Seminar on Organisation Development in Courts

Maastricht, June 17th 2011

First session:
Key issues in organisational development and quality management in courts
Chaired by Francesco Contini, IRSIG-CNR, Bologna

President of the Maastricht District Court, **Ronald Philippart,** welcomes all the participants and thanks them for their presence at the seminar. Special attention is given to Philip Langbroek and Dorien Schouten who have organised this conference. A short introduction is given about the conference and the building. The District Court of Maastricht is a former hospital. Some statistics are given to illustrate the changes the judiciary is facing. In 1985 there were 17 judges and 25 supporting staff, in 2011 there are 75 judges and 100 supporting staff. In 1985 the court had no own budget, the Ministry of Justice paid the bill. This has changed tremendously; the court now has its own budget (2011: 23 million euro) based on the number of judgments passed down. Yet, there are also individual target for judges, with regard to the amount of cases judged, permanent education, review programmes of colleagues et cetera. Another development has been the introduction of managing judges. This is mostly seen as an improvement by judges. There is still much to do, one of these developments is that the number of District Courts will decrease from 19 to 10 in 2012. In this seminar, we look forward to exchange experiences about all recent and upcoming court developments in our countries.

Introduction by **Francesco Contini**, IRSIG-CNR, Bologna:

It is an honour to be here. Exchanging analysis and experiences between academics and practitioners will greatly benefit research and courts themselves. I thank the members of the organisational committee for putting together this interesting seminar. This seminar has two main goals. In the first place, it is an exchange of experiences. It should, however, be noted that there are no universal best practices. Cultural differences determine that best practices differ between countries and the stage they are in. We should try to learn how to face the difficult challenge of court organisation and improving the quality. Our second goal is to find new ways to collaborate in the future. This meeting is already an achievement; we will now have to start exploring new ways to increase our interaction. A broad range of options is available, ranging from research projects, meetings, collecting common experiences, using a website to change those common experiences et cetera. We can greatly benefit from sharing experiences.

Presentation of participants

Introduction by president of the Maastricht District Court, **Ronald Philippart**:

When I started working in the court during the ‘90s, court organisation was very different. Courts were strictly based on Montesquieu’s division of power and strictly applied law. Organisation was basically non-existent; we only had to distribute clerks

and judges. In the recent years, this has changed. We are experiencing more pressure on courts due to budget constraints and public management is introducing new ways of thinking in the public sector and judiciary system. However, many European courts have resisted these changes. In this seminar, there are many representatives from northern-Europe, whereas courts in Western-Europe continue to ignore the changed circumstances. Many courts still work with the blueprint left in place after Napoleon, despite developments in their countries. Courts are only now learning to serve states and their citizens; other values are asking for their attention. After 200 years, the constitution of the court has changed. Courts have been able to rework and re-evaluate the changes. Ideas have been re-elaborated and adapted, producing interesting developments. Our courts now are no longer the courts of 20 years ago. We should celebrate the capacity of the courts here to accept the changes and seek the implementation of new methods.

Organisation development in court administration – **Philip Langbroek,** Montaigne Centre, Utrecht University:

To begin my presentation, I would first like to introduce two organisations. Two years ago we started the Montaigne Centre at the University of Utrecht which concentrates on judicial administration and conflict resolution. The centre offers a multidisciplinary combination of actors: researchers, lawyers, political scientists and economics. It is an example of our society evolving: 20 years ago such collaboration would have been unthinkable. Of course, we are also a tool for universities to finance cutbacks in the budget. We therefore function as trade agents in knowledge. We are in need of your experience and expertise to keep us organisationally alive. We hope we can rely on the participants to this seminar for their kind cooperation in future projects.

Also, I would like to introduce the International Association for Court Administration. This federation of court administrations originated in the United States but offers worldwide membership using English as the spoken language. It facilitates worldwide exchange of experiences, both virtually and physically. The association publishes the International Journal for Court Administration for which I have been an editor since 2008. In addition, a worldwide conference is organised yearly. This year's conference took place in Jakarta, next year you are all welcome to partake in The Hague, 13-15 June 2012. Everyone can become a member, courts as well as ministries of justice, for not a large membership fee. The journal and website are freely available to members. More information about the organisation can be found on www.iaca.ws.

In court administration, I would like to distinguish between two structures. First, courts interact with the political domain. With political domain, I refer to the elected representatives. Secondly, courts interact with the central court administration. I do not consider courts as entities of their own; they are part of bigger court structures. There is ongoing interaction, which basically revolves around money.

The first structure has undergone development. Administrative councils have been introduced, and where central court administration could no longer fulfil its role, ministries of justice were set up. From a democratic point of view, it seems odd that the court administrations would no longer function adequately. However, for the relation between local and central courts it has not made much difference. The basic value for their interaction is trust. The emphasis must be on cooperation, not independence. Trust is the revolutionary perspective.

Recently I was asked to do a comparative analysis of success and failure in court administration between Member States. We selected countries where something was going on in quality management. We examined classic political examples, as well as Ukraine. Ukraine was not selected for its sophistication, but because it was trying to develop its court administration policy but faces interesting obstacles from the old communist structures. What we found is that in working relationships between local and central courts, trust is most important. Who owns the information at local level is a crucial factor. Lawyers think in terms of competences and formal relationships. When developing quality management and organisation development tools, you need information on the development in courts. Now, local court administrations have to generate information and transfer it to the ministry of justice, thus making any quality management their problem. However, organisational development has to be

organised bottom up, not top down. Top down initiatives are unlikely to be effective because judges and staff will ultimately want to do their own thing and ignore the administration's policy.

For developing quality policy, two types of feedback loops are needed: 1) how do registries, lawyers and users think of the court, and 2) how do judges and staff perform in juridical quality? Information about the last issue is the most sensitive. In decentralised relationships, information from this feedback loop can also be used for accountability purposes. Politicians are very interested in the performance of the courts. With their permanent lack of money, they constantly try and press the judiciary to be more efficient and cheaper. Is it possible to shield this sensitive information acquired for organisation development from application for accountability purposes?

Judicial work will always be affected by management, but partial independence can be accomplished. One example is Lower Saxony. Before judges and staff started their organisational development project, they agreed with the Ministry of Justice that – as long as efficiency was increased – the organisational information would be shielded from political enquiry. Hence there was no accountability problem. This system has been effective now for quite some years. In the Netherlands, on the other hand, quality management information is explicitly and structurally attached to the structuring and financing of the judiciary. It works now. However, when talking to judges, it seems that ten years ago they still regarded the judiciary as 'their organisation'. With the council of the judiciary firmly in place, it seems that judges are losing their attachment to the judicial policy and organisation. Is it possible to combine quality management and accountability without making the judiciary too vulnerable for political interference?

For court administration to work, judges should accept to participate in management. This is not self-evident. The judiciary has to learn about what people on the shop floor want. Management has to show that they do something with the ideas and comments. Courts have to adapt all the time, become flexible organisations. In the judiciary there is no market competition, but competition for public trust. The judiciary has to show they earn it. I see a dominant role for ICT and registrations here. Facilities do not have to be high-tech, but practical. And finally, respect each other's domain. This point is problematic. Local courts lack overview of the whole country or direct interaction with the Ministry of Justice. Central court administrations fill this void and give central input for organisational development. If a something has to be changed, interaction and cooperation of courts is needed. If there is a good working relationship, the courts will be involved and asked to present their ideas as well. Without that trust and task division, courts cannot act in absolute autonomy. Maybe this would have been possible twenty years ago, but today all courts are part of a larger structure.

The topic that remains is ethics. The functioning of a court is loaded with ethics. It is a burdensome task: courts have to reinvent, develop and enforce basic values in their organisation constantly. Even a judge's identity on Linked in or Facebook could pose a problem. If people in the court room object to perceived interaction with contacts on Linked in, it could compromise the judiciary's functioning and independence. In no other public organisation are ethical issues so charged and critical. Judges have an

exemplary role and controlling function. If courts are unable to explain their position from an ethics perspective, power separation cannot be explained and we return to medieval structures. The emphasis on ethics separates courts from other public organisations.

