

**Assessing the Linkage of the Courts to Democratization: An
Analysis of the Judicial Systems in the Baltic States**

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Introduction

While various types of governments have flourished over the years, today's movement seems to be toward establishing democracies. In the new democratic governments that have been forming, many appear to be dedicated to the rule of law. In order to take a closer look at how some of the world's newest democracies have chosen to incorporate law into their governments, it seems appropriate to study the countries of Estonia, Latvia, and Lithuania.

Since each of these three states became independent democratic countries in 1991,¹ studying their judicial systems presents an interesting look into the role of the courts. By looking at three countries in the same geographic area that all began the transition from communist rule to democracy around the same time, it will be easier to see the way these new democracies choose to treat law and the judiciary. This study will focus on the three countries and commonalities between their judicial systems. Before delving into the actual court structures of the Baltic nations, however, it might prove beneficial to first examine the judicial system of the country with the longest standing democracy, the United States of America.

Why does having an older democracy make the United States worthy of inclusion in this study? While this may not be the case for *all* new democracies, many look to the U.S. courts to help develop their own judicial systems. The U.S. Supreme Court, the highest court in the land, could be said to be the most copied court in the world. Each of the Baltic states studied the Constitutions of various successful democracies to help them

¹ Lithuania declared independence in 1990, but the Soviet Union did not formally recognize it until 1991. U.S. Central Intelligence Agency (2003, March 19). *The World Factbook 2002*. Retrieved March 26, 2003 from Web site: <http://www.cia.gov/cia/publications/factbook/geos/lh.html#Govt>; <http://www.cia.gov/cia/publications/factbook/geos/lg.html>; <http://www.cia.gov/cia/publications/factbook/geos/en.html>

transition from their pre-1940 Constitutions to the ones they have today. For example, Lithuania's Constitution "reflects the institutions and experiences of the United States, France, and Germany as integrated into the Lithuanian system."² While the influences of a *particular* nation may not be discernible in these three countries, a comparative look into another court system should help show how they have transitioned to democracy.

THE UNITED STATES

Court System Design/Appellate Process

Because of its large population (the July 2003 estimate is 290,342,554), the court structure in the U.S. becomes rather complicated, especially where the various state systems are concerned. So, for starters, it would be best to simply consider the structure of the U.S. federal court system. While it basically consists of three levels, various specialized courts also play a part in the system. The basic levels include the district courts, courts of appeals, and the Supreme Court.

District Courts

The country is divided into 94 federal districts, each with its own district court. These districts serve each of the states, as well as the District of Columbia and some U.S. territories. Twenty-six of the states only have one district, but the rest are divided into two or more. Because this is the lowest federal court level, cases are generally heard here first and most do not go beyond this level.³ While the number of judgeships may vary depending on bench vacancies, as of 2003, the district courts had 680 in office.⁴

Court of Appeals

² Zeal.com's Country Study and Guide (1995, January). *The constitutional system*. Retrieved March 25, 2003 from Web site: <http://www.zeal.com/exit.jhtml?cid=&wid=100719661&so=&xr=/website/profile.jhtml%3Fcid%3D%26wid%3D100719661>

³ Baum, L. (2001). *American courts: Process and policy* (5th ed.). Boston: Houghton Mifflin Company.

⁴ Federal Court Management Statistics (2003). *U.S. district court: Judicial caseload profile*. Retrieved March 14, 2004 from Web site: <http://www.uscourts.gov/cgi-bin/cmsd2003.pl>

The courts of appeals play an important role in the federal court system. They hear appeals from the district courts. Cases typically do not make it beyond the courts of appeals because the Supreme Court hears very few cases. That makes these courts important policy makers. The U.S. is divided into 12 circuits, each with a court of appeals. While the District of Columbia has one court for itself, the other 11 are divided among the U.S. states and territories. Most of the cases are heard by a panel of three judges. If a majority of a court's judges decide to do so, a case can be heard (or reheard) en banc, with all of the court's judges.⁵ The total number of judgeships in the courts of appeals totaled 167 as of 2003.⁶

Supreme Court

The final court at the U.S. federal level is the Supreme Court. It has nine judges including a Chief Justice. The vast majority of the Supreme Court's jurisdiction is appellate. Lower federal courts send cases to the Supreme Court. State Supreme Courts can also send cases if the matter involves an area of federal law. With the exception of cases heard by a 3-judge panel, the Supreme Court can decide whether to hear a case. As a result, cases usually come as writs of certiorari rather than appeals. The lower court ruling stands when a writ is denied.⁷

In addition to appellate functions, the Constitution gives the Supreme Court original (trial) jurisdiction over cases where one of the parties is either a U.S. state or diplomatic personnel from another country. A large number of Supreme Court cases deal with constitutional issues.⁸ It has the ability to declare legislation and lower court rulings

⁵ Baum.

⁶ Federal Court Management Statistics (2003). *U.S. court of appeals: Judicial caseload profile*. Retrieved March 14, 2004 from Web site: <http://www.uscourts.gov/cgi-bin/cmsa2003.pl>

⁷ Baum, L.

