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**QUALITY MANAGEMENT IN COURTS AND
IN THE JUDICIAL ORGANISATIONS
IN 8 COUNCIL OF EUROPE MEMBER STATES**

A qualitative inventory to hypothesise factors for success or failure

by

Philip M. Langbroek (Research director, the Netherlands)

and with case studies from

Laurent Berthier (France)
Francesco Contini (Finland, Sweden)
Christina Dallara (Slovenia)
Philip Langbroek (Lower Saxony, the Netherlands)
Gar Yein Ng (England and Wales)
Hélène Pauliat (France)
Dmytro Tupchiienko (Ukraine)
Jaša Vrabc (Slovenia)

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Philip Langbroek

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Aims and objectives of this report

This report inventories experiences with quality management in courts and national quality enhancing policies on request of the CEPEJ-quality commission. It gives indications under what conditions quality management in courts and quality policies for court administration could become a success or failure. The overall purpose of quality management and quality policies is to increase legitimacy of the courts by improving their performance with a view to services delivered. This has different dimensions. On the one hand, there are efforts to stimulate court organisations and judges to perform better in terms of efficiency, services delivered and especially timeliness of justice. On the other hand, the efforts are directed at organisation development, for which quality management can be a tool. A third dimension is to increase the information about the functioning of the court-organisations and sometimes of judges for central court administrators; so that they can take measures to help the courts improve. The common denominator is to increase the legitimacy of the courts by showing that they fulfil their societal functions well enough.

Method and scope

The research was of a qualitative empirical character. It tried to find quality management and quality policies in eight different countries within the domain of Council of Europe membership. Based on literature and experience so far, the researchers drafted a format of questions. The answers to these questions were found in materials and interviews with judges and project managers. Because of the small scope of the research, the results should be interpreted as hypotheses for further research only.

Research outcomes

In half of the countries of our sample (The Netherlands, France, England and Wales, Slovenia) the line is drawn at administrative involvement in judicial cases in concrete cases only. National policy makers take for granted that development and implementation of national administrative court administration policies do affect judicial work. This far-reaching perspective has been effective in the Netherlands and Slovenia, but so far not in France and England and Wales. France has imposed a legal framework on the courts, where England and Wales seek to convince the judiciary that cooperation in organization development is desirable. The ministry of justice of Lower Saxony, however, shows reluctance to get directly involved in the internal functioning of court organizations – also in the ongoing benchmark projects over there. The success of quality management projects in Sweden and Finland also seems to be also based on reluctance of central court administrators to interfere.

Central court administrator's initiatives seem to have difficulties in achieving results in larger countries (France, England). Decentralized initiatives have a far greater chance of local success (Netherlands, Sweden, and Finland). An exception is Slovenia with a forceful top-down quality policy approach to improve the courts' functioning, also concerning the quality of jurisprudence. In Ukraine, the ministry of justice only has plans to development quality management for its own court administration department, and further progress depends on foreign aid.

Common standards everywhere are timeliness of justice and user satisfaction. What we have are benchmarks in Finland and Lower Saxony, based on best practices, and prescribed quality standards in Slovenia, The Netherlands and France. In the Netherlands, Slovenia and France, they are actually operated in measurable parameters, whereas in Sweden they are the much softer outcomes of dialogues, without immediately leading to measurements of results. In Finland, Sweden and Lower Saxony the information gathered is oriented at the local court organization only. In Finland and Sweden, the standards may change over time, as the situation of the courts may change over time. This also is the case in France and the Netherlands as far as the operation of the standards at the regional level (France) or the court level (The Netherlands) are concerned. An issue that recently has gained importance is consistency of judgements, within courts, but also nationwide.

Improving the functioning of the courts.

The efforts to develop and implement quality policies and quality management are always directed at improving the courts' functioning in a responsive way towards the courts' societal environment and towards other state actors. This does not come about without considering the different complications that result from the constitutional demand that judges should be independent and impartial.

The traditional opposition in court administration is between independence of judges and the fact that also courts as a part of the state organisation are accountable to political decision makers for their performance. Ministries of justice need to be able to inform parliament about the state of affairs of the courts and their services. Quality policies tend to stress the accountability part whereas quality management tends to reinforce the autonomy of courts and judges in their relation to other state powers, ministry of justice included.

The enforcement of quality policies may put courts and judges under considerable pressure to increase timeliness and perform better content wise. It demands accurate registries of relevant data and a proper information management in order for a council for the judiciary or a ministry of justice to understand what is going on the shop floors in the courts. That is not an easy task in a large country with many courts. In addition, registries require much time and effort from the court management. Without investments in managing the gathering of this information and investments to enable court- management to also use the information gathered for the benefit of the local court, it would be very difficult for central court administrators to bring about improvements. When also focusing on the content quality of court hearings and judicial decisions there is a risk that such policies affect judicial independence and impartiality to a point where they lose judicial support.

From a quality management perspective the risks are not so much on the side of judicial independence but much more on the continuous and lengthy efforts necessary to make it work. Quality management usually requires leadership and a strong conviction about the purposes of judicial work. Furthermore, the capacity to build it up bottom-up, redefine organisational and professional roles, but also the capacities to connect the court organisation to its societal environment by means of e.g. customer satisfaction surveys are necessary assets for such change processes. This not only requires courage, initiative and support of local judges, but also investments in accurate registries in order to be able to have operational feedback on different aspects of performance of the court organisation. Here also the relationship between the courts and a ministry of justice or a council for the judiciary is of importance. Without their consent and help somehow (finances, regulations, agreements on who owns the information gathered), local court improvement projects risk to fail.

Philip Langbroek¹

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1. Introduction

This study is a preliminary inquiry into quality management in court administration in a limited sample of European Countries: England and Wales, Finland France, Lower Saxony (Germany), the Netherlands, Slovenia, Sweden and Ukraine. The basic purpose of this study is to find out which are possible factors for success or failure for quality management in courts and which aspects need further attention from research. Living up to this task is not that simple as circumstances of courts and the persons working in the courts (in the countries of our sample) are quite different. A complicating factor is that quality management depends on information about aspects of performance and in general it depends on feedback from stakeholders (users, their advocates, partners in the justice chain, and institutional partners in the administration of justice). This feedback needs to be organized. The questions then, are, not only if and how the feedback is organized, but also by whom, and concerning what kind of information, and to what purpose. From a quality management perspective, the organization should try to function as an entity that dominantly provides meaning for participants inside and outside its organizational boundaries. This presupposes an autonomy and power that organizations in the public sphere often do not have, because they are subject to different kinds of accountability rules and mechanisms, (controls) as they are a part of the state. This also is the case with court-organizations.

Comparative methodology

For our research design, we have drafted a question list, focusing on national efforts and focusing on efforts in one or more courts. The outcomes in the reports are very different.

The questions to be answered in the reports and some instructions for the researchers are:

¹ I am grateful to Gar Yein Ng, and to the CEPEJ quality committee presided by the honourable François Paychère for their helpful comments on the first version of this comparative analysis. Francesco Contini was so kind to discuss basic concepts with me during the research process.

Central court managing authority

Is there a quality enhancing policy for the courts in your judicial organization?

- To what purpose?
- Who introduced it and why?
- How is it implemented? (e.g. projects, pilots,)
- What are its aims?
- Which are standards used?

Is this quality policy being evaluated? If so, was/or are follow ups organized? How and by whom?

How are the courts (judges, court administrator, court staff) involved in this? Are they cooperative in this? (if useful, refer to the EFQM).

Is there a relation between quality management and human resources management?

Is there a relation between quality management and the financing of the courts?

Court level

How is quality management organized in your court? Are specific court regulations involved? What do they say? Who is or are responsible and who actually does or do it?

Which are the standards? How are they defined? In how far are they oriented at the work of judges? And of court staff? How are standards evaluated?

Do you feel that the results help in making managerial decisions affecting the court?

Do you use the results to develop new ways of doing things? Can you give us an example? (E.g. human resources, specialization within the court)

What resources are used to ascertain a given level of quality? (time, personnel, monetary resources)

Are the following in operation to support the quality management of the courts:
A complaints procedure, publication of annual reports, organizing e.g. peer performance review. 'user' or 'citizens' juries on organisation performance?

Why, in your opinion was the introduction and operation of court management in your court successful (or a failure?)

Our point of departure has been the court organization. Because central - local relations are important as well, we made them part of our comparative analysis. In order to also pay attention to the feedback required by a quality *system*, we included the central players in a judicial system, and wanted to check for the organisation of feed-back on performance and effects for possible adaptations of the functioning of the courts. We thus put the question if a quality system is actually operated not only locally but at the national level as well.

The outcome of our research so far, makes it difficult to come up with a "final" analytical structure for quality management in court administration. First of all 'quality of organization' and 'quality of services' have attracted policymakers' attention everywhere, as a part of the New Public Management. And in several countries in our sample, qualities of services and efforts to manage and improve them in some way or another have become an element of national administration policies, like in France and England and Wales. Second, quality management in court administration has not evolved into a systems approach in all the countries of our sample. But political accountability mechanisms are everywhere, because courts are part of the state. Often they are object of central policies for improvement of efficiency and service quality of the court-organizations. A question to be

answered therefore is, in how far accountability mechanism can actually be separated from genuine quality management in this respect.²

2. Point of departure: Quality Systems & Quality management

We have started this research from two main presuppositions. First, that quality management is directly linked to organization development. Second, that local quality management in the real sense cannot be effectively directed from a central level, because it presupposes considerable organization autonomy. Even so, it cannot be denied that there are formal and organizational structures by which the courts relate to the rest of the state organization.

The nature of these formal and organizational structures is related to conditions for success of the introduction of quality management in courts. But these formal and organizational structures also determine if there is quality management in the real sense or that there are merely central quality policies to steer the functioning of the courts.

Our point of departure also was that quality management is a tool for any organisation, public or private, to develop itself in interaction with its societal environment, in order to serve customers for mutual benefit. This may be the market for private organisations, but it may also be the public and political accountabilities of organisations in public administration. This presupposes an organisational willingness to learn and to be flexible in its actions and developments accordingly regarding the public and political accountabilities.³

In a public administration environment, the relationship between the organisation and the customer or user is not governed by the market. It is governed by its duties to account for their functioning towards e.g. the general public and the press, and towards the offices that may be held directly politically accountable. For courts and a judiciary these are the ministry of justice or –indirectly, because in an intermediary position- an administrative council for the judiciary. This is not a one way relation based on preserved organization autonomy however. Politically responsible offices are inclined to steer and demand results from the organizations that fulfil a certain function in public administration. There is an interaction on results. There always may be a risk that the tighter the relations with the political domain, the less authority the organization has to interact with others and adapt its functioning accordingly.

Quality Systems function by deployment of resources and interactions within the organisation and with the organisations' closer and wider societal environment, but especially with their users. This is also of relevance in public sector organisations. Quality standards are developed to define how services are delivered. Quality assessment is the set of tools to measure how effectively and efficiently the chosen road to development actually has been followed by the organisation. The focus is not only on the organisational efforts, but also on services and on user satisfaction. In order to achieve that, the organization needs to gather information on how its 'users' experience its services. The gathering of this information and giving this information back to the organization is called 'evaluation'. In terms of systems theory, this set of actions constitute the organization of a 'feedback loop'.

Next to that, quality management involves the deployment of tools of quality assurance. This means measures are taken to ensure that the chosen direction is continued and that achieved aims are not neglected –and which thus prevent drop-backs in organization development. This not only presupposes the existence of feedback loops, but it also presupposes standards of performance and a set, minimum level of acceptable achievement. This also presupposes an organizational structure with competences and responsibilities to set standards and to take action when efforts have not worked out as intended. Examples of these are systems of mutual visits and inspections by colleagues from similar organisations (faculties of universities; hospitals, courts) or by inspectorates, or benchmarks under maintenance by a benchmark agency. Softer tools are: complaints procedures, publications of annual reports, organizing e.g. 'user' or 'citizens' juries on organisation performance. The basic idea is derived from systems theory and comes down to organizing internal and external feedback loops on performances as defined and measured by standards. Above all, quality management thus conceived is a part of the vision of organisations as learning organisations. This presupposes an accuracy of definitions of targets and standards that is rarely achieved.⁴ It also presupposes an open mind towards the general public and towards those seeking justice in the courts, in order not to be deluded into confusing the realization of 'targets' with actually changing the functioning of the court organisation. It should be noted that 'checking for targets'

² For a similar approach, see: Gar Yein Ng, Marco Velicogna and Cristina Dallara, (2008) Monitoring and Evaluation of Courts Activities and Performance, *International Journal for Court Administration* 2008 (1), pp 58 – 64. The idea of involvement of central court administering authorities is also reflected in: Francesco Contini and Rick Mohr, Reconciling independence and accountability in judicial systems, <http://www.utrechtlawreview.org/> Volume 3, Issue 2 (December) 2007, , p. 26-43

³ Argyris C., *On Organizational Learning*. Blackwell: Cambridge, 1993.

