the civil, family and criminal agendas”.¹²

3 Another criterion is the **common cultural and regional identities**, “so that the inhabitants in the
4 individual districts are also close in this respect, with the assumption of better mutual
5 understanding”.¹³

6 **Furthermore, population’s attendance for work**, road and transport infrastructure, accessibility by
7 public transport, etc were considered.¹⁴

8 These criteria were then transposed to the data collection, which took into consideration the
9 following three indicators:¹⁵

- 10 • Incoming cases of the courts (period 2016-2019) and its structure, and the required number
11 of specialised judges calculated from the expected “optimal incoming cases” per judge based
12 on the main case categories. This “optimal incoming cases” was calculated on the basis of
13 the so called “Norms”, which establish the number of cases that each judge is supposed to
14 deal with in a year period.
- 15 • Population.
- 16 • Physical distance of other state administration bodies dealing with courts (i.e. police,
17 prosecutor's office, sentencing institutions, prisons).

18 The application of these criteria and the data analysis resulted with the current proposal to change
19 the territory of 19 districts, while 11 districts do not change their territorial jurisdiction.¹⁶

20 The sites/locations of the new proposed 30 first instance courts, called “Centres”, were then
21 designed “based on the criterion of the lowest time and kilometre accessibility on roads for all
22 citizens of the district from the centre of their town to the court’s building, their commute to work,
23 economic function, size and hierarchical importance of towns in the local structure”.¹⁷

24 It is also worth mentioning that “The proposal to establish the seats of general courts in the centres
25 of new districts is not a condition, but only a starting point for the purpose of negotiating the details
26 of the functioning of the court in the district, which will have to be carried out in cooperation with
27 the presidents of courts”.¹⁸

28 The ministerial document stresses that “Access to court is a sensitive issue, especially in the family
29 agenda. This was considered in the draft court map by the largest possible number of general judicial
30 districts, while respecting the development of the idea of cases and court decisions so that at least
31 three specialised judges can decide on the family agenda”. Therefore, in order to “bring” the court
32 closer to the citizen, especially in the family agenda, it is more effective to allow the judge to “travel
33 to the citizen”, e.g. to self-governing or social institutions closer to the citizen's residence (informal
34 environment is also more suitable for this type of agenda)”.¹⁹

¹² *Ibidem*, p.19.

¹³ *Ibidem*, p.20.

¹⁴ *Ibidem*, p.20.

¹⁵ Ministry of Justice of the Slovak Republic, *Recommendations for the creation of a new judicial map*, November 2020, p.17. It also must be mentioned that the working group on judicial map which carried out the preparatory work for the current proposal, proposed also some more indicators that should have been taken into consideration. *Ibidem* p.15.

¹⁶ Ministry of Justice of the Slovak Republic, *Judicial Map Reform*, November 2020, p.20.

¹⁷ *Ibidem*, p.16-17-18.

¹⁸ *Ibidem*, p.18.

¹⁹ *Ibidem*, p.11

1 According to the proposal: “The seats of the general courts of appeal should be established in the
2 seats of the existing regional courts. In Prešov for the East Slovak District, in Banská Bystrica for the
3 Central Slovak District in Trnava for the West Slovak District. **These are cities with a central location,**
4 **which guarantees the best accessibility**”,²⁰ and “envisage the specialisation of the chambers in civil,
5 family, criminal, and commercial matters”.²¹

6 Furthermore, “the absence of a court of appeal in the cities of Bratislava and Košice increases the
7 likelihood of independence in the severance of ties and in the separation of courts of first instance
8 and appellate courts in these two most important economic centres, which undoubtedly face high
9 pressure and risk of corruption”.

10 The new **administrative courts** separated from the “ordinary ones”, are proposed to be located in
11 “Nitra, Žilina and Košice [...] For the sake of better accessibility, **we propose that administrative**
12 **courts have their own boundaries, optimised according to transport accessibility**”.²² They can also
13 benefit from the personnel and material capacities of the abolished regional courts in the same
14 cities.

16 **CEPEJ Guidelines on the creation of judicial maps to support access to justice within a quality** 17 **judicial system” and the 2017 “Report on efficiency and quality of the Slovak Judicial System”**

18 As stated by the CEPEJ Guidelines: “judicial geography is a problem of balance between different
19 factors:

- 20 • Access to justice in terms of proximity of citizens to courts.
- 21 • Minimum size of a court so that the presence of various competences and functions can be
22 ensured.
- 23 • Reduction of costs as the resources of the public administration cannot and must not be
24 wasted but rather optimised.
- 25 • Maximisation of quality and adequate performance of the service provided”.²³

26 The definition of a judicial map can be broken down into phases. The main ones can be the
27 following:²⁴

- 28 • Assess current judicial map and indicators.
- 29 • Set objectives and criteria.
- 30 • Build and measure indicators.
- 31 • Define new judicial map.