Quality management offers risk and chances for courts from an ethical perspective. First, as we discussed, there is a risk that information acquired for quality management purposes can be used for political accountability. Secondly, the call for timelines and consistency of judging may be hard to combine with professional autonomy. There exists a tension between legal certainty and judicial autonomy, how can this be solved and organised internally? However, even if the judicial systems operate open and transparent, public trust will not be generated automatically. Quality management does not protect courts against media attacks on single mistakes.

Societal changes also challenge courts and give them new chances. Courts can no longer act independently, but have to coordinate and cooperate with central court administrators. In addition, with courts no longer dependent on the political domain, who will represent them and defend their cases? Whether it is the Council of the Judiciary, Constitutional or Supreme Court, the general public needs a recognisable face to explain the courts' societal relevance in times of cutbacks. Although the usefulness of courts may be self-evident for us, it is not for Geert Wilders in the Netherlands. He perceives them as the enemy, and so do his voters. In the old days, the ministry of justice shielded the judiciary from political attacks. However, with the Council for the Judiciary, the minister does not automatically defend court administration and life becomes difficult. These developments result in restructuring of the judiciary and pressure between courts and the political domain. Court administrations will need to work to prove their practical relevance, to citizens and politicians.

I hope that we can use this seminar to share experiences and see how we can develop court and judicial administration research further. Thank you for your attention.

Second session:
Local and central initiatives in organisation development and quality management - Chaired by Francesco Contini, IRSIG-CNR, Bologna.

Court of Appeal of Western Sweden, Gòteborg, Sweden – by **Marie B. Hagsgard**.

I am an associate judge at the Court of Appeal of Western Sweden. Since a few years I have been involved in quality management and supporting local initiatives. Two examples that will be discussed today is the use of internal and external dialogue. This method has first been used at the Court of Appeal of Western Sweden since 2003 and the District Court of Vänersborg since 2007. The method has spread to a larger or smaller extent to 20 other courts.

It is an approach where you involve all judges and other staff of a court in a dialogue about how to improve the functioning of the court. This method was mostly learned by doing.

There were two reasons why we have chosen for dialogue. First, the court managers have everything to gain by listening to the professional knowledge of judges and other staff in improving the functioning of the court. These professionals (including the cleaning and security staff) all have important information about what is working well and what needs to be improved. Second, they are all eager to do a good job, so if they know they are being listened to, it will create commitment among the professionals to improve the functioning of the court.

The internal dialogue was done by interviewing the whole staff. These interviews were conducted by 4-10 people of the court management staff, who were given some training and had the trust of the professionals. A list of questions was used. Yet, there were 3 basic questions. 1. What is working well? 2. What should be improved? 3. How should it be done? It turned out that very few judges knew what other people were thinking, with regard to how the court was functioning. The next step was to organise discussions in mixed groups of staff (judges, people from the Ministry of Justice, court administrators). In those discussions the results of the interviews were discussed. What areas were most urgent and what solutions could be adopted? One of the groups came out and said “what rubbish is this?”. The rest of the 20 groups took it seriously and gave the court manager suggestions. In the end a lot of material with a lot of suggestions were collected. This internal dialogue took a year. Then the court manager makes decisions on which measures to adopt. The staff is involved in a follow-up of the results of the measures taken. This was also done in groups.

The next step of the method is external dialogue. In this step external stakeholders are asked about their opinion. First other professionals, like lawyers and prosecutors, were interviewed to give their views on improving the functioning of the court. After that, the court staff has interviewed users/clients of the court. This includes

defendants, plaintiffs and witnesses. They were asked about how they were treated and whether the information available about the procedure was sufficient. It turned out that the external dialogue was much more fruitful when interviews instead of questionnaires were being used.

The method continues with an internal dialogue about the external dialogue. The results of the external dialogue were communicated to all the staff and discussed in groups. The court manager decides on the measures that will be adopted. It should be noted that not everything that is proposed, is possible.

The final step is a follow up the measures taken. This is done in yearly meetings. There are also recurrent interviews with follow up-questions. All courts have a yearly self-assessment. The National Court Agency gave turnaround times and job satisfaction statistics. About job satisfaction, you really discover things with this method; some people in the Court of Appeal said that no one listened to their ideas before this method of dialogue.

The most important result of this method at the Court of Appeal has been the introduction of uniform routines and practices for handling civil cases agreed upon by judges. These routines are communicated to lawyers and put on the courts external website. There has also been a delegation of tasks concerning preparation of criminal cases to secretaries, accompanied by uniform routines for secretarial work. The results of the external dialogue has been that there is much more information for users/clients about the process available. Before court proceedings a paper is sent out giving answers to frequently asked questions. There is an information leaflet in the waiting room explaining court proceedings in easy to understand language. There is more oral information from judges and other staff to users before and during the court proceedings. These measures are also spreading between courts, i.e. other courts pick up on this. Now there are 15 different groups at the Court of Appeal trying to improve the court in many different ways: treatment of users, formulating judgments, contacts with media, specialization et cetera. At the District Court this method has led to shorter turn around times for all sorts of cases and the introduction of uniform routines for the handling of all cases, which are published on the Internet.

The main advantage of internal dialogue is that you use the professional knowledge of judges and other staff and at the same time you engage them in suggesting, implementing and evaluating measures for the improvement of the functioning of the court. The main advantage of external dialogue is that the staff became more interested in the view of users/clients and that resulted in a willingness to meet their needs. The staff became more aware of the task of the court in society as well.

Discussion

Gar Yein: Can you tell me something more about the statistics used? How are they obtained? With regard to the uniform routines, does it require legislation on a national level?

Hagsgard: The government decides (and measures) turnaround time, but there is no punishment, if you are not able to meet those requirements. There is a follow-up by the National Court Agency. In a dialogue with them you explain why you did not meet the goals. Job satisfaction is also measured by the National Court Agency, the government is not interested in that. It is up for the courts to do something about that. It was the incentive for the President of the Court of Appeal to have a dialogue with her staff. With regard to the uniform routines, you only do this when you have this space in the current legislation. That legislation is of course followed. There is space to do it one way or the other at this moment. We have not been criticized, lawyers say “why do not every court does it like this?”. It is now a project for 8 District Courts. Lawyers are pushing it, because it works better for them

Ucha Todua: A question about the court procedure. It is published on an external website, so parties involved know how it is handled?

Marie Hagsgård: We tell them what we need, so we do not need to ask them again and again. A check-list is published on the website with steps that you need to follow to start a procedure. Some judges have said “it is in the law books”, but why not help them?

Philip Langbroek: Is it ongoing? It looks like a soft approach with qualitative information. It is thus labour intensive, how much time does it cost you? You have 15 groups doing this, so from an economical perspective it is bloody expensive. How do you justify that?

Marie Hagsgård: We do have statistics regarding turnaround time, so we know we have not lost time. In civil cases we even have cut time. It increases job satisfaction: it is more fun now to be a judge now that we have these projects. The projects are mostly on writing the verdicts and specialization. It is up to the judges whether they want to do it.

Dietger Geeraert: You mentioned interviews of the users (involved parties in a procedure) about treatment of the users. Are they interviewed about the results of the cases? Or solely about the relationship?

Marie Hagsgård:. No. Britt is going to interview whether users understand written verdicts. This will be the first time we do this in Sweden.

Ronald Philippart: Every court has its own checklist?

Marie Hagsgård:. Every Court of Appeal does their own thing, but we all follow the law. They do have an own checklist. I would love them to start cooperating. If you want anyone to agree, we do not believe in telling people what to do, we believe in agreements. If they agree to something, they continue to do something. It is a slow way of working, but does not make court less efficient. You do, however, need some structure for this dialogue. You never tell them what to do.

Celle Superior Appeal Court, Niedersaksen, Germany – by **Stephanie Otte**.

I am convinced that courts must see themselves as learning organizations. We need to improve efficiency in the courts. We need strategies to deal with changes.