⁴ E.g. John Seddon, *Systems thinking in the Public Sector*, Triarchy Press, Axminster, 2008.

may be qualified as quality management, but that for an organization to adopt itself to changing circumstances, it needs the flexibility and agility to redefine its 'underlying norms, policies and objectives' and to change its internal functioning and its interaction with its environment, and therefore to change its standards of performance accordingly. This is the so-called 'double loop' - learning.⁵

3. Quality management and accountability for the courts' functioning

We also departed with this research, based on the vision that it is hardly possible to conceive a national judicial system as one organization from a quality management perspective, because in fact it consists of many different parts, and because of its size. However, especially on the continent there appear to be quite different ways to deal with central – local relations in court administration. The fact that a judicial organisation may be constitutionally defined as one or two national entities (France) does not change this, but it should be noted that we did not include the highest courts in this study. For Constitutional Courts and Courts of Cassation and other highest courts, different juridical and organisational arrangements exist, and therefore this study does not apply to them.⁶

Taking court-organisations as a point of departure, a major difficulty arises concerning the limited span of control single court-organizations have over demands on productivity and efficacy. In general, courts in Europe lack basic autonomy for this. Courts within the membership of the Council of Europe are generally part of a national court administration. Common features are that there is a ministry of justice (or constitutional affairs) responsible for (delegated) secondary and tertiary legislation in the field, it has the task of having judges selected or appointed, and generally also plays a role in submitting budget proposals to parliament. In many jurisdictions, there is a Council for the judiciary with either a role in the field of selection and (disciplinary) supervision of the juridical profession and/or a role in administration of the courts. Anyway, an administrative council for the judiciary and the court-organizations depend for their organizational functioning on the ministry for primary and secondary legislation, as rules for court administration and rules of procedure need adaptation from time to time. Effective court administration therefore requires a close cooperation between the responsible administering agency and the department within a ministry of justice responsible for legislation. An important question therefore is, how relations between central court administration and local court organizations influence quality management on the local court level, and how this quality management relates to the accountability of the court organizations and the judiciary.

Mohr and Contini have published the idea to make a distinction between managerial, legal public and cooperative accountabilities for courts.⁷ For this they have designed the following matrix:

Forms of judicial accountability⁸				
Key variables	Legal	Public	Managerial	Cooperative
Actor (player)				
Forum			Office Managers, ministries, judicial councils, only marginally legal	'Quality conference', peer groups
Object				
Values and Principles				
Methods				
Consequences				

⁵ Argyris, C. and Schön, D. (1996) *Organizational learning II: Theory, method and practice*, Reading, Mass: Addison Wesley. Also: Smith, M. K. (2001) 'Chris Argyris: theories of action, double-loop learning and organizational learning', *the encyclopedia of informal education*, www.infed.org/thinkers/argyris.htm.

⁶ Studies on the highest courts generally do not focus on organisation and management, but focus, understandably- on judicial decision making. E.g. Nick Huls, Maurice Adams, Jacco Bomhoff (eds). *The Legitimacy of Highest Courts' Rulings, Judicial Deliberations and beyond*, T.M.C. Asser Press, the Hague 2009. However, Nick Huls points out in his introductory chapter to this collection that Highest Courts will need to take a leading role in standing up for the lower courts in order to defend them from (unfounded) attacks from the press and the general public. Nick Huls: Introduction: From Legitimacy to Leadership, p. 3-32.

⁷ Francesco Contini, and Rick Mohr, *Judicial Evaluation, Traditions, innovations and proposals for Measuring the Quality of Court Performance*, VDM-Verlag, Saarbrücken, 2008.

⁸ The design of this table is a citation from: Francesco Contini and Rick Mohr, *Judicial Evaluation, Traditions, innovations and proposals for Measuring the Quality of Court Performance*, VDM-Verlag, Saarbrücken, 2008, p. 61. For the entire table, see their publication.

Tensions with independence and impartiality				
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Their distinctions between different purposes of those different forms of accountability is innovative and makes sense, but from a quality management perspective the distinction in my view does not adequately differentiate between the types of players (actors) who deliver the service and the types of players who receive the information contained in reports in the context of the wider state organisation. Apparently in this table managerial accountability for judicial functioning encompasses political accountability as well. In other words, they seem to accept as self-evident (and see it as inevitable?) that managerial accountability can become highly political. I do not intend to start a debate on taxonomy, but from a quality management perspective the forum does matter (as Contini and Mohr rightly state). As a consequence, delivering information on performance to local court management is different from delivering information on performance to national courts administration authorities, because the latter's scope is much wider – also political- then managerial only. That may connect managerial accountability to possible political power games.

4. Quality management and judicial independence

One of the problematic aspects of court administration is, that administrative and judicial activities interfere with each other, and that accountabilities for both activities may be separated (in conformity with separations of powers theory), but that does not solve the problem of the interference of administrative and judicial tasks in the court organisation. Judges function in a court organisation, and there is a possibility that organization rationality interferes with the content of judicial work.

Organisational measures may influence the ways judges can perform. And the interference of organizational measures with the content of judicial work, although inevitable, is problematic because the accountabilities are related to the way courts are embedded in the state organization. All outcomes of quality inventories, measurements, dialogues, complaint proceedings etc. can be used for accountability purposes while originally set up to be used for local aims of quality management only. Therefore, ownership of this information and (formal) competences to use them are crucial factors from the perspective that judicial decision-making should not be biased – who will have access to this information, and be able to use it? And for what purposes?

In several countries of our sample judges have as office holders and as civil servants an ambiguous position, e.g. in Slovenia, the Netherlands, Germany and France. Of course, judges hold a constitutionally protected, independent position. However, from an organizational perspective judges are also special and qualified civil servants assigned to judicial tasks. And as civil servants they also fulfil tasks in the court organization. And even although their work takes place in a local court organization, these local court organizations are a part of a larger national administrative whole (the juridical hierarchy of courts; court organizations being part of a national court administration).

Judicial independence is legally organised within that context, as a set of duties (e.g. to finance the courts, appointment for life, payment arranged for by law) and limitations (e.g. non-interference in case management and judgments; non-dismissal of judges by an executive office) of the legislative and executive powers. Even so, protection of judicial independence is ambiguous, as it can be conceived of in different ways. The ambiguity relates to the ways in which courts and judges are administered and what competences court administrators have. In court administration the tension between judicial independence and judicial, administrative, public and political accountabilities must be solved.

For this research we were fully aware of the jurists' reflexes to perceive courts (judges and organisations) as belonging to the heart of the rule of law. Courts therefore are primarily perceived by lawyers as being embedded in a legal and constitutional framework. To a certain extent this is an accurate perspective, as far as courts also produce law, by their decisions. To the extent that it is not accurate, however, courts are also to be perceived as entities of public administration. E.g. court organisations in Europe generally are not legal persons but are organised and financed as agencies of a Ministry of justice. Their existence depends on a central and public legal construction which often, but not always has a basis in a written constitution. For practical purposes therefore, it is attractive to consider court organisations as the main player in the operation of a quality *system*.

It makes quite a difference whether courts are to be considered as the organizational embodiment of the third state power, playing an essential balancing role from a separations of powers perspective, or whether judges are to fulfil such roles individually in a rule based adjudicative context, while the courts are organizationally part of a national court administration (ministry of justice and/or council for the judiciary). In the first case, the courts are organized in an institutional setting and they do account for their functioning, but not primarily via a ministry of justice. In the latter case they are most likely to be accountable to a ministry of justice. In the countries of our

research, the value of judicial independence appears not to imply such complete organizational autonomy of the courts. Given the efforts of the English Court Service to reform national court administration in order to make it more transparent and to make the court organizations provide better services, this also holds for England and Wales. Also in Germany the courts function within the administrative framework of a judicial organization act, but it are the ministries of justice of the Länder that administer the court organizations on the state level. Good working relations between local and central court administrators are essential to make this work, and often this does involve judges fulfilling managerial tasks also at the ministries of justice.

In countries with an administrative council for the judiciary, the position of judges and local court administration depends on the relations between the courts and the council and between the council and the ministry of justice, considering especially the relation between the financing of the courts and the courts' functioning, and the ways in which (secondary) legislation is prepared and drafted.

The actual respect for judicial independence within set legal limitations follows a scale of an almost absolute reluctance of central court administrators to get involved in the internal functioning of court organizations (as in Lower Saxony) up to non-interference with case management or judicial decision making in concrete cases only (The Netherlands, France, England and Wales, Slovenia). The latter position involves accepting the possibility of the development and implementation of national administrative court administration policies which may affect judicial work. And therefore judges are inclined to take an interest in the organization development. It seems that the English Court Service takes a middle position, just trying to convince judges that they should follow and participate in the (nationwide) efforts for organisation development, yet without the legislator imposing a framework for court administration as has been done in the Netherlands, France and Slovenia.

In our sample of countries there are various degrees of central interference with local court administration. A basic question from a judicial independence and separation of powers perspective is in how far court administration agencies may be involved in policies to enhance consistency of judging and timeliness of proceedings. If they do, the court organization and the judges working in it will be somehow subjected to efforts to make them conform themselves to the targets set. Another question is how policies to enhance court user satisfaction may interfere with judicial work.

The answer to these questions becomes less tense from an independence and separation of powers perspective when judges engage in such activities, thus taking professional responsibility amongst themselves for the organisation they are a part of. Then, the independence issue shifts in two ways. First the question is, if (and if so, in how far) judges may commit each other to follow a collective jurisprudence & case management policy within a court and even between courts. Second, the question is how administrative processes of organizing accountability for actual achieved timeliness, consistency of judgments and for enhancement of services for court users in relation to the central court administration actually do affect judicial decision making. In Slovenia and in the Netherlands, there have been indications that striving for administrative efficiency not only helps to meet standards of timeliness, but also affect the content quality of judicial decisions. It should be noted that excessive workloads will affect the quality of judicial decisions negatively; on the other hand efficiency policies can also enhance content quality by setting higher standards and by creating conditions for judges to achieve them.

Considering the social-political functions of courts under the rule of law, a major question for future research is, how far such collectivization of judicial activity within the court organization, and between courts up to a regional or a national level, is acceptable from a judicial independence perspective. A further question is how far organization arrangements may interfere in judicial decision making. And: how effective are the different arrangements to enhance timeliness and consistency of court decisions? And for the enhancement of services for court users? Why?

5. Quality management in courts as a part of a national court administration

Let there be no misunderstanding that no doubt the most important factor to achieve a good quality of court hearing and court decisions is the selection and training of judges. The human resources management of the judiciary (selection, appointment and promotion of judges) usually is partly separated from the court administration. This often is administered by a ministry of justice in cooperation with a council for the judiciary. For our study, this was presupposed. Quality management and quality policies in and for courts take the good selection and training of judges as a point of departure, even although introducing managerial responsibilities for judges may demand changes in selection and training of judges.

Generally courts have a wider environment of: prison services, police organisations, the public prosecutions office, fines collections, the bar, agencies for legal aid, Councils of State, Supreme & constitutional courts, the press, politics and the general public. The complexity of judiciary - and court administration make it unlikely that a quality system in a national judicial system is manageable from one central position only, unless it is relatively

small. Therefore, in a European context, interactions between the central court administration, human resources management and local court organizations should be considered part of the context of quality management.

It is possible to have a central quality management policy, but implementing quality measures means taking into account the individual organisation needs, rather than imposing national, uniform solutions on diverse and complex organizations a judicial system usually consists of. Factors of importance for success or failure of quality management are difficult to identify. Much depends on good working relationships within the court organization and between the courts and within the wider judicial system. From this perspective it seems self-evident that a basic amount of mutual trust between central and local court administration is a precondition for effective organization development. Also in that regard the willingness of a single court to try something new (and risk its failure) may be an important factor, relating to a felt need, some foreign development or just an innovative mentality within the court administration, at the central/ and or the local level.

Considering the CEPEJ quality of judicial systems reports of 2006 and 2008, quality of justice as operated in these reports is considered as a national responsibility of the governments of the ECHR member states. But having a national policy to improve the quality of justice is quite different from having local, operational quality management in the courts. Quality management in court organizations generates a lot of information concerning the functioning of the courts, but passing this information on to a central level usually does not only have the purpose to give management information for those handling the buttons of the national justice system, it is also a way to arrange for political accountability for the functioning of the courts in the democratic process. There are several countries in our sample where there is some interference between quality management on the national level and accounting processes in the political line. They are The Netherlands, France and Slovenia. In England and Wales such a system is under development, whereas this is absent in Lower Saxony and present to a low degree only in Sweden and Finland.

In order to produce a readable comparative analysis we come up with a framework that includes both quality management and - policies and central-local relations. We will focus on the following issues from that perspective:

- *Organisation and feedback loops*
- *Quality management initiative*
- *Values and standards*
- *Subjects of quality policy*

6. Organisation and feedback loops.

A basic tension in the relation between quality management and accountability processes in the public sector concerns the relations between the agency and the central authority to whom the information for the accountability process flows.

Ideally, total quality management enables any organisation to function autonomously, e.g. in a commercial environment. In the public sector, agencies are publicly funded and somehow need to account for how they fulfil their tasks. Accountability is a normal part of the democratic process in constitutional democracies. In the reports of this study we see that information gathered as a part of quality management is mixed up with information as a part of political accounting processes. In France, for example, the Charte Marianne is a tool to improve public services nationwide. For the courts it is to be operated at the local level, but at the same time the results of the performance measurement must be transferred to the ministry of justice. A peculiarity of the French court administration is that it is formally separated from the management of the judiciary. But the two different administrations are merged at the administrative level of the Tribunaux de Grand Instance, where the President and the SAR need to cooperate to optimize the functioning of courts and judges within their district.