⁸ Ibid.

unconstitutional as long as a majority of the justices agree to do so.

Specialized courts

The U.S. also has courts that are specialized to deal with certain issues. For example, a Court of Federal Claims covers claims made against the federal government. Another specialized court, the Tax Court, deals with federal tax matters. Other courts deal with veterans' benefits, international trade issues, patents, trademarks, international trade, foreign intelligence surveillance warrants, and deportation of suspected terrorists.⁹

An example of a U.S. state system

While each U.S. state has its own system, Illinois serves as a prototype of a more simplified judicial system. Like the federal system, Illinois has three basic levels of courts. Circuit courts make up the first level. Illinois has been divided into 22 geographic regions, each with its own circuit. Some, such as the one in Chicago, have more subdivisions within the circuit to deal with the large number of cases, depending on the population (the 2002 population estimate for Illinois is 12,600,620).¹⁰ The next highest level in the Illinois system contains the Appellate Courts. It has five divisions and hears appeals from lower courts and some administrative boards. The highest level of the Illinois court system is the Supreme Court. For the most part, it has discretionary jurisdiction like the U.S. federal Supreme Court; it can decide which appeals to hear. It also can receive cases directly from the trial courts when issues such as the death penalty are at hand.¹¹

The number of judges in Illinois varies from court to court. The Supreme Court has 7, the Appellate Courts have 42 (with 18 being in District 1, Cook County), and the

⁹ Ibid.

¹⁰ Area Connect (2003). *Illinois Population Statistics*. Retrieved April 30, 2003 from Illinois Population and Demographics Resources Web site: <http://www.areaconnect.com/population.htm?s=IL>

¹¹ Ibid.

Circuit Courts have over 850.¹² The Circuit Courts also have Associate Judges who typically can hear all cases except ones dealing with felonies.¹³

Judge Selection/Removal Process

Federal level

Becoming a federal judge is a relatively simple process. The president nominates candidates which the Senate must confirm. During times when the Senate is not in session, the president can make a recess appointment, effectively bypassing any discussion in the Senate. Excepting the Tax Court and the Court of Federal Claims, federal judges are appointed for life. That means that the way for a vacancy to open on the bench is for a judge to resign, retire, or die.¹⁴

To be nominated, a judge typically meets four criteria. The first deals with the person's competence and their ethical standards. The second regards what the nominee believes about various policies; the president will want to nominate persons who hold the same views as him or her. Additionally, some candidates are nominated because the president wishes to reward the person for some reason; most nominees share the same political party as the president. Also, if an interest group supports a candidate, they might be able to encourage the president to nominate the person of their preference.¹⁵ So, if a person is competent, shares the same views and political party as the president, and appeals to a group, such as Hispanics for example, then the president is likely to nominate him or her.

Federal court judges can be removed from office through a method outlined in the

¹² A Project for the Illinois Campaign for Political Reform (2002). *About judicial elections in Illinois*. Retrieved April 30, 2003 from The Illinois Voters' Guide Web site: <http://illinoisvotersguide.org/aboutelections.html>

¹³ Nineteenth Judicial Circuit Court. *Illinois Court Organization*. Retrieved April 30, 2003 from Web site: http://www.19thcircuitcourt.state.il.us/bkshelf/resource/il_crt_org.htm

¹⁴ Baum, L.

¹⁵ Ibid.

Constitution. The House of Representatives must decide whether to impeach the judge. If the House does impeach him or her, the Senate then must try the case to decide whether to remove the person from office.¹⁶ Reasons for impeachment typically include when a judge is involved in corrupt behavior or has a criminal offense alleged against him or her. While this process is an option, it generally does not get used.¹⁷

Illinois

To become an Illinois judge, candidates must be nominated during the primary elections. These nominees must then be elected in the general election.¹⁸ Circuit Judges serve for a six-year term and Associate Judges for a period of four years. In order for Circuit Judges to remain in their positions, the people of the circuit he or she represents must vote to retain the person at the end of the term. Associate Judges serve on a merit basis; Circuit Judges decide whether to retain them after their terms are up.¹⁹ Appellate Judge terms are 10 years, after which the person must also have a retention vote. If three-fifths of the voters choose to retain the person, he or she keeps the position. When a vacancy occurs in the Supreme Court, the remaining justices appoint someone else to fill the position until the next election. At that time, the voters get to decide whether to let the person serve a full term.²⁰

Besides not being retained by the voters, other ways exist for a judge to be removed from office. Illinois has a Courts Commission made of a “Supreme Court Justice, two Appellate Court Judges, two Circuit Judges, and two citizens.”²¹ After

¹⁶ Epstein, L., & Walker, T. G. (2001). *Constitutional law for a changing America: Institutional powers and constraints* (4th ed.). Washington D.C.: Congressional Quarterly, Inc.

¹⁷ Baum, L.

¹⁸ The Official Site of the Illinois Courts. *Courts in Illinois*. Retrieved April 30, 2003 from Web site: <http://www.state.il.us/court/SupremeCourt/CourtsInIL.htm>

¹⁹ Nineteenth Judicial Circuit Court.