32 The assessment of current judicial map and indicators should be carried out collecting data from
33 internal and external sources such as:

- 34 • judicial administration data such as incoming, completed and pending cases including all
35 inherent sub-classifications and distribution shall be retrieved from ministries of justice and
36 other court administration authorities;

²⁰ *Ibidem*, p.5, 29,31.

²¹ *Ibidem*, p.36.

²² *Ibidem*, p.5.

²³ CEPEJ *Guidelines on the creation of judicial maps to support access to justice within a quality judicial system*, Council of Europe, June 2013, CEPEJ (2013)7, p.3.

²⁴ *Ibidem*, p.4.

- performance indicators like offices' and judges' productivity, proceedings disposal times can be provided by statistics departments within judicial systems or even collected by the courts themselves;
- geographic, transportation and infrastructure data can be taken from specialised authorities or rather found on reliable sites on the web;
- any other specific information such as the level of business, number of enterprises, legal assistance etc. can be retrieved by associations of professionals and again from reliable websites.

Below the CEPEJ Guidelines identifies some “Key factors” which are those of primary importance, and “Additional factors” which are of secondary importance and that, if utilised, would increase the completeness and robustness of the analysis”.²⁵

- a) “Key factors
 - i) Population density
 - ii) Size of court
 - iii) Flows of proceedings and workload
 - iv) Geographical location, infrastructure and transportation
- b) Additional factors
 - v) Computerisation
 - vi) Court facilities (telephone/video) and cultural sophistication
 - vii) Level of business
 - viii) ADR/mediation
 - ix) Availability of legal advice
 - x) Recruitment of judges and staff

It is emphasized that **“Special attention should be put to the “transition phase”,** which aims to:²⁶

- Effectively start-up the judicial services, ensuring continuity.
- Take care of the transfer of staff from the suppressed offices to the merged ones and, if necessary, to recruit additional human resources for the new offices.
- Organise the logistics of the new offices (space, equipment, IT, supplies, etc.)”.

For this extremely important step “it would seem appropriate to set up special work-teams dedicated to this activity within each court concerned.

The achievement of the objectives set for the Transition phase shall be pursued while:

- Minimizing the risks related to the judicial activity being discontinued.
- Minimizing the impact on service-users.
- Ensuring that all activities are conducted within a reasonable timeframe, according to satisfactory levels of performance”.²⁷

In regards to communication, it should be highlighted that “Special attention should be paid to official announcements regarding the implementation of the judicial map, as long as these messages reach a specific group of people directly affected by the change. While preparing the communication plan the objectives should be:

²⁵ *Ibidem*, p.7.

²⁶ *Ibidem*, p.16.

²⁷ *Ibidem*, p.16.

- To promote a positive reaction to change, ensuring that all those involved are aware of the new judicial map, understand it and perceive it as positive.
- To contribute to stabilizing the psychological climate and motivation of the staff.
- To ensure the consistency of information given over time and to reduce the risk of spreading misleading messages from "unofficial" sources.
- To allow a correct and timely delivery of the messages, gradually providing answers to all reservations of the various parties concerned by the reform".²⁸

"In addition to the communication a plan must be developed to ensure that operational activities are taken up by the transferred people in an effective and efficient manner, including:

- Assignment of the role and tasks to each person transferred within the new court.
- Management of all administrative duties (entry badge, working hours, IT systems enabling policies, etc.).
- Evaluation of potentially disputable issues related to the terms and conditions applied.
- Guarantee the process of paying the salaries".²⁹

It is also of **paramount importance to measure the impact of the judicial map reform**. "Reformers indeed must develop and choose a set of Key Performance Indicators (KPIs) that may be used to measure progress. The KPIs shall provide methods by which the progress toward the objectives of goals is measured".³⁰

The CEPEJ Assessment report on the Slovak judicial system³¹ pointed out that "the high complexity of judicial disputes requires a more specialised judicial system, in order to ensure the best level of quality of justice to citizens and to increase the efficiency in the case-processing".