England and Wales have separated management of the court administration and national management of the judiciary. These are integrated both at the National level in the HMCS Board and on the local level in the courts. The process is directed at improving services, but especially at improving administrative processes and accounting processes, and hence at increasing transparency of the court organisation for the public, but also for HMCS. Standardization is to be viewed as a part of developing the quality of court administration, but that is not quality management in its sense of enabling organisation autonomy. English judges are only partly involved in this, and it seems as if English court and judiciary administration evolves into a continental, French inspired direction. Basically the process aims at making the local court organisations more transparent for the Court Service. In how far this will succeed is still uncertain.

In Slovenia, the centralization of court administration is evident; the lead to improve court services is at the national level and it is organised in such a way that local court organisations and judges have to comply with the demands focussing on content-quality and timeliness. The reporters suggest that this centrally minded

operation may be seen as a kind of quality management, but it is the implementation of a national policy to improve court performance especially on timeliness and juridical content. This is organized as management information gathered under responsibility of the chief of court, which is sent to the council for the judiciary who checks on performance.

Also in the Netherlands, although the Quality management system was designed for the local courts, RechtspraakQ has also become part of the accounting process towards the Council for the judiciary and the Ministry of justice. Management information and (financial) accounting mechanisms are combined here. Measurement takes place at a regular basis, by the management of the courts and also involving user & stakeholder surveys. Judges discuss case law and thus try to come to similar judgments in similar cases. For rules of procedure and in order to address legal developments coordinating judges of the different courts convene on a regular basis. Thus informal court procedure rules (based on formal rules of procedure) have been set and published on www.rechtspraak.nl. In the Netherlands courts must share the information on their performance with the council for the judiciary.

For Finland there is a good working relation between the Ministry of justice and the Rovaniemi Court of Appeal. The ministry of justice is interested in the 'results' of the courts, but there seem to be no overt conflicts about who 'owns' the information gathered in the benchmark project. The recognition for this work apparently has reinforced the relative autonomy of Rovaniemi Court of Appeal, but the national court administration is a ministerial responsibility.

For Sweden the dialogue strategy seems to be effective, as the relations between the National Court Administration evolve around results and budgets. The national Court Administration takes the relative autonomy of the courts as a point of departure, and tries to facilitate quality management in the different courts. Even so there are some judges that disagree about the quality management policy of the ministry of justice, as they perceive it as a possible threat to impartiality.

The Benchmark project for the first instance courts in Lower Saxony is marked by friendly competition. Theme by theme the best practices are gathered and discussed with representatives of the different courts. The outcomes are distributed amongst the courts, with the assignment to try to improve. After some time the exercise is repeated on the same theme, e.g. Mahnverfahren (debt collection proceedings), and then it may show that the court performing best at the first meeting, no longer does so, because other courts were more effective in adapting their internal working processes. Essential here is, that the detailed information on the benchmarks is not communicated to the ministry of justice, as the courts 'own' this information. The ministry of justice accepts this, because the benchmark process results in more efficiency and better quality of services.

The courts' presidents roles in these processes should not be underestimated. If a president (or a court management board) does not openly support the quality management process, it is unlikely that non-managing judges will follow. Especially in situations where eventually the hard or soft standards developed in the process need to be internalised by judges because they need to adapt routines to the standards they helped developing, such support for planning and time is a sine qua non (Sweden, Finland, the Netherlands, Lower Saxony)

In Ukraine, we have not seen feed-back loops yet, even although many projects have been organised by foreign aid agencies, like the American Bar Association and US aid.

Summary

Legal quality is considered a judicial affair everywhere. The traditional tool to achieve this is to appeal to a higher court. Only where judges themselves have taken the initiative, legal quality as fairness of proceedings, motivation of judgments, and consistency of judgments are subject of organisational measures amongst judges, like in Finland, Sweden and the Netherlands. The way these standards are operated may differ from country to country. A common feature is that stakeholders are involved in giving feedback to the courts. This may be by external dialogues as in Sweden or involving user satisfaction surveys as in Germany and the Netherlands.

The central issue in the feedback is ownership of information. Autonomous courts are able to protect information for their organisation development against others (ministry of justice). They prevent the ministry of justice from seeing the information generated by their quality management processes. In most countries, except Lower Saxony, Finland and Sweden, quality management information is also part of democratic accountability processes, referring to public service performance. One should ask the question if information gathered for central steering purposes like in England & Wales and France (and to a certain extent in Slovenia) can be counted as "quality management" in the real sense, or that they should be considered as centralized quality policies, that have little to do with the development of autonomous organizations in interactions with their societal environment.

7. Quality management initiative.

A basic feature of attention for quality management in court administration is that it has some central connotation everywhere. This is the strongest in France, England, Slovenia and Ukraine.

England and Wales have gone through considerable efforts to organize nationwide consistency in the administration of the courts. Part of this was to abolish the Lord Chancellors' offices and by forming a ministry of justice with a full political accountability for the court services. Thus, the formal organizational structure has become similar (although not equal) to court administration structures on the continent. In France, the *Loi Organique de Loi aux Finances* has centralized responsibility with the ministry of justice and obliged court administration to apply the Charte Marianne, in order to enhance quality of services to the general public as a part of a policy to enhance quality of services by the entire French public administration. Slovenia, probably also because of its limited scale, has engaged in centrally steered efforts to organize timely case management and quality of judgments.

Ukraine is a particular case, as court administration still follows the structures of the former Soviet republic it used to be. Quality management and improving the functioning of courts and judges is becoming an issue in Ukraine, because the European Union demands it for its third country partners program and because of projects organized by the American Bar Association and USAID. The ministry of justice has started the development of quality management in its national court administration department. However, considering the state of organization development, the country still has a long way to go.

In Lower Saxony, Sweden and Finland the ministry of justice is present in the background as they bear responsibility for the expenses and the efficiency of the courts, even although the quality management initiative was taken elsewhere. Nevertheless, they have a reluctant approach in common. In Lower Saxony, Celle superior appeal court took the initiative to start a benchmark project on (internal) court proceedings with the first instance courts in its district. In Finland, Rovaniemi court of appeal took a quality management initiative, and in Sweden the Court of Appeal of Western Sweden started the dialogue-project in order to improve the functioning of the court and its services. It should be noted however that the Domstolsverket, Swedish national court administration, has started a quality initiative in 2005, challenging the courts to develop projects in quality management. This manual was developed in close cooperation with the courts' presidents.

Typically, in all three cases the central court administration was involved in the project, also concerning its financing, but maintained a distance. In the Netherlands, quality management is also a matter of the local courts, but within a nationwide framework for quality management, RechtspraakQ. This was developed by the Judiciary reinforcement project and later continuously developed and administered by the Council for the judiciary in close cooperation with the courts. Here quality management is directly related to the budgeting process, as to counterbalance the economizing stimuli of the system of output financing of the courts.

Considering the reports, the French and English approaches to improve quality of court services have not been presented as effective, as they involve nationwide efforts to provide for better services by all courts. The processes are managed top-down, and are led by structural changes in the financing or in the formal organization structure. The centralized Slovenian approach, however, seems to have led to visible results, as they have managed to reduce backlogs and have instituted a human resources policy focusing on quality judges and demanding quality work from them. This latter example shows the difference between gathering information for (administrative and political) accounting & reporting purposes and organizing feed-back loops.

There are clear differences here. The initiatives to develop a quality project were taken by Celle Appeal court in Lower Saxony, and by Rovaniemi Court of Appeal in Finland. In the Netherlands the initiative came from judges of various courts, but was organized by the Judiciary Reinforcement Project with explicit support of the ministry of justice. A similar development led to the dialogue project in the Swedish Western Appeal court. It was one of the responses of the challenge of the Domstolsverket to apply quality management in the courts, based on the 'Quality Work' handbook.

For Slovenia, the authors of the report refer to two dominant factors. First, a row of changes in the legislation concerning the judiciary, but also the Lukenda project aiming at fighting backlogs, initiated by the ministry of justice and involving a large number of stakeholders from within the justice administration (like bailiffs, notaries, bar association) also from outside the state organization (Ngo's). In Ukraine, plans for enhancing quality of justice are initiated by the ministry of justice, but anyway connected to efforts to introduce quality management in Public Administration as a whole. In England and Wales quality management initiatives have been taken by local courts, but eventually the Court Service and the ministry of justice have taken the initiative to start a central quality management project directed at service provisions for their stakeholders. For France, the initiative was

taken by politicians for the entire public service, and the court organizations are considered to be part of that. The court administrations had to apply the LOLF just as other administrative bodies.

Summary

The initiative for quality management is either the initiative of a local court organization, as in Finland and in Lower Saxony, followed and supported by the ministry of justice. Or it is the result of a bottom – up, top - down interaction between one of more judges and courts and the ministry of justice as in Sweden and the Netherlands. In all these countries support from the courts' presidents has helped the development.

In England and Wales the initiative was taken by Her Majesty's Court Service, whereas in Slovenia, the initiative was taken by the Ministry of justice in Close cooperation with the Council for the judiciary, which has led to legislation. In France, quality measures for the courts are prescribed by legislation that is equally applied to all other parts of public administration. It is not clear from the French report in how far the courts' presidents have been a part of the application of these measures in the court organization. In Ukraine, the ministry of justice only has plans to development quality management for its own court administration department.

8. Values and standards

Consistency in adjudication, timeliness and legal certainty are values to be realized by judges everywhere. There may be differences between the countries of our sample as to how much judicial discretion in decisions and case management in first and second instance courts is to be considered acceptable. But the point of departure is that the law and statute acts are leading those decisions. Therefore it is inevitable that these values (timeliness, consistency) are taken into account when developing quality standards. Furthermore, improving the services and their efficiency provided to the users of the courts by the court organizations is a point of attention everywhere. This also affects judicial work, but presumably to a lesser degree than striving for consistency and timeliness of court decisions.

Quality management presupposes common definitions of services and standards and tools to measure performances in accordance to these standards and definitions. It presupposes that these standards and definitions accurately relate to reality, and it also presupposes arrangements that make clear who 'owns' this information, and who should be able to act on the outcomes of the monitoring processes and how. Quality management in the courts and the judiciary is also related to basic values and attitudes within public administration as a whole. Courts are to be considered a part of public administration, and the perceptions of the roles judges should play are probably related to national cultures of public administration.

The standards we have found address different players in the court organization; the court management, the judges and the court staff. Judges and court staff are the ones who have to actually live up to standards or quality arrangements set (set either by themselves or by others). The court management plays a different role, as it may use evaluation outcomes for purposes of organization development and in the accounting process in relation to national court administration. For that reason it may be useful to make a distinction between the addressees of quality standards or quality arrangements: judges, court staff and/or court management.

Standards

For France, the standards are quite clear. It is the national standard of the Charte Marianne which is legally prescribed for the court administration (and all other public services). It focuses on accessibility of the courts, user satisfaction, complaint proceedings and timeliness, but its context is that of the LOLF with a focus on efficiency and effectiveness. These standards of the Charte Marianne should be considered in connection with a more general policy to reduce backlogs, diversification of punishments, improve the execution of criminal sentences, enhance the speediness of registration of judicial decisions and the delivery of writs, and last, but not least, to enhance electronic communications. The action, however is not to take place on the national level but at the level of the court organization. The courts must deliver annual projects and performance reports. This is mainly in the hands of the Service d'Administration Régionale, with a 'Greffier en chef' as chief administrator, responsible for the organisational functioning of the courts in their regions. And they are the main addressees of the standards.

They fulfil a key role in the evaluation of the performance and the quality of the functioning of the courts, and thus in the justification of the expenses made for the delivery of justice. That is, if they succeed in applying the

quality standards in a uniform way and thus deliver reliable and comparable management information throughout the country.⁹

For England and Wales the introduction of tools for quality management in the courts has coincided with far reaching structural and centralizing changes in court administration, like the institution of a ministry of justice and Her Majesty's Courts' Service, and several regional boards for court administration. HMCS has started applying ISO 9000 and EFQM standards for its own services towards the courts, but is in the process of developing quality management in local court organizations throughout the country. The idea is to have a flow of information going from the local court organization to HMCS. Administration of justice standards are based on the so called 'User Service Excellence Standard'. There are 5 standards for this tool: 1) user insight; 2) culture; 3) information and access; 4) delivery; 5) timeliness and quality of service. This is combined with certification, in order to ensure the achievement of minimum yet high standards. The monitoring of performance in accordance with this tool is intended to be used for organization & service improvement. The addressees of these standards are the local court administrators. And a basic idea behind this development is that national court administration gains a major insight in the functioning of the courts.

Just like in France, judges take an interest in this development but have separate responsibilities, even though it is recognized (and intended!) that their work will inevitably be affected by performance oriented quality management. Also inconsistencies in user oriented monitoring practices make locally collected and locally and nationally presented data inconsistent.