²⁰ A Project for the Illinois Campaign for Political Reform.

²¹ The Official Site of the Illinois Courts.

providing notice and a public hearing, this commission has the power to take action against a judge who is guilty of willful misconduct, failing to complete duties, or anything else that puts the judicial office in a bad light. This action can take the form of removing the person from office, suspending him or her without pay, or reprimanding the person. Also, in the event that a judge becomes physically or mentally unable to perform his or her duties, the commission can suspend him or her with or without pay, or even retire the person.²²

Judges are not allowed to have other jobs besides being a judge. That means they cannot even be practicing lawyers or have another government position, whether it be federal, state, or local. They also cannot have an office in a political party during their time in service.²³

Now that the U.S. federal judicial system and an example of a state system have been presented, consider the Estonian, Latvian, and Lithuanian court systems.

ESTONIA

Court System Design

Despite the fact that its population (an estimated 1,408,556 people as of July 2003²⁴) is significantly smaller than that of Illinois, Estonia also has a three-tier court system. Of course, a major difference exists in the fact that Estonia's system serves the entire country, rather than only a portion of it. The Estonian court structure includes: a Supreme Court, 3 district courts of appeals, 18 city and county courts, and 4 administrative courts. The city and county courts are on the same level as the

²² Ibid.

²³ Ibid.

²⁴ U.S. Central Intelligence Agency (2003, December 18). *The World Factbook of 2003*. Retrieved March 14, 2004 from Web site: <http://www.cia.gov/cia/publications/factbook/geos/en.html#People>

administrative courts; the former hear civil and criminal cases while the latter focus on administrative issues.²⁵

Number of judges

While the number of judges may vary depending on how quickly a judicial opening is filled, Estonia currently has around 275 judges, a number significantly smaller than the number in Illinois (approximately 900). In proportion to the populations of the two, however, Estonia has more per capita. That could result from Illinois being under a federal court system in addition to the state system. Another possibility stems from the fact that the number of associate judges in Illinois was excluded from the state total.²⁶

Regardless, as of January 1, 2001, a total of 228 judges were filling posts in the Estonian city, county, and district courts.²⁷ An additional 28 served as administrative court judges,²⁸ and 17 held positions in the Supreme Court.²⁹

Specialized courts

The Estonian Constitution allows for the creation of specialized courts with specific jurisdiction.³⁰ The administrative courts are an example of a specialized court. Labour Disputes Commissions also exist as an alternative method for resolving labor issues. The Appeals Commission of Industrial Property Issues on the Patent Board serves as another alternative to the courts; it focuses on dealing with trademark registration and

²⁵ Justiitsministeerium. *Reform of the administrative court and reorganisation of courts.*

Retrieved April 13, 2003 from Web site: <http://www.just.ee/index.php3?cath=1998>

²⁶ The number of associate judges was excluded due to an inability to locate statistics on the matter.

²⁷ Justiitsministeerium.

²⁸ Phare 2001 National Programme. *Enhancing the administrative capacity of the court system.* Retrieved March 25, 2003 from Project No ES01.04.02 Web site: <http://europa.eu.int/comm/enlargement/pas/phare/programmes/national/estonia/2001/es%200104.02%20-%20terms%20of%20reference.pdf>

²⁹ Riigikohus. *The Composition of the Supreme Court.* Retrieved February 11, 2003 from The Supreme Court of Estonia Web site: <http://www.nc.ee/english/>

³⁰ Constitution of the Republic of Estonia: Chapter XIII (1992, June 28). *The courts.* Retrieved February 18, 2003 from Web site: <http://www.president.ee/eng/ametitegevus/?gid=10774>

patent issues.³¹ Yet another alternative exists in the form of the Arbitration Court, which helps settle disputes; its decisions are final and cannot be appealed.³²

Constitutional review

The way Estonia deals with constitutional review stands in contrast to the patterns of some other countries. For one, Estonia has a Legal Chancellor to deal with constitutional review. The Chancellor can go to parliament sessions and receives drafts of laws prior to them being made into law. If the law seems to conflict with the Constitution, the Chancellor can keep it from being passed. He or she can also be asked to interpret existing laws to determine their constitutionality. A third function of the Chancellor is to refer a case to the Constitutional Review Chamber of the Supreme Court. This chamber also receives cases from the actual courts if they feel that a constitutional issue is at hand. The President can also send information to this chamber if parliament overrides his or her veto on legislation that may conflict with the Constitution.³³

Appellate Process

A hierarchy exists among the main courts in the three-tier system. City, county, and administrative courts fall into the category of courts of the first instance. While one judge generally examines each case, two assessors sometimes join the judge to help in resolving the issue. The three district courts, otherwise known as courts of the second instance, serve as courts of appeal and as such, review court cases decided by the first instance courts. These cases are heard by three judges. The final level in the Estonian

³¹ Kaasik & Co. *Doing business in Estonia*. Retrieved March 27, 2003 from Web site: <http://www.kaasik.ee/eng/ligi.html>