The study carried out also showed that it "emerged from the discussion with representatives of the Ministry of Justice (MoJ) and of the judiciary, as well as from the comments to the replies to the Questionnaire on Quality, that judges are not satisfied with the present court organisation, in particular with the high number of district courts (which doubled between 1993 and 1998). Some are of the opinion that several district courts should be either closed down or merged in one bigger district court".³²

The map shows "a significant number of courts, which are spread out all over the country in a way that does not seem consistent with the number of incoming cases per judge. In some regions there are many courts, rather small and quite close to each other, with few incoming cases per judge (e.g. Bratislavsky, Trenčiansky, Žilinsky regions), while in other regions there are few courts, with a large population (size of the mark) and many incoming cases per judge (e.g. Trnavsky and Nitriansky regions, marked in red in the map below)".³³

²⁸ *Ibidem*, p.16.

²⁹ *Ibidem*, p.16-17.

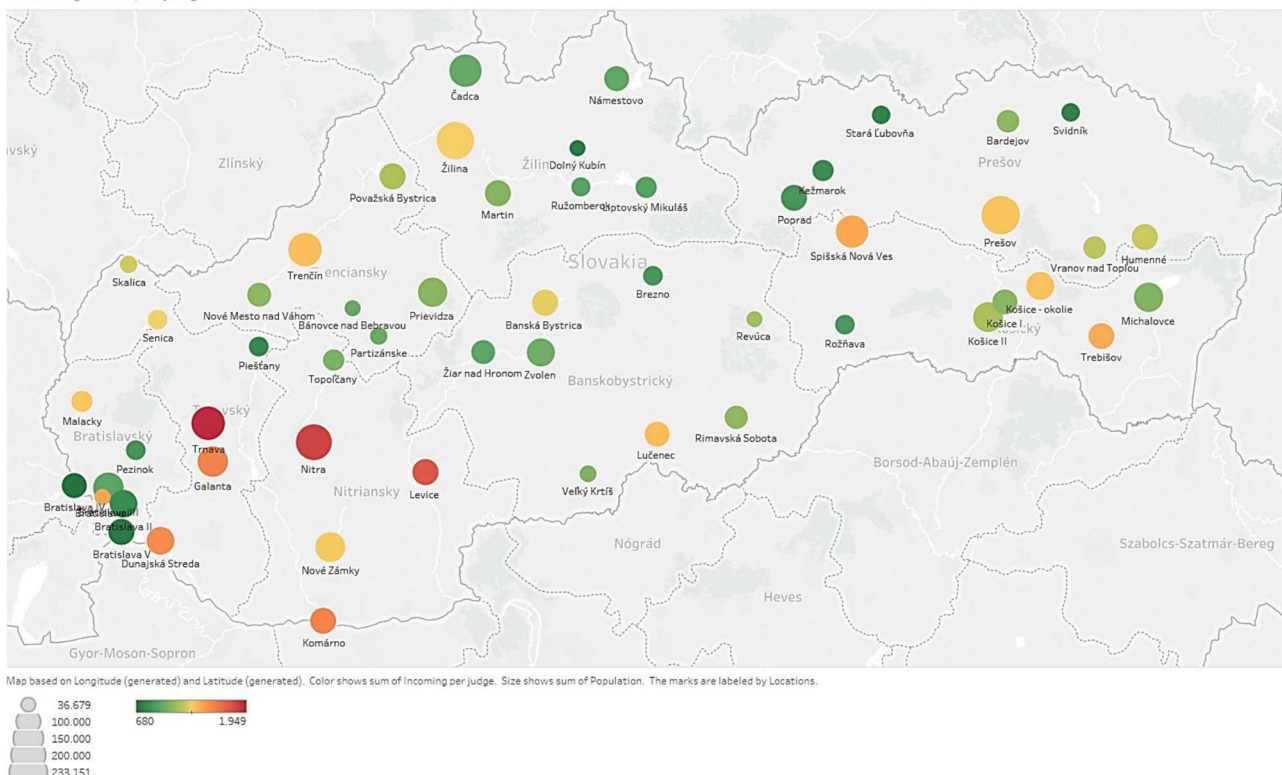
³⁰ *Ibidem*, p.17.

³¹ CEPEJ, *Report efficiency and quality of the Slovak judicial system assessment and recommendations on the basis of CEPEJ tools*, Council of Europe, November 2017, p.19.

³² *Ibidem*, p.18.

³³ *Ibidem*, p.45.