In Slovenia, standards focus on timeliness, with competences of the courts' president to take measures against backlogs of more than 1 year. Timeliness is also enhanced by fixing a time limit for delivering written judgment following court hearing, and by deciding cases following the 'first in first out' principle, and by obliging party to appeal to a higher court within 15 days, and by giving judges an equal share of cases. Furthermore, factors considered important are the amount of decided cases and the quality of the judicial decisions. This is operated in system in which the Judicial Council of Slovenia states the lowest expected amount of work of judges in a court. These standards are based on legislation. Judges are required to write a monthly report which is checked with computer data, about e.g. the amount of cases decided, court hearings, etc. The quality of judicial work is checked against the number of successful appeals against judicial decisions. Every three years judges are evaluated by their peers (the courts' presidents) based on their abilities as shown in the cases they decided. The outcome of the evaluation is decisive for their promotion. Slovenian Judges consider this as at the border of what is acceptable from an (internal) judicial independence perspective.

In Sweden the Domstolsverket has provided a 'Manual for quality work', with a special set of standards:

1. Correct decisions and well-written presentation of reasons.
2. Decisions and summons written in understandable language.
3. Treating parties involved in a respectable manner when approaching the court.
4. Pleasant work environment and atmosphere.

They should be operated by the courts. There is a direct link with judicial work here, because the correctness of decisions and their written presentation is primarily a judicial responsibility.

For Finland, the ministry of justice tries to steer on efficiency. But the Rovaniemi court of appeal has organized its own benchmark project within its district. It is oriented at the quality of adjudication of entire judicial units from the view of the parties and the other persons participating in the trial. The project to develop benchmarks orients itself on 6 areas: the process, the decision, treatment of the parties and the public, the promptness of proceedings, competence and professional skills of the judge, and the organization and management of adjudication. They developed quality indicators for these areas. Each year points for further attention may be indicated by the annual quality conference. The actual benchmarks are developed by quality teams.

The values made explicit in the Rovaniemi project are: fairness of proceedings and good motivation of judgments; consistency as a result of exchange between judges. Values are defined as themes and themes may vary in time. Standards are not put down in law. The standards developed are focused on judicial work, but may involve court staff. A benchmark project is ongoing in the courts in the Rovaniemi court of appeal district.

⁹ From another recent publication: Thierry Kirat, Performance-Based Budgeting and Management of Judicial Courts in France: an Assessment, in: International Journal for Court Administration, issue I, 2010, forthcoming, we know that the indicators used by the SAR and the first instance and appeal courts are highly problematic and that courts are not autonomous enough to use these standards to enhance their own organisational functioning.

Parties and stakeholder are involved in delivery of feedback. There is an annual quality conference, where the results of the benchmark project are presented and discussed.

For Lower Saxony, Celle Appeal court has followed an approach comparable with the one Rovaniemi Appeal court, but with their own design of the process in which benchmarks have been developed. They have organised focus groups for certain aspects of (internal) proceedings. In these focus groups specialists from the first instance courts of the Celle appeal court district participate. They come up with best practices and after two years the performance of the courts on the benchmark is measured in order to find out if the participating courts are still in the same or a better level of performance.

The project described does involve timeliness, as an aim of court decision making. But it does not involve standards that apply directly to the content of decisions. Quality of judicial decisions is guaranteed by the traditional appeal system. The content of judgments and the readability of judgments is not a part of the project described, but the project does strive for the involvement of judges.

The Netherlands have a national set of quality standards for the functioning of the courts, as a part of RechtspraakQ. The standards have been developed by judges, starting from a special project in the reinforcement of the judiciary. Those quality standards are: impartiality and integrity; expertise; treatment of litigants and defendants; legal unity (sentencing consistency); speed and promptness. These norms are operated in sets of sub-norms, which are measured by the separate courts. The data are transferred to the Council for the judiciary. Quality management is part of the financing system of the courts, and the actual system was designed as a counterbalance to economizing incentives in the financing system. Quality management has two sides here, just as in France: it is a tool for the courts to organize feedback on their performance and part of the accountability of the courts towards the Council for the judiciary and the Ministry of justice.

Ukraine does not have a system of quality management for the courts yet, even although the ministry of justice strives for improvement of the functioning of the courts by developing a quality management system for the ministry of justice and the courts.

Addressees of standards

The addressees of the standards are quite mixed. In France and England, the addressees are court administrators, including the courts' presidents. In the Netherlands, those responsible for the functioning of the courts are judges together with professional managers. The standards address judges and court administrators on issues within the judicial domain (e.g. juridical quality operated as numbers of reversal in appeal for a court sector, so not measured at the level of an individual judge), timeliness and integrity, but also user satisfaction.

In Slovenia, judges are expressly addressed concerning timeliness and content-quality. In Sweden and Finland the standards address the judges first, but even so, they can only be realized in close cooperation with court staff. In Lower Saxony, it is the court staff who was first addressed, but the project responsible is a judge; eventually also there court staff, judges and court management are addressed. Considering these standards and their intended effects, a strict separation between judges and court staff seems to be part of judicial culture in France and England, but quality managers seem to be well aware that on an organizational level close cooperation is necessary to achieve good services. This is also shown by the benchmark project in Lower Saxony, where the initial success of court staff participation has persuaded judges to join the process. In Sweden persuasion of judges was –presumably- also behind the careful preparation of the quality project at the central level.

In Ukraine, plans are under development to start a quality management project within the central court administration of the ministry of justice, not yet within the courts.

Summary

Common standards are timeliness of justice and user satisfaction. It is not yet clear how these standards are operated. What we have are benchmarks in Finland and Lower Saxony on the one hand, and quality standards in Slovenia, The Netherlands and France. In the Netherlands, Slovenia and France, they are actually operated in measurable parameters, whereas in Sweden they are the much softer outcomes of dialogues, without immediately leading to measurements of results. In Finland, Sweden and Lower Saxony the information gathered is oriented at the local court organization only. In Finland, Sweden, the standards may change over time, as the situation of the courts may change over time. This also is the case in France and the Netherlands as far as the operation of the standards at the regional level (France) or the court level (The Netherlands) are concerned, but they need to stay tuned to a national measurement system.

Addressees of the standards in most countries are both judges and court staff. It should be noted that once cooperation between court staff and judges has been established, the question of how the management

information will be used in relations of accountability with offices of the executive branch of government becomes a point of attention.

9. Subjects for quality policy

In Sweden, apart from the usual adherence to the rule of law and to efficiency, the Domstolverket had developed policies to realize timely judgments. Between the Domstolverket and the courts, a discussion is continuously ongoing about the goals of the courts and how they should be accomplished. Currently, quality of judgments, court staff satisfaction and 'quality work' (based on internal and external interactions on the issue of how to improve services) are centrally instigated themes, and 25 courts have taken on the challenge of developing projects of quality work. This is done by the method of internal and external dialogue. Judges and court staff are involved in this, and it should be noted that this dialogue does not aim at setting standards but at improving the functioning of the court in a practical but apparently also a manner to motivate the judges to engage in the process. The role of the courts' president in this is of major importance, and s/he can indicate which subjects should be given priority. The Court of Appeal of Western Sweden started this in 2003 also based on literature on quality management, but also because they felt they needed to do something about relative dissatisfaction of court staff with their work. The internal dialogue process developed gradually, and gained an increasing interest of the judges and the court staff. From an internal dialogue it evolved into an external dialogue with stakeholders.

Finland first introduced management by objectives already in 1995. This was based on calculations of production and of processing time. The outcomes of these calculations are input for negotiations between the courts and the ministry of justice. And then the Rovaniemi court took an initiative to make the judges of the courts within its district communicate amongst each other on how they best do their work, so as to develop their professional attitude and to engage in communications with stakeholders.

The ministry of justice has supported this project but is also focused on supporting judges elsewhere in Finland to keep their knowledge up to date and organize professional exchanges. Similar quality projects are now organized in other Finnish courts.

This sometimes is perceived as a threat of judicial independence, as judges insist that their local courts should be owners of such projects, like the Rovaniemi appeal court. Therefore the ministerial policy is directed at stimulating court and judges' performance, but with a strong degree of respect for the courts' autonomy and providing services to keep content quality and performances at an acceptable high level.

Slovenia's quality policy has evolved mainly about speeding up court work and improving the professional quality of judges. This was done in reaction to a judgement of the ECtHR in the Lukenda case¹⁰. So, the aim was to make the Slovenian judicial system more efficient and effective, and therefore aimed at taking measures to speed up proceedings and stimulate judges to live up to new demands. This was centrally instigated, by law, as a system with production targets per court and per judge, average throughput time per judge, conditions for appointment of extra judges, increased mobility of judges, and a focus on dealing with the large amounts of backlogs. Of course, also courses for judges were instigated, and judges participating in the backlog production program were awarded higher salaries.

This was not accepted by all judges, there have been some discussions that the ministry of justice and the Judicial Council gathered too much data about individual judges. However, administrative responsibilities were given to the Judicial Council, The Supreme Court and the courts' presidents for setting targets and supervision of judges' performances.

This is not so much a system of quality management as a system to make court and judges accountable for their performance as a part of a nation-wide effort to increase court & judicial performance.

Also in France the policy development is directed at increasing legitimacy of the entire justice system. It was thus not developed as a system of total quality management, but mainly as a system for targeted accountabilities for the justice system (and the entire public administration) as a whole. One of its instruments is improving service quality for the citizens while preserving judicial independence, e.g. by opening up for complaint proceedings. The courts are considered a part of this – and for the courts the policy is directed towards timeliness and efficacy predominantly, but towards adequate judicial decision making as well. The policy involves a managerial development of justice administration, including an organisation focussing on measurement of results in connection with financing of the courts. From this position, the Tribunaux de Grand Instance are developing a culture of evaluation as far as they are responsible for the Tribunaux d'Instance in their district, but also by a constant dialogue between the Services Administratifs Régionaux at the TGI and the inspectorate of the judicial services at the ministry of justice (IGSJ). Thus a development has set in, which leads to a rationalisation of the management of the courts and a uniform accounting process.

¹⁰ Lukenda versus Slovenia, application 23032/02, judgement d.d. 06-10-2005.

Quality policies for the judiciary in the Netherlands are intended as total quality management at the court level, but are also an element of the political accounting system. Of course the courts have sought for interaction with stakeholders and the general public in order to support legitimacy. But they strive especially for consolidation of public trust and for continuous organisation development based on these interactions. Judicial mistakes are hung out broadly in the press, and the courts have engaged in a specialization and further professionalization process, in order to deal with enhanced transparency of the work of the courts, to increase efficiency, but also enhance the necessary knowledge of judges in the fields of forensic techniques, European and international law, IT-law, etc. This is a constant process, which is connected to the output based financing system. If measured quality does not live up to standards, the court at hand will have to improve, and if the measurement results are poor nation –wide, the ministry of justice and the Council for the judiciary will have to make certain that this is addressed. Possibly, but not necessarily, with more money, e.g. for courses for judges and court staff. So, to date, content quality of judicial decisions is a major issue for the courts.

England and Wales have engaged in an effort to improve the administrative functioning and the services of its justice system. First of all there have been important constitutional changes installing a ministry of justice, and hence changing the relations between the courts and politics in a more continental fashion, with the Lord Chancellor as the minister of justice and The Lord Chief Justice as the head of the judiciary. The Judiciary is administratively set apart from the Ministry of justice, by separating political responsibility for court administration services from the judiciary. Nonetheless, HMCS is accountable both to The Lord Chief Justice and to the Lord Chancellor. So, support for judicial functioning is a task for the Lord Chief justice and support for the organizational functioning of the courts is a task of the HMCS. The policies developed so far aim at the cooperation between the judicial branches and the administrative branches of the HMCS in the different court organisations. Policies to improve quality of services for HMCS itself has evolved within the domain of the courts into efforts to provide better services to the public and to develop more reliable accountability mechanisms. Quality management is an administrators' process, but many judges understand they cannot leave this to HMCS staff in the courts alone. A closer cooperation between court staff and judges has become a necessity.

Judges and court staff are currently discovering how to do this effectively, but it has become clear that judges in England and Wales are followers and not leaders in the process.

In Lower Saxony, the policy is directed at spreading best practices amongst the courts in the district of a superior appeal court. The idea is to improve overall quality without a lot of extra investments, including increasing efficiency. It is a particular property of this process that it was initiated by Celle appeal court itself, which has won the support of the Ministry of justice in Hanover. The project typically is court-owned, and it should also be placed in a federal German policy context where subsequent ministers of justice have tried to impose a large justice reform, but have failed to acquire enough support from the representatives of the German states. This benchmark process is spreading through to other 'Länder', and thus may become a force enhancing a relative autonomy of the courts under the supervision of the superior appeal courts. Good working relationships between the courts and the ministries of justice are essential to achieve this, as the State ministers of justice are politically accountable for the well functioning of the courts.

Ukraine tries to develop a quality management system but faces quite some obstacles, not the least being a lack of money and capacity to make the development process work. Anyway a plan has been designed to be implemented by and within the State Court Administration. This involves training of auditors, the development of ISO 9001 standards and, eventually certification proceedings. The idea is that experiences within the State Court Administration Service are used to repeat the same process within the court organisations.