³² Law Office of Lepik & Luhaäär. *General information*. Retrieved February 18, 2003 from Web site: <http://www.abll.ee/eng/law/general.php3>

³³ Constitution of the Republic of Estonia: ChapterXII (1992, June 28). *The Legal Chancellor*. Retrieved February 25, 2003 from Web site: <http://www.president.ee/eng/ametitegevus/?gid=10773>

system is the Supreme Court, which hears appeals for cassation.³⁴

The Supreme Court consists of several chambers and while it can meet en banc, most cases are heard by a specific chamber. These chambers include one each for civil, criminal, and administrative cases. Six justices serve in each of the first two chambers while only 4 serve in the administrative law chamber. The final justice not mentioned here is the Chief Justice, who presides over court procedures and also chairs yet another chamber (mentioned in a previous section) that specifically deals with Constitutional Review. This chamber has 7 justices who are appointed for 5-year terms by the Supreme Court, en banc.³⁵ The current make-up for the Constitutional Review chamber includes the Chief Justice and 2 justices from each of the other three chambers.³⁶

Judge Selection/Removal Process

The President of Estonia gets the Supreme Court selection process started by nominating the Chief Justice. Parliament, known as the Riigikogu, must then appoint the person for it to become official. The other Supreme Court justices are nominated by the Chief Justice and then appointed by the Riigikogu. Justices must be at least 30 years old and are appointed for life, according to the Constitution.³⁷

As far as the other courts are concerned, judicial hopefuls must apply to the Judges' Examination Commission. After a careful examination, the commission decides whether to recommend the person to the Supreme Court. Before being moved along in the selection process, however, the candidate must meet several other requirements. For one, an applicant must have completed the University of Tartu Law Program or be

³⁴ Ibid.

³⁵ EUMap. *Judicial office*. Retrieved April 15, 2003 from Judicial Independence in Estonia Web site: <http://www.eumap.org/reports/content/20/233/html/600>

³⁶ Riigikohus. *The Composition of the Supreme Court*.

³⁷ *Constitution of the Republic of Estonia: Chapter XIII*

otherwise qualified. He or she must also be a person with high moral character and be at least 25 years old. Plus, the person must have professional experience in the area of legal work. Once these requirements are met and the person has been recommended to the Supreme Court, the court sits en banc to decide whether to nominate the person to the President.³⁸ Up to three candidates can be proposed per vacancy. After receiving the nominations, the President must decide who to appoint. As with Supreme Court justices, lower court judges serve for life.³⁹

That does not, however, mean that a judge can stay in his position as long as he wishes. While the Constitution stipulates that “Judges may be removed from office only by a court judgment,”⁴⁰ conditions do exist that can lead to a judge losing his or her post. Unlike the United States, Estonia has a mandatory retirement age of 65.⁴¹ In addition, judges go through a 3-year probationary period after being appointed in order to determine whether they are really fit to hold their posts. If the judge remains in the position, he or she will theoretically serve until age 65. However, certain conditions do allow for removing a judge from office, such as incapacitating health problems or a court system reorganization. A judge can also be removed in the event of: “loss of citizenship, conviction for an intentional crime, or membership in a political party.”⁴²

LATVIA

Court System Design

Despite the fact that it has a larger population than Estonia, (its’ population was

³⁸ Estonian Institute (1997, May). *Judicial reform in Estonia*. Retrieved February 11, 2003 from Web site: http://www.esis.ee/ist2000/einst/society/judicial_reform.htm

³⁹ EUMap. *Judicial office*. (Estonia)

⁴⁰ Ibid.

⁴¹ U.S. Department of State (1995, February). *Estonia human rights practices, 1994*. Retrieved April 15, 2003 from Web site:

http://www.cpsr.org/cpsr/privacy/privacy_international/country_reports/State_Department_1994/Estonia.txt

⁴² EUMap. *Judicial office*. (Estonia)

2,348,784 as of a July 2003 estimate)⁴³ Latvia also has a three-tiered judicial system for the whole country. It includes a Supreme Court, 5 regional courts, and 34 district (city) courts.⁴⁴ Each regional court has jurisdiction over appeals from certain district (city) courts.⁴⁵

Number of judges

As of March 2001, Latvia had a total of 345 judges serving in the non-specialized court system. The vast majority of these served in the district (city) courts with a total of 219. The regional courts had the next highest number with 88 sitting judges. The Supreme Court justices totaled 38.⁴⁶

Specialized courts

In addition to these courts, Latvia has several more specialized institutions. The Latvian Constitution allows for the creation of military courts during war or in a state of emergency. Also, regional courts set up 28 Land Registry Offices to record real property and fix the rights of property ownership. The judges who serve in the Land Registry Offices have the status of a district (city) court judge.⁴⁷

Constitutional review

The Constitution also stipulates that an additional court, titled the Constitutional Court, has the right to declare laws and other enactments invalid, rather than the U.S. method of having the Supreme Court hear constitutional issues. This Constitutional

⁴³ U.S. Central Intelligence Agency (2003, December 18). *The World Factbook of 2003*. Retrieved March 15, 2004 from Web site: <http://www.cia.gov/cia/publications/factbook/geos/lg.html#People>