A few years ago, the ministry of justice in Lower Saxony followed this insight and came up with a large scale benchmarking project, aiming at analyzing our current (quality) standards in order to render our administration of justice more efficient. In the beginning, the project focused on the courts of first instance but was later expanded to the level of appellate courts.

Before I get to the details of the project, first, let me give you a couple of basic facts about the administration of justice in Lower Saxony. Lower Saxony has a three-level system for ordinary courts. There are eighty first instance courts, eleven (second instance) appellate courts and three superior courts of appeal, which are called "higher regional courts". The Higher Regional Court of Celle is the largest of the three Higher Regional Courts in Lower Saxony. Its jurisdiction includes 6 appellate Courts and 41 first instance courts. Within its district, we employ 4200 persons, including about 900 judges, and serve a population of approximately 4.1 million. The administration of justice in Lower Saxony is organized under the Ministry of Justice. Administrative bodies within the courts act as agencies of the ministry of justice, and are accountable to it in that respect. In these administrative matters, the first instance and appellate courts report to the higher regional courts (which in turn report to the ministry of justice). Statutory provisions ensure that the administration does not interfere with the judicial activities of the courts(, particularly the hearing and deciding of cases).

The benchmarking project is based on the following elements:
First, surveys and interviews of the staff and attorneys are conducted in order to capture the general opinion concerning the quality of the justice administration. The data collected constitutes the starting point for in-depth discussions at each court. In order to ensure comparability of the results, we developed quantitative key performance indicators. These figures constitute uniform criteria – in total we came up with eighteen benchmarking indicators for the administration and thirty for the courts. We started the project in 2002 with the aim to discuss the different work methods in the courts of our district and to develop a flexible system in which everybody involved could profit and learn.

The goal of quality management is to preserve the high quality of public legal services in times of dwindling resources, as well as developing efficient, costeffective approaches satisfying both, the litigants and public servants.

The ever-changing working environment (for instance due to legal reforms, centralization, technological progress, etc.), calls for a holistic approach (that comprises all aspects of our work).

The discussions enable us to learn and develop good ideas and solutions for everyone involved to use.

The systematic comparison of the local courts and the exchange of different ideas of

administrative practice, are then used to optimize existing structures and evoke change where needed, through the implementation of specific and established measures.

Judges are generally more reluctant to participate in this process, whereas the majority of other public servants at the courts are very enthusiastic about it. Due to the success of the early pilot projects and also due to financial support granted by the ministry of justice, all the first instance courts are now participating in the project. The appellate courts and higher regional courts are involved in similar projects. The “best practices” produced by the working groups in each (first instance) court, are communicated to the respective working groups at all the other first instance courts. After a few years, the changes and reforms of administrative practice are reviewed in each court participating in the project.

The results of the review sessions are shown to the participants of the respective working group as well as to the courts’ top level administration. Thus they obtain feedback on how they performed in comparison to other courts. The results reveal, whether a court has made changes or has decided to follow a conservative policy. It remains within the discretion and the responsibility of each court to implement the recommendations.

However, there are no inspections or mandatory control mechanisms to the quality management. The administrative supervisory instruments must not be used to interfere with the judicial activities. That would be (in conflict with the separation of powers and thus) unconstitutional. Furthermore, if there are specific deficiencies with respect to individuals within the court-administration, there exist disciplinary measures and other instruments of individual supervision. Changes in quality management can only occur voluntarily.

The benchmarking project has been very successful so far. Nearly all courts in Lower Saxony have completed two rounds in one working field. Actually, there is not so much left to do, but to exchange the “best practices” we developed. Many courts in other German states are copying our processes, so we are exporting our quality management/improvement concepts for courts.

Nevertheless, in Lower Saxony the circumstances are pressing and calling for changes, since the courts are running short of funds and personnel. Hence, the appellate courts are constantly in need of promoting quality management. For several years, there has been a special department within the higher regional court of Celle that is dedicated to administrative-organizational issues: the “organization department”. In the last two years, we have made it our main objective to support progress in our district by providing services to our local and district courts. The pressure to change, to which both, the court and the administrative staff is exposed, is currently growing. Scarce resources, technological progress and a series of administrative measures of modernization have lead to many small, but also to a number of major changes within the working procedures.

For example, the introduction of the confidentiality of working time, digital dictation, electronic double acts, mobile workplaces, systematic data collection via IT-systems

and new networking technologies have brought many changes to our working environment.

It lies within human nature, to distrust any upcoming change.

If one considers, on the other hand, the importance of a positive working atmosphere for the functioning of the courts, it is evident that the ability to change will become the key issue of leadership in the coming years. Satisfied employees are motivated and provide better results. We constantly observe that the satisfaction of our personnel is crucial for a positive working climate in our courts.

Changes in the staff are often unpopular. "We have always done things this way" or "we never did things that way" are so-called killer phrases.

However, offering specific measures of support for internal reform can be the starting point for the implementation of changes. In Celle, over the past two years, we have developed a strategy for the future quality management of the judiciary branch. The strategy is based on the results and experiences gathered in the benchmarking projects and allows for the sustainable and visible implementation of changes in the courts.

On the basis of the EFQM model and ISO 9001:2008, a recognized quality management system developed by the public administration, the goals of our Quality Management can be defined as follows:

- optimization of working processes
- reinforcing the individual responsibility of employees
- better/effective use of resources and satisfaction of the citizens/litigants
- and all this in a dynamic organizational environment

By means of the surveys conducted in the context of our benchmarking, our employees have clearly articulated their needs and expectations to the court administrative leaders.

Now, they expect concrete measures of improvement, ideally not only regarding the conduct of top level managers, but also preparing the ground for a greater commitment to change on a general level.

The benchmarking concept provides for the institution of so-called "leadership workshops" or "workshops for change", in which the assessments, analyses and suggestions are brought to the attention and responsibility of the courts' top level administration. The subsequent implementation of these proposals (and suggestions) remains in their hands. However, putting new ideas into practice can only be successful, if it is accompanied by so-called "change management".

Given the fact that any process of change is performed individually, it is difficult if not impossible to list all the different means of providing support for the implementation or even to make a general statement about it.

We have expanded our concepts, which now include elements such as the strengthening of leadership skills, leadership development strategies and resource

planning. In these fields we offer training in court workshops for administrative leaders and other administrative personnel.

The individual support measures are developed in cooperation with the courts' top level administration. Ideally, at the end of the workshop there will be specific recommendations for action.

In our view, the workshops with the members of the courts' top level administration are an essential element of quality management, because only the institution itself can motivate their employees to get involved again and again in order to improve their work.

This requires their willingness to make changes, but also a corresponding capacity of the leaders to motivate the staff.

Especially in smaller courts, work efficiency can be increased with relatively little time and effort through the development of common goals and values in terms of a "mission statement discussion". The feedback we received from the courts confirms a positive impact on sickness levels and the willingness to look beyond the boundaries of one's own institution.

Of course, all of this puts high demands on the organization departments at the higher regional courts. But to my firm belief, it is necessary and possible to meet these high standards. I would like to invite you to understand the organization department at the higher regional court of Celle as a center of coordination, as a group of „specialists for change", capable of seeing the big picture.

Finally, I do not want to avoid the question, whether our centralistic approach to establish the departments of organization within the three highest ordinary courts (in lower Saxony) makes sense. Although I am aware of the fact that we could fill an entire workshop discussing this issue, I still would like to outline the main advantages and disadvantages of this concept:

Within our district, members of the staff of the organization department are often perceived as generalists, who are far away from real life practice. Furthermore, expertise in project-management is nowadays widely accessible for most public servants. If there is a need for in depth analysis, (requiring additional knowledge,) there seems to be a preference for – supposedly – more competent and – certainly – more expensive external counsels, whose proposals and solutions are more readily accepted and implemented.

