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The role of the Council for the judiciary in evaluating and monitoring the quality and efficiency of judicial systems

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Introduction by Bart van Lierop, justice at the Court of Appeal of The Hague (the Netherlands)

1. Introduction.

Who amongst you has any objections against the idea that the quality and efficiency of justice should be our prime concern and that we should reflect on methods to promote that noble value? I guess no one amongst you will raise his/her hand and claim that this is not an important issue.

Indeed, the concept of quality has become very fashionable these days. We talk e.g. about the quality of air, the quality of medical care and the quality of education. Likewise, the topic of the quality of justice has become popular.

Why is this the case?

In the first place, one can point at the fact that the judiciary, like other institutions, is subject to growing external criticism from the "outside world", from citizens, politicians and the media. In the area of criminal law, judicial errors like the wrongful conviction of persons or the absence of succesful sentences in complex cases of fraude, provoque reactions of unbelief and condemnation. In the area of civil law, the sometimes unbearable length of proceedings and the incapacity of the judiciary to find adequate solutions for that problem is criticised.

In the second place, judges themselves express worries about the quality of their work; they feel that this quality is threatened by the prevailing culture of management, in which too much attention is paid to the "output" of judicial products and too little attention to aspects of quality. Indeed, I think, the concern for quality is part of the "natural" condition of the judge, of any individual judge and of the organisation to which we belong. We can indeed distinguish between three levels: the macro-level of the judiciary as a national institution, the meso-level of the different courts and the micro-level of individual judges.

When we think about the quality of justice, we think at first about the *legal quality* of the judgments that we pronounce: are they state-of- the-art from a legal point of view, are they sound, fair and well motivated? This dimension of the quality of justice is primarely warranted by systems of appeal and cassation. Topics like the recruitment of judges, their training and education are also relevenant in this dimension.

However, quality of justice also refers to matters like the independance and the integrity of the judge, the length of proceedings, the way in which the judge communicates with the parties, the way in which the judiciary communicates with the outside word and the way in wich the judiciary accounts for its functioning.

Like all concepts, the concept of the quality of justice is influenced by the specific cultural and societal context in which we live. However, it seems to me that the experience within the Council of Europe shows that common ideas about the elements of the concept do exist. The case law on the Convention for the protection of human rights, more in particular article 6 of that Convention, and the work of consultative bodies like the CCJE

(the Consultative Council of European Judges) and the CEPEJ (the European Commission for the Efficiency of Justice) clearly demonstrate the existence of common ground in this respect. I refer to the various opinions of the CCJE and the recent report of the CEPEJ on European judicial systems. But the way in which we proceed in this area differs considerably in the various member states of the Council of Europe.

In the short time that is at my disposal, I will try to give you a brief exposé on the experiences with the topic of quality of justice in the country where I practise, the Netherlands. My main object is to demonstrate how vast the topic is and how much work is to be done to develop a system that defines elements of quality and that is capable to measure these elements of quality.

2. Experiences in the Netherlands.

In the ninetees of the former century, the question of the organisation, the management, of the judiciary became a central topic in the Netherlands. In the framework of a project called “Project for strengthening the judicial organisation”, nation-wide discussions were organised (discussions among judges and dicussions with the outside world), reports were written, research was done with regard to the situation in other countries and pilot projects were set up. These developments resulted, in the year 2002, in the creation of a Council for the judiciary of the Netherlands. The Council was set op to strengthen the efficiency of the judicial organisation and its independence vis-à-vis the executive and legislative powers. More in particular, the council is supposed to form a “buffer” between the courts and the ministry of justice.

In its first years of existence, the council concentrated mainly on quantitative matters like the financing and the output of the courts. The council has certainly been succesful in this respect, but it became more and more clear, through the external and internal factors that I just mentioned, that attention must not only be paid to the amount of judgments produced by a court, but also to aspects of quality. Indeed; the Dutch Judicial Organisation Act (article 94) explicitly also confines to the council the task to assist the courts in promoting the quality of justice. That is the reason why a vast project for the quality of justice (“RechtspraaQ”) was set up, incorporating elements that have been developed earlier. After four years of development, the quality system is now operative.

This quality system works as follows. The system firstly defines the elements, the components, of quality. In our system, we distinguish between four areas, relevant in the assessment of the quality of justice:

1. impartiality and integrity of judges;
2. expertise of judges;
3. personal interaction with litigants;
4. unity of law;
5. speed and proceeding on time.

These areas are subdevided into several more concrete and tangible components that can be measured in an emperic way. To give you an example: the area of impartiality and integrity is subdevided into indicators like the registration of secondary occupations of judges, the existence of a procedure for complaints by litigants, the impartiality of judges as perceived by litigants and lawyers, etc. I have here an outprint of the system, as you can see, it is quite an extensive document.

The system further provides for standards and instruments to collect and measure data, like registration systems, audits, and client evaluation surveys. Indeed, the situation in each court is evaluated regularly.

Important to note is that the council is now working on methods to translate the qualitity-standards into factors that codetermine the allocation of budgets to the courts.

A striking element of the system is the organisation of peer review and intervision. All judges are supposed to discuss, at least every two years, their performances in court on the basis of observations of some colleagues, who are present at a hearing, that is also recorded on video. I sometimes fear that our powerful position on the bench creates the risk that we become authoritarian and selfcontended. Peer review and intervision as well as client evaluation surveys may counter-balance this tendency. I must add, however, that many colleagues, more in particular the older ones, are quite hesitative to participate in these processes of reflection on ones own behaviour.

This is not the place to explain in detail how the system works. Important now is to say that the system implies that all the courts are reflecting, in a sytematic and nation-wide common way, on their own functioning in terms of quality and efficiency. This process entails, of course, a tremendous amount of extra work for the courts themselves (judges and the board) and for the council.

It is too early to draw conclusions on the results of this process. It seems to me though that the enterprise itself: creating space for constant reflection on our functioning, is already very positive. It may support the individual judge in the exercise of his or hers demanding function. It may counterbalance the mono-culture of the quantative approach. It is also important in terms of transparancy towards the society in which and for wich we operate. I do not think that the system jeopardises the independance of the individual judge or the independance of the judiciary as a whole, but of course we must stay alert to possible misuse of the system.

Much depends of course on the way in which the process is conducted. The system is a means and not an end in itself, it should not become another bureaucratic burden; involvement of and support from the participants is essential. We must also keep an open mind for possible aberrations of such a system. To give you an example: all courts in the Netherlands are supposed to define a so called mission-statement. In my court, the court of appeal of The Hague, this mission-statement was, after lengthly discussions, defined as follows:

“Within the judiciary, the Court of Appeal of The Hague stands for the added value of justice in appeal. The court reviews in a thorough way the points of fact as well as the points of law. Where possible, the court promotes the uniform application of the law. The staff of the court is capable and highly motivated. The court constitutes an organisation that works in a reliable and purposive way.”

It seems to me that one can do without such verbal violence!

I may add that this mission-statement was printed on a magnetic card that we can fix at our refrigerator at home, so that we do not forget the message.

In spite of this quite awkward manifestation of our quality system, I think one can hardly overestimate the importance of systematic and permanent reflection on the quality of our daily work. If a council for the judiciary exists in a member-state, it seems a natural task for this institution to promote the quality of justice.