⁴⁴ Latvia Courts Portal (2002). *Courts*. Retrieved February 18, 2003 from Web site: <http://www.tiesas.lv/eng/category.asp?catID=889>

⁴⁵ Harbacevica, S. (2002). *Access to justice country report: Latvia*. Retrieved April 28, 2003 from Project on Promoting Access to Justice in Central and Eastern Europe, Web site: http://www.pili.org/library/access/CEE%20Conference_CountryReports/Latvia.pdf

⁴⁶ Kalnins, V. (2001, October). *Judiciary and legal system: Basic information*. Retrieved March 24, 2003 from Latvian Institute of International Affairs LIIA, Web site: http://www.balticdata.info/latvia/politics/latvia_politics_administration_judiciary_and_legal_system_basic_information.htm

⁴⁷ Latvia Courts Portal (2002). *Land Registry Offices*. Retrieved February 18, 2003 from Web site: <http://www.tiesas.lv/eng/category.asp?catID=891>

Court includes a panel of seven judges.⁴⁸ It has the ability when hearing a case to decide whether laws, international agreements, Saeima decisions, cabinet acts, presidential decisions, and the like conform to the Constitution. While it only heard 23 cases between 1997 and August 2001, and questions have been raised as to its usefulness, it remains as a form of judicial review.⁴⁹

Appellate Process

As with Estonia, the main Latvian courts have a set hierarchy. The district (city) courts hear cases of the first instance, while regional courts hear lower court appeals. While this overview may seem to indicate that the Latvian and Estonian court systems are basically the same with differences in court numbers stemming from Latvia's larger population, such is not necessarily the case. Latvia breaks each court level into panels for hearing different kinds of cases. For example, the district (city) courts are divided into three areas: civil, criminal, and administrative matters.⁵⁰ At the regional court level, appeals of all three types can be heard. Regional courts can also hear civil and criminal cases of first instance in special circumstances.⁵¹

The Supreme Court consists of several parts. One, called the Senate, forms the highest part of the Supreme Court. It hears cassation appeals from all the other court levels. The Senate has three departments: the Civil Department, Criminal Department, and Administrative Department. The other two components of the Supreme Court are the Civil Chamber and the Criminal Chamber. These chambers hear first instance appeals

⁴⁸ Hibbitts, B.J. (2002). *Courts and judgments*. Retrieved February 18, 2003 from University of Pittsburgh, School of Law Web site: <http://jurist.law.pitt.edu/world/latvia.htm#Courts>

⁴⁹ *Kalnins, V. Basic information, V.*

⁵⁰ Latvia Courts Portal (2002). *Courts hierarchy*. Retrieved February 18, 2003 from Web site: <http://www.tiesas.lv/eng/category.asp?catID=895>

⁵¹ Harbacevica, S.

from the regional courts.⁵²

Judge Selection/Removal Process

In Latvia, the way to become a Supreme Court justice is similar to how someone can become a lower court judge. All candidates must be recommended to parliament, the Saeima. One difference between nominating a Supreme Court justice or a lower court judge, however, is that while Supreme Court justices must be recommended by the Supreme Court Chairman, lower court judges need a recommendation from the Ministry of Justice. This includes Land Registry Office judges.⁵³ To be appointed to a judgeship, the candidate must be a Latvian citizen and also a “highly qualified and honest lawyer.”⁵⁴

Varying additional requirements must be met. To become a district (city) judge, the candidate must have a law degree, be at least 25 years old, have put in at least two years of service in a legal profession, and have passed a qualification exam. To become a regional court judge or a Supreme Court justice, the candidate must have served for a determined length at the previous court level, or else as an attorney, prosecutor, or law professor. While some exceptions apply to Constitutional Court judges, the same basic requirements remain.⁵⁵

In the event that someone is found to be morally unfit to hold a judicial post, he or she cannot become a judge. This may occur when the candidate has a criminal record, has had criminal charges brought against him or her, or is under investigation for a crime. Participation in an organization considered hostile to the state of Latvia or one that has

⁵² Ibid.

⁵³ Latvia Courts Portal (2002). *Ministry of justice*. Retrieved April 28, 2003 from Web site: <http://www.tiesas.lv/eng/category.asp?catID=905>

⁵⁴ Hibbitts, B.J.

⁵⁵ Ibid.

been banned also disqualifies a candidate.⁵⁶

While judges have relatively secure positions, conditions exist where one would be removed from office. These conditions include if the judge: requests to leave office, has been elected/appointed to a different position, has health reasons, or has reached the mandatory retirement age. District and regional court judges must retire at age 65 while Supreme Court Judges have until age 70. However, if the Judicial Qualification Board so chooses, it can have the Minister of Justice and the Supreme Court President mutually extend a district or regional court judge's term for five years, thereby totaling 70 as with Supreme Court judges.⁵⁷

Judges can also be dismissed or have their duties suspended upon having disciplinary action taken against them. The Minister of Justice has the power to suspend a District or Regional Court judge from office until a disciplinary problem can be properly considered. The same goes for Supreme Court judges, except that the President of the Supreme Court decides whether to suspend the judge, rather than the Minister of Justice. Then, after the matter has been looked into, the judge can receive a salary reduction, a reprimand, or even be removed from office. Reasons for removal include: intentionally breaking a law while reviewing a case, not completing all of his or her professional duties, behaving dishonorably, and refusing to no longer participate in a political party or organization.⁵⁸

LITHUANIA

Court System Design

⁵⁶ Ibid.