Arguments in favor of a (centralistic) competence center for organizational issues are

1. The extreme workload imposed on the public servants in our district, which results in a constant delaying of conceptional work in order to be able to cope with the day to day business. Even if a specific need for change is identified, lower courts' administrations simply do not have enough time to design and implement new structural measures.
2. Furthermore, efficient and progressive reforms within the administration of justice require an approach that goes beyond the boundaries of the traditional structures. The lower courts naturally take on a local perspective and focus on

their own specific problems within their sphere of influence rather than being open for a comprehensive perception of overarching problems and processes.
3. Internal staff is familiar with the internal administrative structure and does not require time to work their way into it.
4. The expert knowledge remains within the district and can be used again in the future.
5. The costs are very low in comparison to hiring external counsels. In our district, we have 6.75 employees available for 6 district courts and one local court, which means that we do not even fill one full employee-position for each district. In comparison, one single organizational study of the ministry of justice, conducted by external counsels induced costs amounting to approximately 100.000 EUR. In order to be able to bear the increasing demands of the upcoming years, the administrative departments of our public authorities will have to intensify crossagency-cooperation. From my perspective, strategic, organizational and personnel related questions are merging working fields. The success of sustainable administration of justice depends on our capabilities in change-management, which ensure that future projects do not get stuck half way.

Discussion

Martijn Ridderbos: Professionals are eager to commit to process of quality management but there are no punishments or monitoring. Which person in the organisation is the continuous sponsor of this progress? At what level of the organisation is this person functioning? Operational management, line management, top management?

Stefanie Otte: We have no monitoring and no budget. There is a Ministry of Justice which, along with politicians will decide the budget for all courts. We are thus sponsored by the general court budget. There are ideas to get monitoring and budget for individual court initiatives, but we are not there yet.

Martijn Ridderbos: The information stays in the court? The ministry does not have any information on the benchmarking project?

Stefanie Otte: The information stays in within the court; the Ministry of Justice does not have the information.

Marie Hagsgård: Just like in Sweden every court has a budget dialogue every year and they will get extra money for extra projects.

Johannes Riedel: I would like to make some additional remarks. With regard to the budget question; in Germany we are discussing budgets based on specific case costs. We know how much a specific case costs us. From those numbers we can create a flexible staff budget. In addition, there are ordinary costs for the building, electronic services etc. Lastly, part of the costs is case specific: witnesses etc. The costs in the third pillar should not be limited. It depends on the individual decision of

the judge what measures he wants to take. What can I do with the knowledge that a criminal case at regional court is the most expansive? I cannot just ignore them.

I would also like to make a second observation. Our court has entered into network of many courts in Germany. The project that the speaker spoke about has expanded to other courts. Involving all courts is a great asset that can improve their functioning. However, you should not start with raising expectations. We tell our staff that it will be hard work but it will get easier later on. That is our experience in Cologne.

Gar Yein: Comparing your situation to Sweden, is there as much internal dialogue going on?

Stefanie Otte: I think our situation is similar to Sweden: we ask lawyers, staff and judges for their opinion by regular questionnaires. In addition, we also give feedback to all people that filled out the questionnaire. There are also regional discussion groups to stimulate developments in courts.

Francesco Contini: You mentioned benchmarks in different areas, can you provide us with examples of the benchmarks you used?

Stefanie Otte: The benchmarks differ between courts. It also greatly depends on the type of court (courts in first instance or courts of appeal). However, examples of benchmarks are the runtime of a case, how many people visit the court, how many judges are there etc.

Daniel Kettiger: How much time does one case cost you?

Stefanie Otte: That is not monitored. To measure the performance in different types of cases, we have selected representative courts where measurements have been made by external advisors. Based on those statistics, the Ministry of justice asks the finance department for their financing. In addition, our staff numbers are based on these statistics. In practice, it is also used as a tool to distribute the workload within the court. However, this goes outside the purpose because the work load depends on the individual performance of staff etc. But the case-dependent costs are used as a working tool.

Marie Hagsgård: Who decides what areas should be improved in the functioning of the courts?

Stefanie Otte: I'm convinced top level management has to decide this, not quality management or lower courts. However, ultimately it is left up to the local managers in local courts. They have to decide.

Ucha Todua: Do you use ICT?

Stefanie Otte: We give out paper questionnaires but we have to use ICT to process them.

Dutch court organisation - Council for the Judiciary in The Netherlands, **Yinka Tempelman**

There are three big movements that can be seen in the Dutch legal system. First is the redesign of the judicial map. The number of District Courts will decrease from 19 to 10 and the number of Courts of Appeal will decrease from 5 to 4. The objective of this redesign is to create a certain mass, so they have the flexibility to change. It paves the way for specialisation within the court.

The second movement is governmental cuts. One of the most prominent of those cuts are the cost covering fees. The government has proposed to increase the costs of starting a procedure, in some cases this leads to an increase of 500 %. This has consequences for the financing of courts, the influx of cases and access to justice.

Overall these movements lead to a big reorganisation, an emphasis on working on teams and discussion about the different locations of the judiciary.

How can the results be acquired? Of course, the focus on budget creates a tension, financial considerations has to be taken into account. Yet, the courts and judges adopted it quite quickly. The question was how to generate more production and more money. As a result of that, the need for counterbalance became more and more apparent. The third movement was thus the creation of quality norms, see how much time is used and then turn that time into money. There is an emphasis on quality management. The risk of this is that quality is not an issue for professionals anymore, but that it turns into a management responsibility.

In those quality norms, you have to combine values, demands from society and the organisational context. When defining them, you cannot simply say “we need that much time for preparation of cases”.

Discussion

Ronald Philippart: Concerning the redesigning of the judicial map, the judiciary agrees with it. The big argument that is given by the Ministry of Justice for this change lies in the concept of the safety chain. The Ministry wants to reorganise the police and the public prosecutors service in 10 regions, so the judiciary naturally has to follow. We see, however, a possibility to improve quality.

It lies different with the money barrier to get access to justice in the form of increased fees. That is a disaster and the judiciary protests in the most extreme way. The total budget for the judiciary is 900 million euros, he wants to achieve a cost reduction of 240 million euros.

Gar Yein: You want to bring competences back to the court? How long will it take before courts feel they own quality management? And towards Philippart, how is this protest achieved?

Yinka Tempelman: Quality management was not totally taken away and given back.

Philip Langbroek: It is about what they are going to take, Council for the Judiciary will give them possibilities.

Yinka Tempelman: It has sort of grown that the Council has gotten loads of responsibility to improve quality over all the courts. There is the unity of one organisation, one judiciary. All the initiative was coming from the Council. That creates a problem, because they cannot relate to the professional in a direct manner. The Council has been trying to follow the relationship between court board and professional, can we mirror that between Council and court board? It is a matter of how much responsibility they will take.

Ronald Philippart: It is the council and the courts against the Ministry of Justice, not the Council against the courts. The Council has the legal right to advise on legislation. European Treaties force us to have access to the justice and in fact we make it impossible. It might have something to do with the fact that former Ministers of Justice were professor in constitutional law and this one is not.

Isabelle Dupré: Is it possible to introduce quality management on a central level. In Belgium, there are local initiatives, but it is still local. If I see the Dutch experience, the Council has the possibility and advantage to spread the system. One of the big issues in Belgium is that that is not possible.

Martijn Ridderbos: The quality management system is more about accountability than about improving the local process.

Philip Langbroek: I am amazed that there is a conception about central steering, “you need to bribe the minds”. I know that professional judges are quite stubborn, that creates huge management problem. It organises the fun away. Judges are treated – not good from checks and balances perspective – as functionaries. What is the judiciary as a constitutional entity, de rechterlijke macht? It is endangering the constitutional status.

Gar Yein: Judges are responsible to society, but society does not know the value of a properly functioning judiciary. As a professor, you are not going to listen to every student. Society needs to know more about the judiciary.

Yinka Tempelman: We have to explain more, but we are very aware that it is about justifying legitimate demands. They feel themselves more bureaucratic and it is taking the fun out of it. It is not easy. The function is to create the fun again. The Council serves as a buffer.