Incoming cases per judge



The conclusion of the Assessment report on the issue of judicial map was that: “the existing specialisation system could be amended in the sense of assigning “causal jurisdiction”, as a general rule, to several district courts in the country (either one for each region or one for the territory of several neighbouring regions), instead of assigning specialisation to only one district court for the territory of the entire nation”.³⁴

It was also recommended to “Consider the possibility of shifting judges between specialised agendas/branches, with their consent, upon good notice and not all at the same time, to ensure the transfer of knowledge and know-how, a response to changing caseflow etc. At the same time, the possibility of switching the specialisation between the major branches of law (civil and criminal) should remain exceptional”.³⁵

CEPEJ’s experts’ comments and suggestions on the proposed reform

We already stated in the introduction, this opinion cannot check the data and their reliability that have been used by the Slovak authorities to propose the judicial map reform, which are thus taken for granted. Furthermore, this opinion does not want and cannot get into the political discretion which is always embedded in the complicated decision-making process to redesign the judicial map.

Having said that, **the methodology used by the Ministry of Justice which led to the current proposed reform of the Slovak judicial map is in line with both the CEPEJ Guidelines and the CEPEJ 2017 Assessment Report**

³⁴ *Ibidem*, p.20.

³⁵ *Ibidem*, p.140.

1 It appears that all four steps have been correctly applied in the reform process: assess current
2 judicial map and indicators, set objectives and criteria, build and measure indicators, and finally
3 define a new judicial map.

4 Remarkable is the evidence-based approach used, which appears to have been particularly used for
5 the design of the new first instance district courts.

6 In addition, the reform was discussed and developed in an ad hoc working group, hearing and taking
7 into consideration the internal, professional and managerial points of view as well of various
8 stakeholders and academia.

9 Last but not least the reform has a strong political support, with the Minister of Justice explicitly
10 taking political responsibility in public for the implementation of the reform.

11 However, based on the information that were given to us, we would also like to point out a few
12 issues and provide recommendations.

13 **The first one is the need to have a separate jurisdiction for administrative cases.**

14 One can argue that there are not, even in the literature, evidence-based recommendations or
15 standards that can say if these cases should be separate from the other civil cases with a special
16 setting of courts, however it also true that one of the principles used by Ministry of Justice to
17 redesign the court map has been simplicity. On this respect, it may be debatable that to establish
18 new administrative courts by their own and a new supreme court of administrative matters is
19 consistent with the principle of simplicity.

20 The creation of a new a set of courts specialised in administrative case will most probably generate
21 managerial complexity, which benefit should be better studied and argued in the proposed reform.

22 We take note of the fact, that administrative judiciary is in many respects a branch of its own,
23 including “business process” on how to handle cases and deal with parties.

24 But separating the units physically makes it more difficult to keep/establish an “all in one
25 philosophy” of body of judges and its management.

26 This starts with that subjective feeling of belonging to and “judging as one”; it also has eventually
27 impact in governance setting (i.e. different judicial councils, different procurement and allocation
28 of resources) common standards, benchmarks, controlling methods, training, etc.

29 It will take special attention on the management level to avoid this drift of branches and to keep
30 them under one common umbrella.

31 **The second point of attention is the location of the three first instance administrative courts.** They
32 are supposed to be located in three cities different from the three cities in which the new courts of
33 appeal are supposed to be located.

34 As stated in the Ministry proposal: “If we were to prefer a simple model in the creation of
35 administrative court districts, in which the districts of first - instance administrative courts would be
36 identical to the districts of general courts of appeal, it would have to lead to low accessibility of cities
37 in the southern part of the Central Slovakian district in connection with mountain barriers, the
38 absence of expressways and a sparse network of public connections in the direction from the north
39 of Central Slovakia to the south. The availability of these circuits is optimally set for the centres of
40 Trnava, Banská Bystrica and Prešov, and not for the cities of Nitra, Žilina and Košice. We have

1 therefore adapted the districts of the administrative courts to the proposed centres of Nitra, Žilina
2 and Košice, taking into account the existing direct bus and train connections”.³⁶

3 However, in the same document is stated that the locations of the three new Courts of Appeal in
4 Prešov, Banská Bystrica, and Trnava have been chosen because “these are cities with a central
5 location, which guarantees the best accessibility”.³⁷

6 This apparent inconsistency in the argument where to locate the administrative courts and the
7 appeal courts maybe should be better analysed and argued.