⁵⁷ EUMap. *Judicial office*. Retrieved April 30, 2003 from Judicial Independence in Latvia Web site: <http://www.eumap.org/reports/content/20/428/html/600>

⁵⁸ Ibid.

With a population of 3,592,561 (according to an estimate from July 2003)⁵⁹, Lithuania easily has a larger populace than the other Baltic States. It also has a four-tier court system rather than the three-tier systems of the other two countries. This may seem a little ironic, however, given that Illinois has a three-tier system even though its population is a great deal more than that of Lithuania. Regardless, the Lithuanian court levels include: a Supreme Court, a Court of Appeal, 5 County Courts, and 54 District Courts.⁶⁰

Number of judges

As of May 1999, Lithuania had a total of 529 judges, over half the number in Illinois (again excluding the total of Illinois associate judges). The vast majority were serving in the district courts, which had a total of 344 judges. The county courts had 131 judges, the Court of Appeal had 28, and the Supreme Court had the least with 26.⁶¹

Specialized courts

Besides the main court level, the Constitution allows for the creation of specialized courts to hear litigation issues dealing with administrative, labor, and family matters.⁶² In May 1999, a specialized system was created for hearing administrative cases. It has a two-tier system including the Superior Administrative Court and 5 County Administrative Courts.⁶³

Constitutional review

Lithuania also has a Constitutional Court, but it is not part of the actual judicial system. This court helps ensure that the Constitution is supreme and it can declare laws

⁵⁹ U.S. Central Intelligence Agency (2003, December 18). *The World Factbook of 2003*. Retrieved March 15, 2004 from Web site: <http://www.cia.gov/cia/publications/factbook/geos/lh.html#People>

⁶⁰ The Ministry of Justice of the Republic of Lithuania (2001). *The judicial system of the Republic of Lithuania*. Retrieved March 18, 2003 from Department of Courts Web site: <http://www.teismai.lt/english/teisinesistema.html>

⁶¹ Ibid.

⁶² International Constitutional Law (1992). *Lithuania- Constitution*. Retrieved March 25, 2003 from Web site: http://www.oefre.unibe.ch/law/icl/lh00000_.html

⁶³ The Ministry of Justice of the Republic of Lithuania (2001).

and acts unconstitutional. It also can decide if international agreements conflict with the Constitution, whether the president has incapacitating health problems, and if officials who are being impeached are complying with the Constitution. One final area it also considers deals with complaints of election law violations regarding the president or parliament.⁶⁴

Nine judges serve for non-renewable 9-year terms. To become one of these judges, either the president, parliament chairperson, or Supreme Court chairperson must nominate him or her; parliament then appoints whomever it chooses. Laws are suspended while being investigated by this court. Once a decision has been reached regarding a law's constitutionality, the ruling stands. Decisions of this court are final and cannot be appealed.⁶⁵

Appellate Process

The district courts hear cases of the first instance. Upon appeal, these cases can then move to the county courts. Civil cases involving a large sum of money over a set amount typically bypass the district courts and are first heard in the county courts. Criminal cases such as ones dealing with “high treason, espionage, attempted assassination of a state official or a representative of a foreign country, instigation of war, genocide, illegal transportation of persons, etc,” are also times when the county courts hear cases of first instance.⁶⁶

The Lithuanian Court of Appeals hears appeals from cases where the county court served as the court of first instance. This court also serves as the end of the line for administrative cases; they do not have the opportunity to a cassation appeal. The other

⁶⁴ Ibid.

⁶⁵ International Constitutional Law (1992).

⁶⁶ The Ministry of Justice of the Republic of Lithuania (2001).

cases heard by the Court of Appeals do have the opportunity to cassation appeal, however, and can be heard by the Supreme Court, which serves as the highest in the country.⁶⁷

Judge Selection/Removal Process

Both the president and parliament play important roles in determining which people become judges in Lithuania. First, however, a special panel of judges must recommend candidates to the president. Then, to become a Supreme Court judge, the president must recommend one of these candidates to parliament, which must in turn appoint the person. The process for becoming a judge at the Court of Appeals level is similar; the president makes appointments after receiving approval from parliament. The president appoints lower court judges as well.⁶⁸

Certain qualifications do apply before a person can be considered as a judicial candidate, however. The person must be a Lithuanian citizen. Also, judicial candidates are not allowed to have another elected or appointed position if selected to become a judge. Tied in with that, judges cannot receive a salary beyond what they make for their court positions.⁶⁹

Judges must be 25 years old and have a five year probationary period at the start of their appointments. After that, they can receive life tenure. If they do not receive tenure, the position is terminated. Upon reaching the age of 65, however, all judges must retire, just like in Estonia. An exception is made, however, when a judge reaches retirement age during a case.⁷⁰

⁶⁷ Ibid.