Philip Langbroek: It is combined with a cutback in expenses and that creates a risk of failure. Because of the change process we have gone through judges have economised their mindset, they will not see the fun. The risk is that the thought

becomes “it is not our problem, but a problem for the Ministry of Justice in The Hague”. How is the Council going to address this issue?

Ronald Philippart: We have to accept the new political reality, in the past arguments counted and now they do not count anymore. We were attacked (by Geert Wilders), money counts.

Johannes Riedel: Problem of discussion in the Netherlands is that you are accustomed to output. The German system uses input-related budgeting and that allows for the conscience of individual judges more than the output-related system. An example: the average expectation is that a judge decides100 cases a year. In that case a speedy judges decides 150 cases and a slower one decides 80 cases. The latter one is not getting promoted and we somehow get along with it. Where do you put the emphasis on? It is a little bit easier than in the other systems to say that you have different judges and the conscience of the individual judge defines the balance between workload and thoroughly doing the case. We all have to shoulder somewhere. What we have experienced in Germany is that centralised projects initiated by Ministries of Justice that are coming top down are short-lived. Bottom-up projects are more sustainable.

Isabelle Dupré: Local initiatives do not work, there are some ones who do not want to follow. They are now experimenting on measuring workload for 4 years, but there are some courts that just don’t want to follow. You can’t do quality management without measuring and statistics. It is a necessary phase.

Daniel Kettiger: This was mostly about centralized states as in the Netherlands, if you are looking at it from a federal perspective (Swiss, German, Austria) it is quite another thing. The competence for the organisation is with the cantons in Switzerland, the Länder in Germany. The central Ministry of Justice in Switzerland would not dare to ask for a centralized quality management system. In Switzerland, all initiatives dealing with court management have started with the courts. It stayed in the courts. But it does interest other courts within time. Only thing central to quality management is that the Ministry of Justice could issue a mandatory steering instrument that courts need a quality management system. They will not decide on the contents of that system.

Marie Hagsgård: You should help the courts to spread information on what they are doing in their local initiatives. We interviewed all court managers and everyone wanted to know what happens in the other courts. They want interviewing guides available. They do it their own way.

Yinka Tempelman: Bottom-up is always better. There has been a call from the court to formalise things (local initiatives). The Council is very interested in local initiatives, are they enough? Council feels pressure from political side to be accountable. If you do not respond to that, they (Ministry of Justice, politics) will come with ideas. If you

try to centralise a very good approach in one court, it is very difficult. You have to enforce it or live through it. You can also spread the word.

Marie Hagsgård: We have tried to influence the Court of Appeal in Stockholm, They did their own idea, with even better results. Why are we afraid of letting people their own thing?

Yinka Tempelman: We only check that there is a quality management system.

Ronald Philippart: There are also some positive points to be made. The first is that when we look at permanent education, there is a level for the whole country and every judge and judicial employee needs to fulfil that level. The second is that we do employee- and customer satisfaction enquiries, so courts can be compared. The third is that when you go to rechtspraak.nl, you can see that if you want to go the Kantonrechter, you get one instruction valid for all the Kantonrechters in the Netherlands.

Afternoon program - Chaired by Ronald Philippart, President of the Maastricht District Court

Is local court autonomy a precondition for organisation development? Judicial and managerial responsibilities in court administration

Reforming justice in Slovenia - Ministry of Justice, Ljubljana, Slovenia, **Zoran Skubic**

Slovenia has recently transformed the organisation of the judicial system. Twice now, we have reformed our system with an older alternative. In the first reform, we re-introduced the Austro-Hungarian system that had been our organisational system earlier. In our second reform, we re-introduced the system that had existed before the last reform. Therefore, I named my presentation 'Back to the Future – Reforming justice in Slovenia'. Two sayings apply to our situation: 'The more things you change, the more they stay the same' and 'you should never reform things that work'.

The latest reform served three basic aims:

- Strengthening the court administration in district courts
- The introduction of the old/new position of the director of the court
- The new strengthened role of the judiciary council

Strengthening court administration

Before 1995, the regular court network in Slovenia consisted in the first instance of 8 Basic courts and their 42 (territorial) units. These units basically had the legal and institutional status of a department in a court. The units were by no means independent as the court management was in the hands of the president of the relevant Basic court. The Head of the unit only had limited, mostly logistical competences. This meant that in organisational terms there were 8 courts of first instance at that time, each using many territorial units.

In 1995, a new Courts Act abolished Basic courts and their units and put in their place a new network of regular courts of the first instance: 11 District courts (8 former Basic courts and three new district courts) and 44 Local courts (most of them previous units). The concept of District and Local courts was (re)introduced using the old Austro-Hungarian system ("Kreis-" and "Bezirksgerichte").

As opposed to the relationship between the earlier Basic court and its units (where the units as such as a rule had no institutional and organisational independence to speak of), there was only a nominal but no de facto effective connection between the district courts and local courts "in its district" in terms of court administration duties and responsibilities. Every president of the court – be it district or local – was as a rule the sole bearer of court administration for his or her court. This meant that there were in fact 55 courts of first instance for a population of about two million.

This created a disproportional situation. Now Slovenia had courts of the first instance that employed 30, even over 100 judges, whereas other micro-courts consisted of 5 judges or less. Also, the reform of 1995 had created implementational difficulties that are regarded as one of the prevalent causes for the considerable court backlog in later years, culminating in the Lukenda v. Slovenia decision of the ECHR. No one knew which cases were adjudicated by the lower or higher courts, which increased backload.

One of the discoveries made during the Twinning project between Slovenia and Germany was that the most effective form of court administration is found in medium-sized courts. Larger courts, because of their size, are too inflexible and time-ineffective in their response to changes in the environment. Small courts as a rule are considerably more affected by unforeseen absences of judges and staff as their inner reserves can be depleted more easily.

The challenge we faced in the Ministry drafting this reform was how to reform the network of the courts of the first instance (44 local and 11 district) without reducing the number of existing courts (opposition of local interests in the National Assembly) or repeating the mistakes committed during and after the reform of 1995. The problem was that no region wanted to eliminate their own court, so all politicians voted against elimination of courts completely.

The solution? Ensuring de facto medium-sized courts through concentrating the court administration of local courts in the district courts, but also taking into account certain specificities of the largest court in the State – the Local Court in Ljubljana with over 100 judges and 500 judicial staff – by affording it special independent status. The new second paragraph of Article 114 of the Courts Act now explicitly states that: "… an individual Local court is an organisational unit of the district court in its territory except for Local Court of Ljubljana which is an independent organisational unit."

The president of the District court now has the competence to set the annual schedule of all the local judges in his or hers district covering specific areas of relevant law. The purpose of this regulation is to ensure even workload of the courts, but also for greater specialization of individual judges. The Amended Courts Act also provides for the possibility of redeployment of judges of Local courts within the area of the District court.

In effect the current organisational paradigm in its essence harks back to the system that was in place before the judicial reform in 1995, where court administration (and responsibility) in the courts of first instance is divided between a relatively few number of holders, thereby especially strengthening the position (and responsibility) of presidents of District courts.

The new map that could be a sound basis for the reform may abolish some of the micro-courts. It contains eleven district courts.

Director of the court

An important innovation in the court management is that all matters concerning court administration are no longer in the exclusive provenience of presidents of the courts, as this is now a shared responsibility of presidents and the newly-introduced position of Directors of the courts, appointed by the Minister of Justice (new paragraph 1 of Article 61 of the Courts Act):

> (…) A director of the court shall independently perform tasks of court administration … related to the material, technical and financial operations of the court, conducting public procurement procedures, decision-making in court staffing matters, court security provision, monitoring, analysing and drafting the up-dating of business processes and carry out other tasks of court administration on the basis of authorisation by the president of the court, with the exception of tasks concerned with judicial service.

Director of the district is in charge of the business operations for the entire district (financial management, personnel matters, security of court personnel and the court as a whole and overall responsibility for the business aspect of court administration). At the same time the Director can be engaged in other tasks of court administration under the explicit authority of the president of the court, unless the law provides otherwise.