Summary

The overall subject of quality management policies is to increase legitimacy of the courts by improving their performance. This has different dimensions. On the one hand, there are efforts to stimulate court organisation and judges to a better performance in terms of services and especially timeliness of justice. On the other hand the efforts are directed at organisation development, for which quality management can be one of the tools. The third perspective is to increase the information about the functioning of the court-organisations (France, England and sometimes of judges (Slovenia, the Netherlands) for central court administrators.

10. Conclusions: factors for success or failure?

Courts are a part of the state organization. Judges are public office holders and usually on the continent, civil servants as well. The court organizations bridge the separation of powers gap between court staff and administrators and judges. Usually, some judges bridge that gap by accepting a personal union of administrative and judicial offices. On the one hand, this complicates courts as organizations, but it is also eases the sharp tensions between the executive and the judicial branches in regard of the court administration. Management of the court organization will inevitably touch upon judicial work in one way or another.

'Quality of organization' and 'quality of organization performance' are both conditions for and outcomes of quality management. Because courts are a part of the state, a major problem is the relationship between central state agencies, like e.g. a ministry of justice or a council for the judiciary, and the courts. These relationships usually are framed in the constitution and in one or more statute acts on the organization of courts and the wider judicial system. The administrative law of the judicial organization formally invests competences with those central state agencies and within the courts. It is not self evident at all, that the very same acts prescribe more than the organizational functioning of the judicial organization. And a relevant question is, if they should do so. However, sometimes they prescribe efforts for a certain purpose, like court-inspection, quality management, timeliness of proceedings or they frame productivity economically (output financing). If so, there always somehow is a relation between the prescription to organize quality management in the court organizations and political accountability for the organizational functioning of the courts and for the outcomes. This relation is shaped within the legal framework *and* within the wider context of the national justice organisation.

It is an outcome of this research that in one country with a central policy to enhance court performance, this has become a success; this is Slovenia, which has gone through great efforts to improve the timeliness of its judgments. But it has also put demands on the content quality of judgments by measuring the reversals in appeal. In the context of possible sanctions (career decisions) for a judge who malfunctions according to this standard, this is a questionable means. However, one may consider that from a policy perspective these measures were necessary – and maybe even justified to stimulate judges to improve performance on juridical content.

For the other two countries, France and England, it is too early to say that the LOLF in France and the performance standardization policies of HMCS will result in better services. So far the relationship between court organization and the judges in those countries has not become clear.

In the Netherlands the position of judges in the court organization is arranged for quite clearly; they are subject to the management board of the court. They have to abide with decisions of this body, even although interferences with the content of judicial decisions in individual cases is not allowed. In terms of management information quality management in Dutch courts has become a success. But the courts and the judges have lost autonomy in the process of national policy developments concerning court efficiency, quality management and the 'judicial map'. The original bottom-up movement for quality management as a tool to reinforce the autonomy for the courts has evolved into a nationwide judicial organization with a strong centre, also because management information on quality of court performance has been integrated into the financing system. In how far this way of organization works adequately to legitimize the courts remains to be seen, as the accountability process does not directly address virulent media hypes concerning judicial decisions.

For the other countries, except Ukraine, good working relations between the ministry of justice and the courts seemed to be essential. Especially respecting the courts' autonomy as a matter of fact, leaving the quality management to the local court organisation or to the judges-led project management as in Lower Saxony, seems a basic precondition for success. Of course, the formulation & operation of standards – if any, is to be left to the local judges and/or the court staff. This presupposes, however, that judges and court staff are willing to take responsibility by themselves. Especially very clear arrangements on the ownership of information generated in the process of local organization development is a critical issue, as shown by the Finnish, Swedish and Lower Saxony examples. Without support of the central court administration, also financially, developing local quality management is bound to fail.

In this process the support and facilitating function of the courts' presidents seem to be essential. In Sweden the process started by the intermediate support of the presidents of all the courts, as consulted by the Domstolsverket. In Lower Saxony, the commitment of the president of Celle superior appeal court and of the other superior appeal court should be considered crucial as it convinced the presidents of the first instance courts that they should participate. Furthermore, in Sweden and Finland, the direct participation of non-managing judges appeared to be essential, especially with a view to the element of peer review.

It should be noted, that it does not seem to make a lot of difference what standards are addressed in the quality measurement. Timely judgments, court user satisfaction are values everywhere, whereas juridical content quality is left to the traditional appeal system in most countries (apart from Slovenia and the Netherlands).

Summing up and future research:

For successful quality management at the court level respect for local autonomy by central court administrators is essential, leading to clear arrangements of local ownership of generated information. Support of the presidencies of the courts will enhance the development of quality management as well.

For successful central quality enhancing policies, like in Slovenia, a strong central grip on judicial performance and its measurement is a necessary precondition, but demands of judicial independence make this a questionable method.

The efforts followed in France and England to focus on administrative standardization and accountabilities, and thus not directly involving judges in the process may or may not be successful. Eventually, these processes will also need judicial support and participation. We do not know yet if these efforts will be successful, because we do not know how judges react on the ways in which the intended standardization processes will affect their work, and if they will support or resist these developments.

Future research on quality policies and on quality management in court administration and court organizations should focus on the standards and the development and operation of quality indicators. Based on the discussions in the cepej-quality committee of the Council of Europe, specific attention could be given to adequate juridical knowledge of judges in relation to their specific tasks (specialization) and on consistency of judging.

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Gar Yein Ng

1. Introduction

The aim of this project is to give a preliminary overview of how standards and performance management are operated in England and Wales.¹¹ The conclusions of this research will focus on factors for success or failure of quality management. The analysis will be given within a framework of law and policy. This will include looking at who is responsible (therefore accountable) for the operation of standards in the court organization, what those standards are, how they are defined, and how they operate within the organization itself.

Given the uniqueness of the court structure in England and Wales, and given the major constitutional and organisational changes that have taken place in the last five years there,¹² it is not possible to examine the operation of quality standards without first giving a brief description of the leadership of the court organization, the court organization itself, and judicial administration in general. Furthermore, a short examination will be made of the problems the courts currently face (both in civil and criminal law).

Following from this a description of the quality system will ensue. This will be based on various policy documents and interviews with key administrators (both judicial and clerical). Having addressed the question of how quality standards were introduced a description will be given on who is responsible, both in and out of the courts, for implementing quality standards. On the operation of standards themselves, a closer look will be given at what the actual standards are, how and who defines them; the measurement of actual results, and whether or not there are follow-ups on the outcomes (by whom and how).

A chief characteristic of implementing quality standards is the reliance on all people and elements of an organization working together and communicating goals and methods to achieve those goals.¹³ Therefore, answers have been sought as to the relationship between the courts and central administration, between judges and administrators, and the issue of feeling of ownership of such a project within the courts themselves, has also been addressed. The project also addresses the matter of accountability. This matter has been considered, on the one hand, by looking at the relationship between the quality management system and the financing of the justice system. On the other hand, mechanisms of inspection and control of quality standards are also important methods of holding an organization to account for its methods and results.

2. Constitutional reform

Constitutional Reform Act 2005

Woodhouse describes how the Constitutional Reform Act 2005 alters the role of the Lord Chancellor in the judicial branch of power and takes measures to enhance the institutional independence of the judiciary in England and Wales.¹⁴ Firstly, the Lord Chancellor's role as head of the judiciary has been handed over the Lord Chief Justice (formally also the head of the Criminal Justice System).¹⁵ The second change is the Judicial Appointments Commission, which seeks to create transparent and open procedures in the appointments to and promotions within the judiciary, also having regard for the need for greater diversity.¹⁶ Whilst it does not give the judiciary full responsibility over its own appointments, it does create a professional way of appointing its members. This leaves the Lord Chancellor with executive and political functions for running the "judicial system", considered to be a government function in the U.K. This includes the running of the courts and the judiciary.¹⁷

Accordingly, there is no longer a need for the Lord Chancellor to be a member of the legal profession or even a member of the bench.¹⁸ It is therefore acceptable that this position is filled by an elected politician of the House of Commons. This shifts accountability for the running of the judiciary into the political realm.¹⁹ This

¹¹ This project excludes other parts of the U.K. because other parts of the U.K. apply a different legal system and therefore have a different court structure and jurisdiction.

¹² Constitutional Reform Act 2005, Courts Service Act 2003

¹³ See: Theoretical framework to this project

¹⁴ D. Woodhouse, 'The Constitutional Reform Act 2005-defending judicial independence the English way', *International Journal of Constitutional law* 2007, 5 vol., 153-165 p., D. Woodhouse, 'The office of Lord Chancellor: time to abandon the judicial role - the rest will follow', *Journal of Legal Studies* 2002, vol. 22, 128-145

¹⁵ D. Woodhouse, 'The Constitutional Reform Act 2005-defending judicial independence the English way', *International Journal of Constitutional law* 2007, vol. 5, 153-165 p. 155

¹⁶ *Ibid.*, p.155; see also Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p.17

¹⁷ D. Woodhouse, 'The Constitutional Reform Act 2005-defending judicial independence the English way', *International Journal of Constitutional law* 2007, vol. 5, 153-165 p.155

¹⁸ *Ibid.*, p.155

¹⁹ *Ibid.*, p.155

fundamentally alters the separation of powers in the constitution and requires an explicit check against the politicians' new role in holding the Lord Chancellor to account for the operation of the justice system. Therefore, section 1 of the Constitutional Reform Act 2005 makes judicial independence a matter for political protection. It states that all ministers of the crown, including all those responsible for the judiciary and administration of justice, must uphold "continued judicial independence" and not seek to influence judicial decision making in concrete cases through their special access to the judiciary. Therefore the Lord Chancellor must have regard for the need to defend the independence of the judiciary, by offering the necessary support to enable the judiciary to function, all the while ensuring the public interests are properly represented. The implication of this is that public interest in the judiciary is no longer confined simply to ensuring independence of the judiciary.²⁰

The questions are then put as to what does judicial independence mean and what are its requirements under s.1 of the Constitutional Reform Act 2005. Woodhouse observes that there is a focus in the U.K. on preserving judges' impartiality, whatever the case or circumstances. It could be argued that this could mean that courts should have autonomy to protect human rights and the rule of law. Based on these observations, Woodhouse concludes that judicial independence, rather than being an end in itself, is a means to several ends "with its constitutional value deriving from those ends".²¹

However, it is also clear that constitutional theory,²² as well as the Constitutional Reform Act 2005 do not support the notion that judicial independence requires absolute institutional autonomy, and that checks and balances are needed. To that end, even though all courts rely upon the Ministry of justice (formerly the Department of Constitutional Affairs) for "adequate" funding, the ministry recognizes the need to consult the judiciary on issues of funding, and administration of justice. The courts also rely upon the ministry of justice for a range of administrative support and services, including human resources, property management and IT.²³ At the same time, the Constitutional Reform Act 2005 introduces the concept that the Lord Chancellor must report directly to Parliament on the administration of justice and spending.²⁴

Next in her analysis, Woodhouse examines what may constitute a threat to judicial independence under the Constitutional Reform Act 2005. This is considered to be unclear because judicial independence is traditionally protected through tenure, appointments and remuneration, all of which are protected by legislation. Furthermore, protections are found in conventions, understanding and guidance from previous practices.²⁵

Traditionally, the judiciary has only had to be concerned with delivering independent and impartial justice.²⁶ However, the Constitutional Reform Act 2005 recognizes recent developments in government policy in terms of meeting increased public expectation and trying to boost public trust, with emphasis on the need for efficient delivery of public services.²⁷ This has meant that the judiciary has seen a change in orientation of its role and focus to become more outward looking. Woodhouse states that "commonality of purpose can no longer be assumed"²⁸ between policy makers and judges. Given this divergence, and given the difficulties in maintaining the position of the Lord Chancellor working in all three branches of government, it seemed a natural way to go to limit the Lord Chancellors position to defending judicial independence from government policies and political criticism (though this role is still open to interpretation).²⁹ Therefore, the role of guiding judges on "appropriate" behaviour and chastising judges on issues of judicial administration falls to the Lord Chief Justice, the new head of the "independent" judiciary.³⁰

²⁰ Ibid., p.155-156

²¹ Ibid., p.157; see also G. Y. Ng, 'Quality of Judicial Organisation and Checks and Balances', Intersentia, Antwerp 2007 pp.360-361

²² M.C.J. Vile, 'Constitutionalism and the separation of powers', Liberty Fund, Indianapolis 1998

²³ D. Woodhouse, 'The Constitutional Reform Act 2005-defending judicial independence the English way', *International Journal of Constitutional law* 2007, vol. 5, 153-165 p.157; see also Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 pp.11 & 14

²⁴ D. Woodhouse, 'The Constitutional Reform Act 2005-defending judicial independence the English way', *International Journal of Constitutional law* 2007, vol. 5, 153-165 p.157-158

²⁵ Ibid., p.158

²⁶ M.C.J. Vile, 'Constitutionalism and the separation of powers', Liberty Fund, Indianapolis 1998, Alexander Hamilton, 'The Judiciary Department', *The Federalist (independent journal)* 1788, No.78; G. Y. Ng, 'Quality of Judicial Organisation and Checks and Balances', Intersentia, Antwerp 2007 p.16

²⁷ D. Woodhouse, 'The Constitutional Reform Act 2005-defending judicial independence the English way', *International Journal of Constitutional law* 2007, vol.5, 153-165 p.158; see also Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p.16

²⁸ D. Woodhouse, 'The Constitutional Reform Act 2005-defending judicial independence the English way', *International Journal of Constitutional law* 2007, vol.5, 153-165 p.158

²⁹ Ibid., p. 159-161; see also HMCS, 'Her Majesty's Courts Service Framework Document', HMCS, The Stationary Office 2008

³⁰ D. Woodhouse, 'The Constitutional Reform Act 2005-defending judicial independence the English way', *International Journal of Constitutional law* 2007, vol. 5, 153-165 p.161

In a recent trend of writing in this field, Woodhouse emphasises that “public criticism by elected representatives, even when that criticism is unfair, may also be seen as a way of holding tenured judges to account, rather than as an attack on judicial independence.”³¹ In conclusion, Woodhouse states that these changes offer an opportunity to the judiciary to engage with the public, and at the same time increase transparency, which in turn is one possible method of defending judicial independence.³²

Role of the Lord Chief Justice

The Lord Chief Justice (LCJ) is the Head of the judiciary, i.e. the “branch of state responsible for the delivery of justice independently and impartially”.³³ The recent report produced by the LCJ to review the administration of justice in courts highlights his various responsibilities, which include the welfare and deployment of individual judges (which implies case management and distribution); providing training and guidance to individual judges; judicial business of courts, including case listings and allocation of work within the courts.³⁴ Outside of this type of “micro-management” of justice, the LCJ also represents the views of the judiciary to Parliament, the Lord Chancellor and various ministries connected to the administration of justice. This used to be the role of the Lord Chancellor until the Constitutional Reform Act, which also represents greater (though not absolute) institutional autonomy of the judiciary from the other branches of government.