⁶⁸ International Constitutional Law (1992).

⁶⁹ Ibid.

⁷⁰ EUMap. *Judicial office*. Retrieved April 29, 2003 from Judicial Independence in Lithuania

Besides retirement, there are other ways for a judge to leave office. For example, if the person decides he or she would rather not serve as a judge any longer, someone else will be found to fill the position. Health problems can also cause a judge to be dismissed. Plus, if a judge's behavior reflects poorly upon the position, the person will be removed from office. The same goes for circumstances where a court judgment comes into play against a judge.⁷¹

COMPARATIVE ANALYSIS⁷²

Similarities and Differences

Each of the countries mentioned have similar judicial systems in some ways, but each has its own unique differences. The United States stands out because of its sheer size and subsequent need for a greater number of courts (federal and state) than any of the Baltic states. Estonia has an interesting way of dealing with constitutional review issues by incorporating a legal chancellor. Latvia may give judges an incentive to decide cases in ways that will lead to their term being extended as they near retirement.⁷³ Lithuania has a Constitutional Court that has no direct ties to the actual judicial system.⁷⁴

Yet, they do have similarities. The specialized courts in Estonia do some of the duties that U.S. specialized courts do. For example, Estonia's Appeals Commission of Industrial Property Issues on the Patent Board deals with similar issues to the U.S. Court of Appeals for the Federal Circuit; both deal at least in part with trademark and patent

Web site: <http://www.eumap.org/reports/content/20/440/html/600>

⁷¹ International Constitutional Law.

⁷² Unless noted otherwise, the following information recaps points made earlier in the paper and thus will not be cited a second time.

⁷³ EUMap. *Judicial office*. (Latvia)

⁷⁴ EUMap (2002, November 6). Press release.

issues.⁷⁵ Plus, all of the court systems had a very similar structure, at least on paper. With the exclusion of Lithuania which has a 4-tiered system, the systems of the U.S. federal government, Illinois, Estonia, and Latvia all have three basic court levels. They each follow a fairly similar appeals process as well. While some cases can bypass certain court levels depending on the severity of the case matter, most simply rise from one level to the next, ending with the Supreme Court.

Methods of judge selection follow a fairly similar pattern, excluding the electoral process used in Illinois. Lithuania's system parallels the U.S. method; the president nominates candidates which the legislature must approve prior to a presidential appointment. Latvia's system is similar as well, except that the recommendations come from the Ministry of Justice for lower court judges and from the Supreme Court Chairman for Supreme Court judges. Estonia's method is a little more complex, with the president nominating the Supreme Court Chief Justice for parliamentary approval. The Chief Justice then nominates the other Supreme Court judges, which parliament must approve. Meanwhile, lower court judges must apply to a commission which can then recommend the person to the Supreme Court, which can then recommend the candidate to the president, who can then make an appointment. Despite these differences, however, all have a number of checks and balances employed in an attempt to keep the judiciary from being corrupted. One person would find it difficult to simply put their favorites in office since the legislature must approve candidates before they can become judges.

Each government has similar reasons for when a judge can be removed from office, especially when criminal behavior or other misconduct is involved. The main

⁷⁵ See Kaasik & Co. source for more information on this Estonian commission. See Baum, L. (p.35) for more details on the functions of the U.S. Court of Appeals for the Federal Circuit.

difference between the U.S. and the Baltic nations, as already mentioned, is that the U.S. does not have a mandatory retirement age.

The way in which each country deals with constitutional matters differs, however. The U.S. Supreme Court hears constitutional questions. Estonia also has Supreme Court judges hear constitutional matters, but has them do so as a separate chamber that only includes 7 of the 17 justices. It also has a legal chancellor to specifically focus on legislation and its constitutionality. Latvia has a separate Constitutional Court that only deals with constitutional issues and, like Estonia, has seven justices. Lithuania, like Latvia, has a separate Constitutional Court for these matters. Like the U.S., it has nine judges on its court, but while the U.S. Supreme Court judges are appointed for life, Lithuania's Constitutional Court judges can only serve for nine years.

Revision needs

While the Baltic states have come a long way during the short time that they have been democracies, the passing of time reveals areas that need reworked. Many people in these countries have little faith in the judicial system, which likely results from experiences with courts under the Soviet regime.