New role of the Judicial Council

The Judicial Council is a sui generis state body and aside of the presidents of the court one of the basic bearers of court administration in Slovenia. From its 11 members six are voted in by the judiciary, five are elected in the National Assembly among university professors of law, attorneys and other lawyers. As of 1st of January 2010 the Judicial Council is essentially solely responsible for appointing and dismissing the presidents of all the courts except the President and the Vice-President of the Supreme Court.

Other competences of the Judicial Council:

- to propose to the National Assembly candidates for judges or a dismissal of a judge;
- to decide on promotion judges;
- to decide on an appeal against a decision on reassignment and/or appointment to a judicial post, a judicial title and/or a higher judicial title and against a decision on a classification into a wage grade;
- to decide on the incompatibility of a judicial office;
- to give an opinion on the budget proposal for courts and provide an opinion on laws concerning judges and court staff;
- to adopt quality criteria for the work of judges and the work of courts;
- to specify the number of judicial posts;

- to monitor, establish and analyse the efficiency and effectiveness of courts, and to produce an annual report on the efficiency and effectiveness of courts;
- to hear and decide on the justifiability of an appeal of a judge;
- to perform other matters, if so provided by law.

The Council has also been assigned to monitor the work of courts and preparing annual reports on the performance of the judiciary as a whole. If we would try to recapitulate and add up all the new competences and combine them with the ones already in place, we would see that the Judicial Council has effectively become a watchdog for measuring and, if need be, correcting the performance of the courts. Correction in this case means also the possibility of dismissal of the accountable president of the court.

Conclusion

Exclusive autonomy in terms of court administration in local courts that have 5 judges or less is very hard to justify in the long run. The Slovenian model might seem as a half-way solution – the middle road between abolition of micro-courts and the atomized structure of court administration that prevailed before the "soft" reform in 2009 – but in effect it has shown first signs of improving the performance of Slovenian courts, even in the face of the current economic crisis.

But as with all reforms involving such complex and inflexible systems as the judiciary change never comes easy and never fast. Therefore the methods applied have to be of evolutionary, never of revolutionary nature. The alternative is the stacking of reform upon a reform, thereby ignoring past mistakes and making new ones. Therefore it is better to take notice of the old proverb, that "wisdom is learning from the mistakes of others", even if "the mistakes of others" as we have seen in our present case means "the mistakes we ourselves made in the past".

Discussion

Philip Langbroek: What does independent status in the context of your presentation mean?

Zoran Skubic: Every court is an inner organisational unit of a higher administrative unit. It is not totally independent but it has its own administration and it does not answer to the court in Ljubliana.

Martijn Ridderbos: How does the planning process of judges work?

Zoran Skubic: The president of the court prepares the annual plan of the court. Basically, the president of the Court is responsible for all budget allocation and planning.

Gertraud Karl-Hansl: What is medium-sized?

Zoran Skubic: Slovenia has 950 judges now, but we started with more than 1000. We were the recordholder of judges per 1000 people. When we have 10 or 11 districts, we plan to have 80 judges in every district court.

Gar Yein: Is the abolition of microcourts also in the stars? Are you planning to remove them?

Zoran Skubic: We will probably annex them to other courts.

Gar Yein: Will access to justice be a problem then?

Zoran Skubic: The main problem of the reform was that every Slovenian had to be able to access a court by carriage. Now we have the infrastructure and I think that provides new possibilities without obstructing access to justice.

Ucha Todua: To comment on that, we had the same problem in Georgia. When we planned to decrease the number of courts, the question of access to justice was raised as well. We had 200 courts but we didn't need them. If we left 50, access to justice wouldn't be impaired because the distance from courts would hardly increase. The reform that was done ensured the same access to justice while increasing the efficiency of the system.

Dietger Geeraert: Access to justice is not having a court on every corner.

Philip Langbroek: I realise that local courts in local communities come at a price. When you have so many small courts, it seems logical to choose for more concentration. However, political parties often argue that it would ruin their 'local republic'. There is some truth to that argument. In little populated areas people have to travel furthest for a court. There is inequality in this situation. It depends on what you see as the purpose of the court.

Francesco Contini: The relationship between scale of the court and efficiency should not be taken for granted. Many American studies show that there is no correlation. It is very expansive to merge courts from an organisational point of view. However, if you do have studies in your country that say otherwise, please make them available to us.

Marie Hagsgård: In Sweden, small courts have smaller turnaround times but higher cost per case. In large courts have longer turnaround times but smaller costs per case.

Isabelle Dupré: In Belgium, judges want to have autonomy, which proves a problem in trying to eliminate smaller courts. Scale, quality and who is responsible for the court and the handling the cases are all important factors for preferring smaller or larger courts.

Presentation - Center of Competence for Public Management, University of Berne, Switzerland, **Daniel Kettiger**

I like to make some general comments at the start about Switzerland to give you an idea about the judicial system. The biggest court has 18 judges. Switzerland is a federal state and a democratic country. There are 26 organisations of the judiciary. People think they are doing everything right. In Switzerland all judges are elected by Parliament or by the electorate. They are not elected by the federal Minister of Justice. There is a cultural gap between the French- and the German-speaking parts of the country. There is also a gap between rural parts (small cantons) with agriculture and mountains and the big city areas and agglomerations in other places.

Three mega trends in Swiss courts can be discerned. First, there is a decrease of courts with laic judges. We still have them, but mostly in small cantons. It is coupled with an increase of single judge decisions.

The second trend is centralization: there are now not only chambers, but also departments and sub-departments.

The third trend is independent court management. The court budget is established by parliament, but there is independent resource management, i.e. the court is free to decide how to spend the money.

The background to these trends are the redesign of the Swiss court-landscape and New Public Management.

There have been amendments in the Federal Constitution (1999) and a new law on the Federal Supreme Court (2007). Also a new Federal Administrative Court was established in 2007. A unified civil and criminal procedure (for whole Switzerland) was adopted in 2011. These changes had implications: no longer all organisation forms were possible, due to the federal law. The unified civil and criminal procedures have forced the cantons to reform their organisation.

The other background is New Public Management that has been around since 1995. From this year on 50 % of the cantons use NPM, others do not. Two/thirds of the budget is given out under a contract management/NPM-system. This has been subject of discussion, as well as leadership in courts. In three cantons (Bern, Lausanne, Solothurn) the whole judiciary operates on the basis of contract management.

In the literature elements of good court management have been developed. Only a few of those will be discussed today (education, management structures, caseload management, court controlling).

Education of judges has never been a real discussion. But after the professionalization of the courts, many single judge cases and judges as managers of complex and interdisciplinary cases, there is need for professionalization of judges.

Concerning, the minimal education to become a judge or Public Prosecutor, there are some changes and differences. Normally (in most courts) you have to be a lawyer or have a master's degree in law. Yet, to be elected in the Swiss Federal Supreme Court you do not need to be a lawyer, although after 1848 no one was elected who did not have a master's degree. In the canton of Zürich you do not need to be a lawyer to become a judge or president of the District Court. A management consultant said "I can manage a court" and he was elected. That failed miserably, he stepped up and acknowledged his mistake. He said he could not do it. Now there are discussions going on about minimum requirements for judges and Public Prosecutor. There is a Swiss Judges Academy and a master's course in forensics. The selection criteria are different for every court and canton. In some cantons there are free elections, e.g. Bern. In the law it is said that to become a Public Prosecutor you need a master's degree of a Swiss university or of a foreign university that is equivalent to the Swiss education. There is a committee with members out of parliament, who make a preselection. They can even take specialists in addition to these selections. In other cantons it is totally free. In Switzerland when it is not ruled by law, it is ruled by fact.

Question Langbroek. If you have to run for elections, then how can you work on the professionalization of judges? Are the same judges re-elected again?

One danger is that judges are thrown out by political reasons. (e.g. head of federal Public Prosecutors Service). In some cantons, in the law you have these conditions and then you have additional commissions of the parliament who make a preselection. Normally the parliament is appointing who the commission selects. When you look at Switzerland, one canton over the other is taking over this system.