New machinery has been created to assist the LCJ in his new responsibilities as Head of the Judiciary in the shape of a directorate of Judicial Offices of England and Wales.³⁵ This is further broken down into three parts: the Judicial Studies Board,³⁶ the Judicial Office and the Judicial Communications office, which were created as a response to the change of responsibilities. The Judicial Studies Board aids the LCJ in his responsibilities in training members of the judiciary.³⁷ The Judicial office provides administrative support to the LCJ,³⁸ and the Judicial Communications Offices is responsible for the public relations of the “independent judiciary”.³⁹ This report highlights the role of the Judicial Communications Office in creating one “judicial family”, bringing together tenured judges and members of the lay magistracy.⁴⁰

These new responsibilities, the setting up of administrative support, along with the political accountability for the judiciary represents a move towards what Woodhouse termed as “outward looking”.

The Ministry of justice

In May 2007 a Ministry of justice was created for the first time in the history of British government. This ministry is responsible for criminal justice, prisons, penal policy (all of which were previously under the responsibility of the Home Office), and courts service and legal aid (which were previously under the responsibility of the Department for Constitutional Affairs).⁴¹ One of LCJ’s main concerns is that there is now only one departmental budget for all of these administrative matters, and this can lead to a potential conflict between the resource needs of the courts and prisons. According to this argument, there a potential risk exists where judges will believe that their judgments may have adverse financial consequences on other parts of the ministry of justice’s budget, and thereby alter their way of decision making to reduce the risk to the courts financial position.⁴² In this review, the LCJ puts forward two possible solutions: given that judicial independence requires the courts be properly resourced, a new mechanism should be created to set and safeguard the budget of the courts.⁴³ The second solution proposed was to bring Her Majesty’s Courts Service (HMCS) under a joint responsibility to both the LCJ and the Lord Chancellor. Bearing in mind the analysis of Woodhouse on this issue, that judicial independence does not mean institutional independence, and judicial independence requires the courts to be “adequately” resourced, a compromise on both solutions has been reached in the form of a HMCS Framework

³¹ Ibid., p. 164; see also K. Maleson, *The new judiciary: the effects of expansion and activism*, Ashgate Publishing, Aldershot, Dartmouth 1999 ch.3; G. Y. Ng, *Quality of Judicial Organisation and Checks and Balances*, Intersentia, Antwerp 2007 pp.17-18

³² D. Woodhouse, 'The Constitutional Reform Act 2005-defending judicial independence the English way', *International Journal of Constitutional law* 2007, vol. 5, 153-165 p. 164-165

³³ Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p.11

³⁴ Ibid. p.11

³⁵ Ibid. p.13

³⁶ Ibid. p.13 & 59

³⁷ Ibid. p.59

³⁸ Ibid. p.13

³⁹ Ibid. p.13

⁴⁰ Ibid. p.55

⁴¹ Ibid. p.16. For more detailed information on the ministry of justice, please refer to its website <http://www.justice.gov.uk/about/about.htm> (last accessed 28.10.2009)

⁴² Ibid. p.16

⁴³ Ibid. p.16

Document in which a diarchy is set up to take responsibility for the direction of HMCS. This diarchy is composed of the LCJ and the Lord Chancellor and sets out the responsibility of HMCS towards both the “independent judiciary” and the ministry of justice.⁴⁴

Having introduced the constitutional changes and new leadership of the justice system, it is now time to give a brief description of the justice system itself. These two parts, along with a brief depiction of the problems faced by the justice system, sets the stage for implementing quality standards and/or quality management in the courts in England and Wales.

3. The Justice System

Her Majesty's Courts Service (HMCS)

In 2002 there were plans to create a single agency to administer the county and magistrates courts. The aim was to “provide sole responsibility for the delivery of court services at a consistent service level to court users”.⁴⁵ It was argued that there should be an increase in resources made available to support the delivery of justice, and flexibility in the use of court buildings. On April 1 2005 HMCS took over the unified management of all criminal, family and civil courts. HMCS was originally split into 42 local areas across 7 regions. Each local area had its own management team in order to take advantage of the combined resources to improve services. Since April 1 2007, there are now only 25 local areas (each headed by an area director) across 6 regions (each headed by a regional director).⁴⁶ In 2006 HMCS created a mission statement:

“All citizens are entitled to access to justice. The aim is to ensure that access is provided as quickly as possible at the lowest cost which is consistent with open justice.”⁴⁷

Whilst HMCS represents a unified approach to providing access to justice across all jurisdictions, as a practitioner, Reeves is critical of HMCS’ approach, and believes that this change is aimed at improving criminal justice over civil and administrative justice.⁴⁸

HMCS is an agency within the ministry of justice. It provides support considered necessary to allow the judiciary (and the magistracy) to exercise their “judicial functions” independently.⁴⁹ There is a Board, which provides leadership and broad direction to HMCS and which holds the chief executive team to account for the performance of the agency.⁵⁰ It describes itself as:

“a key arm of public service delivery, working to ensure access to justice to all court users and others relying on its service”⁵¹

This implies that access to justice is more than providing independent and impartial judges to deliver judgments. This statement reflects a ministry of justice approach to the administration of justice from an administration point of view, and reflects what Woodhouse earlier described as a divergence of “common purpose”. To find the common purpose therefore, the LCJ and Lord Chancellor discussed and agreed between them, that HMCS should be responsible to both the government and judiciary. This means joint leadership of HMCS by government and the judiciary.⁵² This has manifested itself in various ways. The first is in the composition of HMCS Board. The Board is composed of: one independent non-executive chair, three judicial representatives, one representation of the department of constitutional affairs (i.e. ministry of justice and the Lord Chancellor) –to be nominated by the permanent secretary (i.e. the minister for justice/Lord Chancellor), the chief executive, three HMCS executives and two non-executives. This Board must be approved by both the Lord Chancellor and LCJ jointly.⁵³

⁴⁴ Ibid. p.16-17; see also HMCS, 'Her Majesty's Courts Service Framework Document', HMCS, The Stationary Office 2008

⁴⁵ A. Reeves, *The Path to Justice: A review of the County Court system in England and Wales*, Emerald Publishing, Brighton 2006 p.38

⁴⁶ HMCS, 'Her Majesty's Courts Service Framework Document', HMCS, The Stationary Office 2008 p.1; see also HMICA, 'Annual Report 2006-2007' Her Majesty's Inspectorate for Court Administration 2006-2007 <http://www.hmica.gov.uk/annreps.htm> (last access date: 28.10.2009) p.15

⁴⁷ A. Reeves, *The Path to Justice: A review of the County Court system in England and Wales*, Emerald Publishing, Brighton 2006 p.80

⁴⁸ Ibid. p.80

⁴⁹ HMCS, 'Her Majesty's Courts Service Framework Document', HMCS, The Stationary Office 2008 p.1 & 6-7

⁵⁰ Ibid. p.1

⁵¹ Ibid. p.1

⁵² Ibid. p.3

⁵³ Ibid. p.7

The responsibilities of the Board are quite diverse. They include giving general direction to HMCS (having been given direction by the LCJ and Lord Chancellor themselves); communicating the aim and objectives of HMCS; ensuring a strong working relationship is established between staff of HMCS and the independent judiciary at all levels; improving services and operations to meet needs of all court users (including performance management); corporate governance; assuring that HMCS operational structure is both cost-effective and efficient and that management's planning and finance are carried out efficiently and effectively, thereby protecting public confidence in HMCS.⁵⁴

The chief executive is responsible for the day to day operations of HMCS. It provides leadership for HMCS staff, and works under the general direction of the Board, in accordance with the framework document. It is accountable to HMCS for budget, plans, and effective and efficient delivery of business (i.e. justice).⁵⁵ It is broadly responsible for ensuring that the Board is provided with high quality advice that is impartial, transparent, independent and honest. It is also responsible for the performance of HMCS staff. It must advise the Board on sound risk management. It represents HMCS to government boards and committees *per direction of the Board*.⁵⁶

This is broadly the machinery that has been set up to on the one hand to increase access to justice through more efficient administration, and on the other, to support the work of the "independent judiciary". As one can see, at the time of this report, this organisation is still in its infancy, and going through many changes to organisation and leadership.

Court system and judiciary

England and Wales is divided into geographical counties, that are joined together in "circuits", which are further divided into districts (civil jurisdiction) and petty sessions (criminal jurisdiction). There are three levels of jurisdiction: first instance, appeals, and appeals to the Court of Appeals and a Supreme Court.⁵⁷

At first instance, there are tribunals for administrative and industrial disputes, and parties can appeal from there to the High Court. There is the magistrates court which deals with smaller criminal matters and some family matters. Parties can appeal from the magistrates court to the Crown court if it is a criminal matter and to the High Court if it is a family matter. The Crown court is a first instance court in its own right, and it deals with larger criminal cases. Parties can appeal from the Crown court to the Court of Appeal and to the High Court. The county court hears civil cases. Parties can appeal from that court to the Court of Appeal and the High Court. Finally, at first instance, there is the High Court, situated in London. This court hears cases in administrative, criminal, civil, family and equity law. Whilst the High Court is situated in London, it can hear cases in other courts through district registries, which are situated in county courts. Parties from here can appeal to the Court of Appeal (and in some limited instances to the House of Lords).⁵⁸

There are 650 courts (including some 400 magistrates courts), manned by approximately 20,000 HMCS staff. There are 1500 tenured judges, 30,000 magistrates, and 2250 part-time judges. Apart from the magistracy, there are various different positions within the judiciary itself. First, there are "deputy district judges" who sit in county courts, and have limited jurisdiction.⁵⁹ There are also 155 deputy district judges" who sit as professional judges in the magistrates courts.⁶⁰ There are also 1318 recorders. On the district bench, there are 421 district judges who man the county courts, and 141 district judges hearing cases at the magistrates' courts. On the circuit bench, there are 652 judges. In the High Courts, there are 3 heads of division, 110 High Court judges,

⁵⁴ Ibid. p.6

⁵⁵ Ibid. p.10

⁵⁶ Ibid. p.10

⁵⁷ During this research, a new Supreme Court for the United Kingdom has been opened. It has essentially the same functions as the House of Lords in its former judicial capacity to hear all appeals on points of law in all matters civil and criminal in England, Wales and N. Ireland, and all civil matters for Scotland. For more information on this new institution, please see <http://www.supremecourt.gov.uk/index.html> (last access date: 07/10/09). The 12 Supreme Court justices (formerly Law Lords of the House of Lords) were sworn in on the 1 October 2009: http://news.bbc.co.uk/2/hi/uk_news/8283939.stm (last access date: 07/10/09)

⁵⁸ This section is an amalgamation of various descriptions of courts and statistics on numbers and types of judges from three main sources: A. Reeves, *'The Path to Justice: A review of the County Court system in England and Wales'*, Emerald Publishing, Brighton 2006 p.8; C. Menzies, 'Assignment of cases to the courts in England and Wales', in *Case assignment to courts and within courts: a comparative study in seven countries*, P. Langbroek and F. Fabri (eds), Shaker, Maastricht 2004 pp.121-124; and Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p.9

⁵⁹ A. Reeves, *'The Path to Justice: A review of the County Court system in England and Wales'*, Emerald Publishing, Brighton 2006 p.89

⁶⁰ Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p.9

and 28 masters and registrars; and at the Court of Appeals, there is the master of the rolls (head of the civil justice system) and 37 Lord Justices.⁶¹

This is broadly and simply speaking, the machinery set up in which the independent judiciary operates to write judgments considered impartial and independent. The question arises as to how this court system and HMCS work together to form a “justice system” or “judicial system”, thereby creating an environment in which quality standards can be implemented.

A judicial system?