Estonia

The judicial system of Estonia has progressed remarkably with a consolidated and independent judiciary. The court system itself is stable, with democracy and the rule of law firmly in place. Some problems do exist, however. The Ministry of Justice continues to play a large role in court administration, thereby hindering efforts at keeping judges from being unduly influenced. The financial autonomy of the courts is limited, making them susceptible to decisions made by other government branches. Public support of an independent court structure remains low as well because of a low level of

trust in the judiciary. That, in turn, leads to politicians who are reluctant to make the courts more independent. Plus, many judges believe that the Draft Courts Act does not do enough to keep judges free of outside influences.⁷⁶

Latvia

While Latvia has done its best to remove the legacy of the Soviet judicial system, it can be difficult to completely eradicate it. Public perceptions of many remain unchanged despite new laws and attempts at reform. Negligence in some areas of law has caused setbacks, and lingering socialist traditions also haunt public administration.⁷⁷ Plus, the system has been hindered because it has limited resources and a lack of political engagement by the people. Judges and other court staff are paid very little, not to mention that the court infrastructure itself has its own problems. Court proceedings are often delayed a great deal and corruption plays at least some role in the system. The qualifications of the judges vary a great deal as well, with some being much better than others. To top it off, the Open Society Institute has reported that, “Important elements of the separation of powers are poorly defined in the constitutional structure, or are based only on ordinary legislation.”⁷⁸ It also notes that the Ministry of Justice has a great deal of control over many parts of the judicial system, such as its administration, finances, and discretionary powers. That can lead to unsuitable influence being exerted on the judges.⁷⁹

Lithuania

As with Latvia, Lithuania has some problems to be worked out. The courts and

⁷⁶ EUMap. *Executive Summary*. Retrieved May 1, 2003 from Judicial Independence in Estonia Web site: <http://www.eumap.org/reports/content/20/233/html/100>

⁷⁷ Kalnins, V. (2001, October). *Judiciary and legal system: Summary*. Retrieved March 24, 2003 from Latvian Institute of International Affairs LIIA, Web site: http://www.balticdata.info/latvia/politics/latvia_politics_administration_judiciary_and_legal_system_summary.htm

⁷⁸ Kalnins, V. *Basic information*.

⁷⁹ Ibid.

judges face difficulties regarding their public perception. They “are, on the whole, mistrusted and not fully respected by a number of politicians, as well as substantial segments of the general public and media.”⁸⁰ This leads to a hesitance toward making the judiciary more independent, including where finances are concerned. That, in turn, keeps confidence in the courts at a low level, especially when politicians and the media refer to the courts in a negative way.⁸¹

Many problems stem from a decision the Constitutional Court made in 1999 that affected the Law on Courts. Improvement may happen now since new legislation that passed in 2002 created a Council of Courts and a National Court Administration in order to generate a more independent and efficient judicial system.⁸² It cannot, however, immediately erase the problems the original court ruling created since Constitutional Court proceedings voided part of the Law of Courts. The court system faces struggles with inadequate funding and working conditions. Salary reductions placed barriers on the independence of judges. Many Lithuanians focused on the problems, however; 86.1% stated in a poll that they were in favor of reducing judicial salaries even more. Many also said they believe that the courts are corrupt. And sadly, other public officials have at times overstepped their bounds in requests to the courts. They try to push acquittals in certain cases or for verdicts that benefit particular groups.⁸³

CONCLUSION

⁸⁰ EUMap. *Introduction*. Retrieved May 1, 2003 from Judicial Independence in Lithuania Web site: <http://www.eumap.org/reports/content/20/440/html/200>

⁸¹ Ibid.

⁸² EUMap (2002, November 6). *OSI welcomes Lithuania's recent judicial reform but points at risks of creating an unaccountable and poorly managed judiciary*. Retrieved March 25, 2003 from Press release Web site: http://www.eumap.org/whatsnew/pressinfo/1036523775/index_html?print=1

⁸³ EUMap. *Introduction*.

While each of the Baltic states has taken a good step toward having an independent and effective court system, problems do remain. Each needs to focus on training judges to ensure a more competent judiciary. Latvia especially should develop a better way of evaluating judicial performance instead of using time in office as an indicator of who is qualified to serve.⁸⁴ Each country should also work to help the courts become more financially autonomous and judicial independence should be a priority. Part of the problem remains that the public, not to mention the other branches of government, remains rather skeptical as to the value of the court system. As mentioned previously, the usefulness of the Latvian Constitutional Court has been questioned, signifying that judicial review is not seen as an important function of the judicial system.

If the new Estonian Courts Act and the Lithuanian Council of Courts and National Court Administration are both implemented effectively and respected, progress will be made in both countries' judicial systems. Latvia seems to be the one with the least supported system. In order for real change to occur in Latvia, "the pressing importance of immediate, serious and sustained political commitment to comprehensive judicial reform," needs to be acknowledged.⁸⁵

Progress in each country is possible, as long as others outside the judiciary get behind the system and support it. While it may seem risky to place much autonomy in the hands of the courts given the current state of each of the systems, a little dedication to improvement will go a long way. Each has taken important steps toward creating an effective judiciary, but with any new system, problems are bound to arise. Depending on

⁸⁴ EUMap. *Judicial capacity in Latvia*. Retrieved May 2, 2003 from Monitoring the EU Accession Process: Judicial Capacity Web site:
http://www.eumap.org/reports/2002/content/70/428/2002_j_latvia.pdf

⁸⁵ Ibid.

how each country resolves its issues, the judicial systems should grow stronger and deserving of the people's trust. It may take years, but with awareness, not to mention the encouragement of the European Union, progress should occur.