There are criteria in the law and a committee of parliament makes a recommendation (for both elections by parliament and by the people). These recommendations can also be negative.

Question Ridderbos. What about management development? Your professionalization of the managers, you do that if the manager becomes the manager. Otherwise, you throw resources away. Selection criteria of judges are ruled by other people. What is the rendement/results of your professionalization, if the selection of the people you want to professionalize is done by other people?

The Swiss judicial system realises that there is and must be a professionalization. Now you have these possibilities of further education and specialisation at universities. More and more cantons put criteria in their law or establish recommendation committees. Probably in twenty years, it will be a number of course requirements and experience.

With regarding to management structures, you see the growth of independent court management and bigger courts with departments/chambers. These structures consist of hierarchies between legal professionals and boards of court management.

How can you be the boss of a concern of judiciary, when you didn't have the chance to get your education here (i.e. a legal education)?

Concerning caseload management, there is a discussion whether it is done right away. When in the canton of Lucerne the numbers of our study were presented, it was the end of the internal discussion. For the controlling system mostly the New Public Managent-system is used. The most sophisticated example is the Swiss Federal Supreme Court. Useful information about that can be found in publications in the IJCA-journal Lienhard and Kettiger. As a conclusion it is safe to say that a lot is going on, we are standing at is the beginning.

Discussion

Philip Langbroek: Considering some remarks of certain politicians in this country about the election of judges, this has been very interesting, but also shows how extremely complicated it makes things. You are not dealing with an ordinary organisation; judges modify their behaviour, because they want to be re-elected.

Daniel Kettiger: In Switzerland there is a popularisation of media. It endangers independence of judges. I think it is a bad system, because it puts independence on stake. The head of the Swiss Public Prosecutor Service was not re-elected out of doubtly political reasons, even as three commissions proved that he could be re-elected. And there are other more minor faults.

Yinka Tempelman: Are there other systems to guarantee impartiality of judges?

Daniel Kettiger: There are of course constitutional guarantees; I can question his independence (wraking). Those decisions are only taken by (higher) courts. It is a weak system. There has been a case of going into the mountains unprepared, canton said it was prohibited by cantonal law. The Public Prosecutor Service brought it to court. A female single judge sentenced that it was no infraction of law and dismissed the case. In the journals political parties were openly speaking not to re-elect this judge. Even though I think she has made the right decision. She was impartial, she was not a member of a political party.

Is local court autonomy a precondition for organisational development? - Central European University, Budapest, **Gar Yein Ng**

This presentation aims at comparing the English and French court administrative system. In the discussion of earlier presentations I already inquired about the

autonomy of court administrations and the ownership of quality management information, specifically because of its relation to accountability. We will return to this relationship later in my presentation. First, I will focus on answering two questions in both systems:

1) What scope does the local court have for administrative decision making?
2) What is the scope of accountability?

What scope does the local court have for administrative decision making?

The United Kingdom has recently created a Ministry of Justice. We now have two organisations. First, the judiciary is concerned with the judicial matters. Second, the Ministry of Justice monitors the functioning of justice and aims to increase the public trust in courts.

Judicial independence does not automatically mean institutional autonomy for courts. Within the UK, there is a 'cooperation' agreement between the independent judiciary and Ministry of Justice that implemented new hierarchy in the justice system. Centralisation of decision and policy making was not there before. Of course, policy cannot be monitored if there is no data available. The centralisation has meant a huge increase in data collection. Because the UK was not used to collecting data, there is now so much data produced that in many aspects it has become a huge bureaucracy. There is no overview of the organisation or the data collected. The results of data monitoring can thus produce negative consequences for some courts, but not for others. The new policy is aimed at getting one performance, but there is a build-up of bureaucracy and they are working to develop it.

In France, on the other hand, everything is centralised: administration, judiciary, services for the judiciary. They are currently discussing the implementation of a quality management system. The French financial construction creates management by objectives: the budget is defined by the courts' output. Since last year, ordinary and administrative courts are allowed to review if legislation conflicts with human rights. The development will increase the courts' workload. The courts become are the gateways towards the constitutional court. Their number of cases will increase and there will be more focus on what the courts are doing. The French seem to inherently dislike and distrust judges. Therefore a tension is arising between financing and controlling the higher case load and getting negative judgements from the ECHR.

The data collection in France is used to connect budget to the output of cases. Therefore the French use a more focussed form of data-collection for management purposes.

What is the scope of accountability?

The ECHR allows a huge margin of appreciation for the organisation of courts. Both the French and British system are therefore legitimate. In France, nevertheless, many developments are taking place and more debates on court organisation are still coming. We will examine the scope of accountability in both states.

In the UK, the courts were under parliamentary accountability. Since the introduction of the Ministry of Justice, court administration has become a public administrative issue. The British use ‘leak tables’ to show how each court is doing in comparison to the next. They were introduced to pressurise the courts into better performance: a naming and shaming mechanism. For transparency, better use is now made of websites and the community outreach has increased. We have an inspectorate for court administration which functions as a sort of ombudsman. They will report on issues.

The ministry of justice is supported by her Majesty’s Court Services. The services are being torn between serving the ministry and the independent judiciary. Civil services may not interfere with case management. It is a recent development that judges are confronted with a more intense adversarial system and they have to constrain the lawyers.

The French have a more normative system. There are a lot of organisations working centralised. There is a Ministry of Justice, judicial services commission, regional services commission et cetera. These are all not accessible to judges. A court is managed by a chief PP and chief judge, assisted by a chief clerk.

To conclude, both states have a large number of organisations doing a lot of different things. Sometimes judges have a lot of responsibilities but in both systems, it is clear that the administration does a lot of work.

Local initiatives

After the courts were centralised under her Majesty’s Court Services, courts’ policy was centralised as well. Courts said they had benefited from these new performance standards, both judicial and clerical. However, after its introduction, no resources were left for local initiatives. In France, with the internal partnership between police, judiciary and lawyers, only central initiative exists as well. The problem is that without local autonomy, courts lack resources and motivation for local development. The other problem that exists is the high turn-over of court staff. With the budget cuts now, even more people are leaving and not being replaced. This creates a moral problem and causes a lack of personal responsibility.

My research has shown that in organisational development, everything depends on participation and ownership of information. It is possible to have local initiatives in centralised court systems if you have a dynamic judicial staff and administration. But a higher participation of the judiciary in court organisation causes a higher success rate of new initiatives.

Without local autonomy however, it is very difficult to have local initiative. It is not an absolute statement, but the consequence of centralisation is a lack of motivation, financing and ideas for local initiative. Each court is a different creature. Thus each court should be allowed to take responsibility for their well being, with the support of the central organisation.

Discussion:

Yinka Tempelman: Am I right to detect cynicism about centralisation?

Gar Yein: Yes, people have a tendency to give away responsibility where they can. In centralisation, courts can take for granted that someone else will do the work for them. It is not laziness but a natural inclination to shift responsibility. Good communication between court and judicial councils can stimulate the sharing of best practices. Belgium is not a big country; they could share their work instead of creating a central council. I am cynical about centralisation however, especially if the state does not know exactly where it wants to be going.

Martijn Ridderbos: The problem is what you ask the council to do. The minister wants the council to do everything but then the council has less discretion. There is a lack of trust between politicians and judiciary.

Isabelle Dupré: In Belgium the problem cannot be solved by communication. The solution is a balance between the two alternatives, not only centralisation or decentralisation. It is a mixture.

Gar Yein: I think it is a very difficult matter to decide. I am still intrigued with the impulse for centralization. Judicial impartiality, *that* is important.

Isabelle Dupré: But the judiciary needs centralisation for the collection of data, but for the functioning of courts of course you need to give them autonomy and trust.

Yinka Tempelman: I agree that it is a balance. Every court is a unique creature, but the public sees all the courts as one judiciary.

Gar Yein: They want an equal due process for their cases wherever they go. Yet, you cannot ignore the local differences. However, you have to be careful where the centralisation comes from, especially for the independency of the judiciary. If you give them an inch, they'll take a mile.