Having discussed the relationship between the LCJ on the one hand and Lord Chancellor on the other), the question now arises as to how this relationship translates to the relationship between the rest of HMCS and the independent judiciary. In the Framework Document, the Lord Chancellor and LCJ agree new aims and objectives for HMCS.” As an aim, they agree that:

“All citizens, according to their different needs, are entitled to timely access to justice, whether as victims of crimes, defendants accused of crimes, consumers in debt, children at risk or business people involved in commercial disputes.”⁶²

As one can see, this is a variation on the mission statement delivered in 2006. It does not directly mention *low costs* or consistency with the principle of *open justice*, though it does deal with timely access, which, though not the same as *“as quickly as possible”*, is still an aim dealing with speed. This may reflect an attempt to come to a common understanding of the elements on the delivery and administration of justice between the two organisations.

The next point is that of objectives, and rather than describing the overall focus on administration of justice, objectives that relate directly to the judiciary have been chosen, as this section of the report deals with forming a relationship between the two organisations into one justice system. Such objectives include providing support for an independent judiciary in the administration of justice; continuous improvement in the performance and efficiency of all court work having regard to any contribution the judiciary can “appropriately” make; and the promotion of a modern, fair, effective and efficient justice system that is available to all and responsive to the needs of the community.⁶³ The Lord Chancellor and LCJ agree to further measures in support of these objectives and aims, to be published in HMCS business plans.⁶⁴

Furthermore, under the joint duty that HMCS owes to both the Lord Chancellor and LCJ in delivering effective and efficient operation of the courts, HMCS staff are also subject to direction by the independent judiciary, in support of judiciary business and in accordance with court processes. HMCS operations are assessed in annual appraisal reports.⁶⁵

In reality, as it stands at the time of writing this report, the picture is neither 100% positive nor consistent. According to the LCJ review the quality of court staff is one of several fundamental elements to the effective and efficient operation of the courts. The review states that whilst there are some examples of very good court performances that reflect cooperation between the independent judiciary and HMCS staff, the “... *overall picture... is one that does give rise to concern.*”⁶⁶ Various examples of good performance includes the CJSSS initiative to increase efficiency of summary cases in magistrates courts; the ability of the courts to react efficiently to a massive influx of retail banking cases in 2006 and 2007, and the unification of the family court structure across the layered court structure.⁶⁷ The review names three concerns for the efficient running of the courts, but one in particular concerns this relationship: staffing issues.⁶⁸ Here the review is concerned with the high pressure on staff to perform well, which in turn creates low morale. Furthermore, there is an extremely high turnover of staff, which leads in many courts to a brain drain and lack of experience to deal with court work. One

⁶¹ Ibid. p.9

⁶² Ibid. p.3

⁶³ Ibid. p.3

⁶⁴ Ibid. p.3

⁶⁵ Ibid. p.11

⁶⁶ Ibid. p. 20

⁶⁷ Ibid. p.21; this is not an exhaustive list. Others are discussed in the review. See also HMCS, 'Her Majesty's Courts Service Framework Document', HMCS, The Stationary Office 2008 p.24 for other examples of positive cooperation between the two organisations.

⁶⁸ Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p.22

court has reported a turnover of 67%.⁶⁹ Various interviews with HMCS staff and judge have also highlighted that the relationship between judges and court staff is inconsistent. One respondent stated that

“Each court operates differently, sometimes formal, sometimes informal. In my experience, a well run court has good interactions between judges and the staff. In a poorly run court, there is often a lack of discussion between judges and staff. As staff are responsible for compiling and updating case files with correspondence and court orders, and as judges need these files to make their decisions and manage a case, it is common sense to have some sort of communication of needs between staff and judges...”⁷⁰

As one can see, the relationship between judges and court staff, whilst not new, is being shaken up. It is clear from this that both government and judicial policy requires these two organisations to work together to achieve the aims of efficient and effective administration of justice.

In sum, the situation that the “judicial system” finds itself in is to say the least, challenging. The independent judiciary finds itself in a different position in the constitution in relation to parliament and government. On the one hand it must be protected from government policies and politics, but on the other hand, a compromise must be reached with HMCS (an agency of the ministry of justice) on how to best administer justice efficiently and effectively. This leads to the implication that judges are no longer best placed to decide on these issues alone. Thus they find themselves in dialogue with politicians and administrators, but more than that, they find themselves with new responsibilities for the organisation of justice.

On paper therefore, this particular relationship is very new, and leads to many possible scenarios on how this may work, if indeed, it will work at all. What will be interesting to see is the effect, if any, that the implementation of quality standards will have on this relationship. It is in this setting, along with a backdrop of persistent problems that quality standards are implemented.

4. Perceived Problems

The purpose of this section is not so much to go in depth and diagnose every single problem that plagues the courts in England and Wales, but simply to highlight various concerns introduced in various reports, literature and interviews. This will put various quality standards into context later on. The main problems can be summed up as follows: efficiency of administration of justice; inconsistency of courts service across the England and Wales; setting and defining the function and role of courts service; and problems with introducing new methods in administration of the justice system.

Efficiency of administration of justice is a consistent problem. The LCJ review highlights problems of delays, late pleas in criminal courts, and adjourned trials in all the courts.⁷¹ For the County Courts, Reeves is highly critical on the one hand of increasing costs to parties and increasing delays in courts.⁷² The increase in costs is perceived as the “front loading” of costs to the parties in civil cases. This is where the parties pay for the process as they progress.⁷³ This way, on the one hand, if they end up settling, then they do not have to pay for the whole process; and on the other hand, this front loading of costs may also encourage parties to settle earlier on in the case.⁷⁴ This “front-loading” of costs takes into account to the treasury principle that

“There cannot be a subsidy of one element of work through the surplus of developed in another area of activity. If people pay on a stage-by-stage basis, it is eventually more efficient as people often settle at an early stage, meaning it is unnecessary to pay for a whole hearing.”⁷⁵

With the perception of increased costs, I asked about the perception of quality of services and delays. One interview respondent observed that

⁶⁹ Ibid. p.23. This was confirmed in an Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008

⁷⁰ Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008

⁷¹ Lord Chief Justice, ‘The Lord Chief Justice’s Review of the Administration of Justice’ Judiciary of England and Wales 2008 p.23: For magistrates courts see p. 27; For Crown Courts, p.29, For Family Courts see p.34 This review not only highlights the problems but also what measures have been taken to combat them and their success.

⁷² A. Reeves, ‘The Path to Justice: A review of the County Court system in England and Wales’, Emerald Publishing, Brighton 2006, pp.52-54; see also Lexicon Ltd, J. Plotnikoff and R. Woolfson, ‘Evaluation of appellate work in the High Court and the county courts’ Ministry of Justice 2005 , part 5, and part 8, pp.46-48,

⁷³ A. Reeves, ‘The Path to Justice: A review of the County Court system in England and Wales’, Emerald Publishing, Brighton 2006 p.35

⁷⁴ Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008

⁷⁵ Ibid.

*“... because the civil work of the courts has to be self-financing, with a fee structure that supports that objective, customer expectations are then raised of the courts in terms of services and functions which are not always met...”*⁷⁶

These expectations pertain to services by court staff in terms of waiting areas, reception staff, efficient correspondence and other things one might expect at a public building, such as a cafeteria. Court buildings are not always able to provide this simply because the buildings they reside in have not been maintained to an appropriate standard.⁷⁷ In 2005 the Department for Constitutional Affairs (DCA) produced an Efficiency Technical note, on the one hand as a tool to “assess efficiency gains”, and on the other, to highlight their “aim, through [a] 5 year strategy, is to contribute to the delivery of better public services, and to change the way the justice system works to widen the public’s access to, and improve their confidence in, the services we deliver”. Given that the DCA no longer operates, it is unclear whether this 5 year strategy is still in operation, but one policy was initiated to tackle the building problem and that was estates integration “e.g. combining county courts with magistrate courts” by “saving on the cost of running the HMCS estate flowing from estate rationalisation (e.g. lower running costs because of merging and closing courts)”⁷⁸ The interesting thing is that even with all these closures, there is still the problem of £200million arrears in building maintenance (up from £38 million in 2000).⁷⁹

However, the DCA technical note also highlights plans to fulfil HMCS’ original mission statement to provide justice “as quickly as possible at the lowest possible cost that is consistent with open justice”. Furthermore, they wish to increase savings by reducing court staff but implementing measures to ensure a high rate of case completion and therefore highlight a link between performance and finance.⁸⁰

Consistency of courts service across England and Wales is also a problem. According to Reeves:

*“.. service varies enormously depending on which court is used”*⁸¹

Reeves describes the case *CDC2020 v. Ferreira* [2005] EWCA Civ 611 dealing with delays due to administrative failures. What is highlighted here is that the judgment itself is directed by the Lord Justice of Appeal to be sent to the HMCS responsible for administration and to the master of the rolls. From this, Reeves concludes that it “is a particularly serious issue”.⁸² One could also conclude that courts service and administration is also a judicial matter, and can be treated as a matter of rights to be enforced in the courts themselves.

One incident that occurred in 2008 was the Inspection into Leeds Magistrates court, which the secretary of state for justice (Lord Chancellor) says: *“... paints a lamentable picture of the historic failure at Leeds Magistrates’ Court properly to record the results of court adjudication, dating back to 1980...”*⁸³

This failure has led to injustices occurring, for example, where somebody maybe tried and sentenced for the same crime twice. It basically led to case files being incomplete for both the police and the judge, which means that informed decisions could not be taken. This may reflect a general lack of understanding by court staff (in this instance) as to the importance of their role in achieving access to justice. Other problems pertaining to staff in courts is extremely high turnover.⁸⁴ As discussed a little earlier, this can lead to a brain drain of expertise and low morale.

⁷⁶ Ibid.

⁷⁷ Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 pp.48-50; Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008

⁷⁸ Department for Constitutional Affairs, 'Efficiency technical note', 2005

⁷⁹ Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p.49

⁸⁰ Department for Constitutional Affairs, 'Efficiency technical note', 2005 p.10-11

⁸¹ A. Reeves, *The Path to Justice: A review of the County Court system in England and Wales*, Emerald Publishing, Brighton 2006 p. 38, see also p.74

⁸² Ibid. pp.41-44

⁸³ Ministry of Justice, <http://www.justice.gov.uk/news/announcements110308a.htm> 2008 (Last access date: 28.10.2009). For full report please see: Eddie Bloomfield, Stephen Wooler CB, Sir Ronnie Flanagan GBE QPM and Andrew Bridges CBE, 'Report into the Resulting and Warrant Withdrawal Procedures used at Leeds Magistrates' Court' Criminal Justice Joint Inspection 2008 (http://www.justice.gov.uk/docs/resulting_warrant_leeds.pdf)

⁸⁴ A. Reeves, *The Path to Justice: A review of the County Court system in England and Wales*, Emerald Publishing, Brighton 2006 p.55; see also Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p.22-23

Case management by judges has also been highlighted as something that is inconsistent, especially the use of the “over riding objective”.⁸⁵ This is a procedural instrument found in the Civil Procedure Rules which allows judges and courts a certain flexibility to handle cases in ways they consider to be just. Reeves believes that there is a “... sense that the CPR gives the district judge too much discretion to do what they believe is in the interests of justice.”⁸⁶

Having given an overview of constitutional and organisational changes to the courts and a few of the challenges they face, it is now time to analyse the role of performance management and implementation of quality standards in these courts.

5. Quality Management in the courts

This part is based mainly on interviews with members of various teams of both HMCS and the Ministry of justice. The first part deals with the quality enhancing policies and the structure that exists to implement them. The next section will look at the system of monitoring and evaluation, and finally at results of implementing quality policies.

Quality enhancing policies

There is no dispute that there are quality enhancing policies for HMCS and the courts. In fact, one respondent said that:

“The HMCS has had EFQM assessment from the beginning. This assessment was the basis of the changes that are taking place. HMCS board asked for this assessment to be made as a guide for policy making. This is an internally driven programme and acts as a starting point.”⁸⁷

What each respondent did was describe how they operated and what standards were in use. The first two respondents’ views represented here work at policy making level from the centre. The second two represent the experiences of the courts with quality policies.

The first respondent describes the Customer Service Improvement Tool.⁸⁸ This is part of a process of adopting a corporate program in order to guarantee customer service quality, and create consistency throughout the courts. The basis of this tool is the Customer Service Excellence Standard. There are 5 standards for this tool,⁸⁹ which were developed in order to gain different perspectives and customer insights, and to highlight that there are different methods of achieving aims according to the “customer”. This tool is used to develop insights, which are the basis of improvement. When talking about who they target as “customer”, the respondent said: everybody, from partners, stakeholders, professionals, witnesses and defence. When asked if judges were considered to be “customers”, the respondent answered in the positive, with the qualification that they are different as they have a “*day-to-day experience of the court organisation*”. The strategy of the Customer Services Directorate is to try to gain accreditation across HMCS by 2009, then gain corporate accreditation by 2010-11. They are currently implementing these standards across the courts. There are 37 applicants, across 7 regions, 24 areas, and 652 courts. Each applicant is responsible for implementing standards within the region, area and courts within its remit. The respondent gives a hypothetical example, whereby Merseyside will have about 20 courts. The area board is responsible for funnelling the work, and applying standards across the courts. They must use the standards to develop services. This is a form of bottom up implementation. After each applicant has attained accreditation, the judicial system as a whole organisation will apply for corporate accreditation as one organisation. People are working to gain accreditation both in policy and in the field.