8 **The third issue is related to the family cases.** Usually in Europe, but of course it depends on the
9 different procedures, these cases are the ones that need a court quite close to the users, with an
10 easy and friendly access. The Slovak Ministry also stated that “Access to court is a sensitive issue,
11 especially in the family agenda. This was taken into account in the draft court map by the largest possible
12 number of general judicial districts, while respecting the development of the idea of cases and court decisions
13 so that at least three specialized judges can decide on the family agenda. In order to ‘bring’ the court closer
14 to the citizen, especially in the family agenda, it is more effective to allow the judge to ‘travel to the citizen’,
15 e.g. to self-governing or social institutions closer to the citizen's residence (informal environment is also more
16 suitable for this type of agenda)”.³⁸

17 This is a very interesting innovative concept, breaking the old paradigm that justice has only to be
18 served “at the court in front of the mighty judge”. This innovative approach is also certainly in line
19 with the attempt to ease the access to justice. However, it should very carefully planned by the
20 Ministry of Justice as well as shared with the judges and the court staff to check its feasibility. All
21 its potential to make family justice closer to the citizens should be therefore exploited.

22
23 **A fourth issue deals with the exceptional commitment and planning that should be invested by**
24 **the Ministry of Justice in the transition phase.** This is not the goal of the document that was
25 submitted to us, and some attention was paid to the transition phase, which is very critical for both
26 logistics, in particular buildings as well as information and communication technologies, and
27 personnel management. In this regard, a specific attention should be given to the communication
28 of the reform to the judiciary, but also to the citizens and the local communities.

29 “Change Management” should be addressed more prominently. The concept refers to better judicial
30 management in the new structure but may also mention the responsibility of both central and local
31 authorities, as well as judges and court staff for the change management. It will be a lengthy process
32 of implementation which may be going through different periods of government. Therefore, the
33 clear statement has to be placed, that the implementation is not depending on the political level
34 alone, but highly backed by the Ministry of Justice and the judiciary.

35 Successful implementation will depend on:³⁹

- 36 • Ensuring continuity of judicial services,
- 37 • Taking care of the transfer of staff from the suppressed offices to the merged ones and,
38 if necessary, to recruit additional human resources for the new offices.
- 39 • Organizing the logistics of the new offices (space, equipment, IT, supplies, etc.).
- 40 • Minimizing any impact on service-users.

³⁶ Ministry of Justice of the Slovak Republic, *Judicial Map Reform*, November 2020, p.37.

³⁷ *Ibidem*, p.5.

³⁸ *Ibidem*, p. 11.

³⁹ CEPEJ, *Guidelines on the creation of judicial maps to support access to justice within a quality judicial system*, Council of Europe, June 2013, CEPEJ (2013)7, p.16-17.

- Ensuring that all activities are conducted within a reasonable timeframe, according to satisfactory levels of performance.

People transfer has to pay attention on

- Promoting a positive reaction to change, ensuring that all those involved are aware of the new judicial map, understand it and perceive it as positive.
- Contributing to stabilize the psychological climate and motivation of the staff.
- Ensuring the consistency of information given over time and reducing the risk of spreading misleading messages from "unofficial" sources.
- Allowing a correct and timely delivery of the messages, gradually providing answers to all reservations of the various parties concerned by the reform.
- The Assignment of the role and tasks to each person transferred within the new court.
- The Management of all administrative duties (entry badge, working hours, IT systems enabling policies, etc.).
- The Evaluation of potentially disputable issues related to the terms and conditions applied.

Measuring the impact might also be addressed in advance

- Monitor KPIs (see CEPEJ report “European judicial systems”)
- measure the effectiveness of the implemented reform regularly, e.g. by:
 - cost of justice per inhabitant;
 - number of courts and magistrates per inhabitant;
 - calculated disposition time,
 - clearance rates;
 - age of pending cases;
 - timeframes and related backlogs;
 - qualitative surveys - customer satisfaction
 - trust of people into judiciary.

We would like to emphasise once again that special attention should be devoted to the investment in information and communication technology (ICT). In particular, in the development of a robust electronic case management system with electronic filing, and video communication, which are going to affect the current and future design, and the efficient implementation of the court map. The full exploitation of ICT is one of the key factors to improve access to courts, procedural transparency, timeliness of proceedings, and employees and court users’ satisfaction.

Finally, the framework timetable for the implementation of the judicial map reform appears maybe a little bit too optimistic, but a short postponement is not supposed to jeopardize such an ambitious and well-designed reform.