Isabelle Dupré: That fear also depends on the trust between the different actors.

Ucha Todua: I agree with Isabelle Dupré: we need a mixture. Every court is a unique creature. Even though the courts are the same, cases will be different. You can't decide for all courts because their circumstances will always be different. There should be a balance between centralisation and taking into account local circumstances.

Philip Langbroek: If you are right, it shows how difficult the position of the court has become. The courts have to interact with so many factors and actors but they do not even have the competence to start a neighbourhood justice centre. Even for that they need cooperation with the Ministry of Justice. They have to show that they are working on consistency of judging and the prevention of deadlocks, and it all has to be done timely and with good juridical quality. In addition, there is Europeanization and globalisation; the legal substrate of trade relations and human relations has become much more complex and it is continually ongoing. The average turn-around time consequently goes up and you have to somehow combine all this. What you need at a certain point is enough capacity at the local level. You also need good information at the central level. Who has to deliver that? If you do not cooperate in this balance, you lose everything. If you look at the societal pressure in Belgium and the United Kingdom, if you do not do anything with that, you lose everything. It is a really complicated situation. Where to start? If you do not have that, you will never be able to function adequately. You cannot exchange experiences with other courts and life becomes very difficult. So there is an important function for a national court agency. Both can do the job, as long as you maintain minimum trust.

Gar Yein: I do not trust the process that led to Her Majesty's Courts Service in England. It is too opaque, not transparent enough, it is one big black hole.

Martijn Ridderbos: There was no clarity about what data was collected. If you do that with vision, with dialogue, you make it useful.

Marie Hagsgård: We should focus on the effects on the floor. Do we get good quality? The public wants the same result. The Finnish example has shown that if you put judges together just for discussion, they are interested in each other and after a few years courts get more similar. We do not like them to be exactly the same, even though citizen may like that. There is a very important job for the national court agency to network between courts and help people share information about routines. These professional people will want to be at the top. Who wants to be the lazy court? 30 % of the courts in Sweden do local initiatives without pressure.

Yinka Tempelman: Maybe the problem is simply in the word centralization.

Philip Langbroek: But you need some coordination at the general level.

Stefanie Otte: You have to organise the benchmarking-process. We are not the Ministry of Justice, but we introduced benchmarks for first instance courts. It creates an overview so that we can take care of the data. We invite them for workshops and organise meetings.

Johannes Riedel: One field is the core of the outcome. The public wants decisions to be more or less the same. Differences have to be levelled out. There has to be an exchange of opinion, but that is also where it should stop. Another thing is the services we should offer such as telephone hours et cetera. We brought all the courts

together and got through a rather tedious process, but at the end we could offer the bar a guarantee about a minimum of core hours that a judge was available. That could have been done at the national level top-down, but it is probably better to organise it bottom up. That's why we have statistics on the length and duration of the case. We are not letting the central coordination bodies know what our own benchmarking system finds out. Still, in every system you have a body that is finally responsible. That should be restricted to a service level. The interacting bodies should somehow find out where to draw the line.

Francesco Contini: The central body can negotiate and discuss. If you take this approach, you still have a frame of data. The Ministry of Justice works to create development. We need good conditions for the initiatives to flourish. The court, based on local features, understands which quality is more appropriate. It is clear that if you have management by objectives, the quality will diminish. If you take the Swedish approach, it is more balanced. Also in the German model seems easier to get a balanced outcome. Not everything that counts, can be counted. That is important for data collection and budget consequences. If you put emphasis on numbers, you lose the other part. Quality and budget are two sides of the same coin. We can reach certain results if the budget-approach is soft, like in Sweden. This is much more difficult in the Netherlands, since there hard pressure there. For judges, policymakers and researchers it offers great possibility for comparison. We can compare and understand the consequences of the different models. We can take new steps towards good quality and in terms of policy making, we can carefully consider the different options.

Marie Hagsgård: Looking at the Dutch example, I met a Dutch judge named Charlotte Keijser. We had a nice discussion some time ago. She said that she wanted to get her colleagues involved in the development of Dutch courts. It started out as judge initiatives. Somewhere along the way, judge initiative was lost and now she was looking to get engaged again. But how can you interest the ordinary judge in organisational development, quality management, upholding the rule of law and being open to the interests of the public?

Ronald Philippart: There are many aspects in quality. There are the measured aspects: how long do you wait, how many cases wait, standards regarding permanent education and so on. That can be compared. There is also a peer review between judges and they discuss Court of Appeal-sentences. Those elements are not measured, but do happen. Only a small aspect of quality can be seen in benchmark-reviews.

Marie Hagsgård: How do you encourage that type of quality and not lose them?

Ronald Philippart: A lot of these aspects are organised in another way and enjoy other types of financing. The courts are separated in sections, all the sections are organised in national sector programmes. They discuss how we deal with quality. These programmes are incorporated in local courts.

Martijn Ridderbos: There is a budget for innovation, all courts have one representative of the sector in the sector programme. These sector programmes are on a special budget that is separate from the output-budget.

Ben van der Aa: They discuss many different subjects, like how do you organise peer review and how can we improve the motivation of verdicts. I think they reach the heart of the matter. I think it is not a good example to talk about permanent education as Philippart does. It was a judge-initiative to create 40 hours permanent education a year. It started as a minimum, but has become a maximum now. Centralisation is a pain. There are roundtables with clerks and administration. We want to make a programme as an outcome of the discussion.

Marie Christine van Binnebeke: Centralisation is only effective if judges feel the programme. The important thing is that people are involved and present. Always stimulate people “go to the project”. Always activate people to be active.

Marie Hagsgård: Go to the project and share your experiences within the court afterwards.

Gar Yein: That is a positive thing about France. In France, all judges know each other and they know what is going on in other courts. When I started my research, I had just the name of one French judge. He could easily tell me who else I should contact. They find each other out very easily.

Philip Langbroek: It has been a very nice last discussion. We want to work slowly towards the end of this meeting. We have organised this meeting because Hagsgård called me and said we should do something with this. As researchers and research network we share an interest in developing knowledge of court organisation in all kind of aspects. We would like to also use this opportunity to ask you for more information about your court system at a later stage and hope you are willing to share that. If we receive grants, we will ask you to find some persons to be interviewed. It is networking in a broad sense.

Francesco Contini: June 13-15 next year, there will be a conference in The Hague. Maybe a meeting just like today can be organised there?

Philip Langbroek: We have some ideas about another conference like this, but there are all sorts of practical problems, especially regarding the size of conference rooms in the Peace Palace. Depending on interest, we might do the same session twice.

Francesco Contini: There are other options, I was talking with Johannes Riedel and he is happy to support a thing like this next year. The Italian government might be doing more research into this subject. One very ambitious idea is that the European Science Foundation finances a call to organise workshops. One of the features required is a mix of researchers and practitioners. We can try to make a proposal. That will happen around spring next year, when we will ask for availability. A grant to

study quality management in court is not easy. If you look at the call, it is about democracy & citizenship and it is difficult to connect that to court quality. We are not in a very popular business. At the next call, we will look at whether it is available. An alternative would be a documents repository, where we can share our documents. We can explore these possibilities around October.

Ucha Todua: Somewhat like this is already available in Georgia, maybe we can use that infrastructure.

Francesco Contini: We will explore availability.

Marie Hagsgård: Maybe it is an idea that every participant writes subjects for further seminars. We had so many subjects out here. Maybe there are even more in your heads. Interested to see what anybody else would want to discuss.

Philip Langbroek: If there are specific questions for research, we want to know, as we are constantly trying to develop research themes. From behind my desk I am not able to formulate research questions that matter directly to you.

Daniel Kettiger: Maybe a file where you can add research questions.

Ronald Philippart: I think no one will object to this database.

Philip Langbroek: It is time to close this section and seminar. It has been a very useful day and a great success. It is time to relax now. Please join us for a drink in the other room after which we will soon leave for dinner. Thank you very much.