“There are five different methods of gaining customer insight: Customer journey mapping – whereby in depth interviews are taken with 30 customer types and repeat players on the whole experience of the court process. With the insight gained here, they decide on the priorities for the second year. They look at where people begin to disengage from the process and gain understanding of the real experiences across the customer base. They hope to gain a clearer picture of the customer base and be able to make improvements according to the needs of different types of customer. There is also a 3-year project

⁸⁵ A. Reeves, *The Path to Justice: A review of the County Court system in England and Wales*, Emerald Publishing, Brighton 2006 p.32

⁸⁶ Ibid. p.32

⁸⁷ Interview on quality management in courts with Policy maker3, Service Excellence Team: HMCS Customer Services Directorate 2008

⁸⁸ Ibid.

⁸⁹ The five standards implemented are: 1) customer insight; 2) culture; 3) information and access; 4) delivery; 5) timeliness and quality of service.

of exit surveys top map broader experiences against 5 standards. There is also a postal survey of jurors and probate officers, as they have a specific experience of the court process.

Satisfaction surveys – whereby surveys are conducted on key areas of process and customers are asked about good/bad experiences.

Ethnography- this is the study of behaviours and why people will respond in particular ways. The respondent gave the example of people responding to correspondence from the tax office. Where people will recognise the envelope and timing of correspondence, they will usually put the envelope at the bottom of the pile. Based on this, the tax office should then consider sending correspondence in a different envelope and at a different time, so that the organisation changes its approach to sending out the bill.

Front line staff (judges, clerks, bailiffs etc), whereby surveys are taken of the day-to-day experiences internal to the court.

Usability testing: looking at external use of IT systems, e.g. how many people use different parts of a website, and this provides insight into the usefulness of that part. They also look at alternative ways to paying fines, not only online, but via telephone services. This tests the use of all service channels.”

This has been described as a “massive” undertaking. A great deal of effort is put into communications. The aim in the end is to “return power to local staff in policy making”. However, this respondent emphasises that

“HMCS is clear that this is not about the accreditation per se, rather what it represents. The needs of the customers must come first, and this is the only basis for using this tool”.

A member of the access to justice policy group of the ministry of justice stated that standards implemented in the courts must meet “departmental strategic objectives”.⁹⁰ These are nationally determined but very broad. HMCS has the responsibility to set out and determine agency standards that are aligned to the national standards set by the ministry of justice. Next to HMCS, the respondent also identifies the Judges’ Council as having some mandate to propose standards, targets and changes. There are 7 regional performance managers, who are responsible for “*delivering performance against targets in the regions*”. This is therefore also a devolved responsibility.

At court level, the first respondent stated that

“There is actually no quality management in the courts.”⁹¹

However, this respondent goes on to describe that there is a system that measures (quantitatively) the amount of work and timeliness done, of courts services (administration and correspondence). There is an agreement between the Lord Chancellor and LCJ on a set of performance standards. These standards in no way bind the independent judiciary in the deciding of individual cases.

The next respondent has specific experiences with implementing ISO 9001 at the magistrates’ court in Barnsley.⁹² This court attained ISO 9001 in 2000. It was a local court initiative which was brought in to check and maintain the quality of processes in court.⁹³ All standards developed were based on the courts processes themselves. A consultant was brought in to describe and analyse court processes, and then gave advice on changes to improve the efficiency and quality of all work at the court. From this, the court got into the habit of auditing processes.⁹⁴ They developed a set of standards on customer satisfaction,⁹⁵ processes (organising appearance in court of defendants, controlling payment of fines, arranging hearings in court on family matters; administering family and maintenance accounts; and enforcing orders made by magistrates),⁹⁶ quality of product on items such as court users’ documents, Court Orders (looking at how checks are made, by whom, how they are recorded, and what to do when failures occur or are detected).⁹⁷ Furthermore, they have developed

⁹⁰ Interview on quality management in courts with Policy maker2, Ministry of Justice: Performance & Analysis team, access to justice policy 2008

⁹¹ Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008

⁹² Interview on quality management in courts with Policy maker1, HMCS: Customer services and Communications 2008

⁹³ Quality policy: Barnsley Magistrates’ Court’ Her Majesty’s Courts Service 2006 , p.18

⁹⁴ Interview on quality management in courts with Policy maker1, HMCS: Customer services and Communications 2008

⁹⁵ Quality policy: Barnsley Magistrates’ Court’ Her Majesty’s Courts Service 2006 p.37 & p47-48 for developed indicators

⁹⁶ Ibid., p.32-33 and p.37

⁹⁷ Ibid. p. 38

indicators timeliness of court processes.⁹⁸ After the unification of courts services in the form of HMCS in 2005, this initiative was dropped, as it was not in line with national policy, and nor did they have the resources to continue on their own.⁹⁹ At this time, Barnsley magistrates' court, like all other courts in England and Wales, is participating in the implementation of the Customer Service Improvement Tool.

Another initiative described by two interview respondents is the piloting of LEAN principles in two courts in Liverpool and Birmingham. This is the "working simpler program" and it is based on the principles of quality management and EFQM. There they are measuring the amount of time it takes to do certain things and efficiency (also of court procedures), and they are looking at customer orientation. This is to help these courts meet timeliness targets.¹⁰⁰ Whether they will take on any lessons learned from the Barnsley magistrates' court experience is not known.

In sum, there appears to be a unified quality policy to be applied across the courts (but not to the independent judiciary). The aim of this policy appears to be to enhance quality and consistency of customer service, and improve courts performance in general. The implementation of this policy appears to rely upon the multi-layered HMCS structure and the courts and the ministry of justice. There has been previous experience with implementing quality management, but this was not supported in the end, and that court had to bring itself in line with the national court policy, and now pilots on quality management are taking place in other courts. It also appears that there is an operational distinction between "performance management" and "quality management of processes".

Implementation

Court managers are responsible for meeting performance standards.¹⁰¹ Furthermore, when asked about participation, cooperation and buy-in, a respondent said that:¹⁰²

"..each applicant team is responsible for involving everyone in the process. However, implementation is not a big problem, simply because 97% of crown and county courts were already accredited before amalgamation with the magistrates' courts and the formation of HMCS in 2005."

The same respondent stated that each applicant can choose:¹⁰³

"when they go for accreditation in this 3-year period as long as they make the 2009 deadline. They can go at their own pace. They have local assessments against the standard to see how they are doing, and support is offered if needed."

Following from this, the question was asked whether given the structure of the local court service, respondents found it difficult to implement quality management in their courts.

*"The actual setting up of the Quality Policy and Quality Management Processes were difficult initially, because at the time staff were not fully aware of the benefits that the standard would bring about. Some staff considered that it was extra work 'on top' of their already heavy workload. However, they battled through it, and created some momentum to the process, and found the benefits outweighed the extra work in the end"*¹⁰⁴.

Another respondent said:

*"It is not difficult to implement a system of performance management. As quality is subjective and difficult to measure, it is not done, not even a sample. Quantitative testing is the easiest."*¹⁰⁵

When asked whether the courts considered it a burden to do all this work for performance measurement, a third respondent replied,

⁹⁸ Ibid. p.44 More details on quality standards applied across court processes can be found 'Quality system processes: Barnsley Magistrates' Court' Her Majesty's Courts Service 2006

⁹⁹ Interview on quality management in courts with Policy maker1, HMCS: Customer services and Communications 2008

¹⁰⁰ Interview on quality management in courts with Policy maker2, Ministry of Justice: Performance & Analysis team, access to justice policy 2008 and Interview on quality management in courts with Policy maker3, Service Excellence Team: HMCS Customer Services Directorate 2008

¹⁰¹ Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008; and Interview on quality management in courts with Policy maker3, Service Excellence Team: HMCS Customer Services Directorate 2008

¹⁰² Interview on quality management in courts with Policy maker3, Service Excellence Team: HMCS Customer Services Directorate 2008

¹⁰³ Ibid.

¹⁰⁴ Interview on quality management in courts with Policy maker1, HMCS: Customer services and Communications 2008

¹⁰⁵ Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008

“Yes, I think so. If you are on the operational side, people tend to resent collecting data, but they recognise the need. It is always a challenge to persuade people to collect data, and much more is needed. The benefits need to be made clear to them of data collection.”¹⁰⁶

In terms of implementing the ISO standard at Barnsley Magistrates’ court, the respondent said that once it gained momentum, they were able to apply it across all of the processes of court administration. This created greater understanding of each function, and how each contribution fit into the bigger picture.¹⁰⁷

A problem that assessment has picked up in the implementation of performance targets is that of “perverse consequences”. One of the respondents gave an example on the effect that targets had on case listings within the courts.¹⁰⁸

“... especially where a court listing manager would list cases to fit the targets. For example, there are three tracks of cases in civil litigation: small claims, fast track and multi-track. If a court was behind in its targets for small claims, it could happen that a listings manager would file more small claims at the cost of the other two, causing a distortion in the overall disposal of all the cases. It was discovered that the way performance standards were measured meant that only certain elements of performance were measured, and often at the expense of the rest of the system.”

This caused another perverse consequence to the independence of the judiciary:

“An important note here: listing is a judicial function, to protect judicial independence. The government can have no say in when cases should be heard or by which judge. Therefore no manager may ever change a court listing without permission from the resident judge. [Therefore] given the performance standards imposed by the HMCS, and given that the HMCS is part of the Ministry of justice, there have been tensions on these issues, and there have been pressures to change listing practices in accordance”

According to another respondent, every report must spell out each specific perverse consequence as a result of applying standards.¹⁰⁹

League tables on court performance are also a consequence of implementing performance standards. According to a respondent, these were created to put pressure on “poorly performing” courts, but amounts to no more than “glorified peer pressure”.¹¹⁰

Evaluation and Monitoring

As an earlier CEPEJ report states, “monitoring and evaluation systems should facilitate the improvement of the efficiency of justice and the quality of the work delivered by the courts, and therefore to effect a more consistent implementation of policies”.¹¹¹ Furthermore, “systems for evaluation [are] (used for the collection and analysis of information in relation to specific norms) and monitoring [are] (used for supervision and control of the courts or the individual units/departments of the courts)”.¹¹² In an earlier research conducted on behalf of CEPEJ, different stages of development were identified for the operation of monitoring and evaluation systems: bureaucratic data collection, normative framework, institution building, evaluation and monitoring, and accountability and action.¹¹³

¹⁰⁶ Interview on quality management in courts with Policy maker2, Ministry of Justice: Performance & Analysis team, access to justice policy 2008

¹⁰⁷ Interview on quality management in courts with Policy maker1, HMCS: Customer services and Communications 2008

¹⁰⁸ Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008

¹⁰⁹ Interview on quality management in courts with Policy maker2, Ministry of Justice: Performance & Analysis team, access to justice policy 2008

¹¹⁰ Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008

¹¹¹ CEPEJ, 'European judicial systems - Edition 2006 (2004 data)' Council of Europe: European Commission for the Efficiency of Justice (CEPEJ) 2006 p.70. See also Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p.25: “Accurate statistical information about the workload, capacity and time taken for cases to come to trial is a necessary tool for assessing the efficiency and effectiveness of the administration of justice, the achievement of the targets set by HMCS for the disposal of business, and for assessing future needs for judges, staff and court buildings.”

¹¹² G. Y. Ng, M. Velicogna and C. Dallara, 'Monitoring and Evaluation of Court System: A Comparative Study' Council of Europe: EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ) 2007 http://www.coe.int/t/dghl/cooperation/cepej/series/Etudes6Suivi_en.pdf (last access date 28.10.2009) p.7

¹¹³ Ibid. p.47

Evaluation

From the data, it can be discerned that how information is collected and dissemination is essential in this process. As stated by the Barnsley magistrates' court experience: "*The standard for data entry and conveyance of information is 100% accuracy*".¹¹⁴ One thing that came from all the interviews is that there is a huge amount of information being communicated both vertically and horizontally between HMCS bureaucracy, the courts, the ministry of justice and the LCJ Judicial Offices.

Two main problems have been identified with data collection. On the one hand, the LCJ Review states that "*court reports show that there continue to be real problems.... Problems are that... right data needed to enable the system to be administered properly is not collected in several parts of the business and there is inconsistency between the figures that are collated and published centrally and locally held data*".¹¹⁵

One of the respondents discussed one of the principles of data collection to combat this problem:¹¹⁶

"one performance truth: where if information goes in at one level, it stays there when it is filtered upwards (incorruptible), so that the message of it does not get lost".

This is important because information is used at many different levels for many different purposes, for example, the court manager will use data differently from an area manager, or HMCS national headquarters. When asked if reports are made to highlight problems, the respondent answered that all reports must be

"unbiased" that they should "*show statistics at their crudest*". The intention in collecting data and making reports is to "*set the reader to asking questions and not assuming about performance*". The information gathered is eventually relied upon to help refocus resources to improve courts' performance. Another respondent shares this view, and says

"data analysis should highlight where support is needed and what the benefits are in the implementation of standards".¹¹⁷

Aside from statistical data collection, there are attempts to encourage HMCS to share best practices.¹¹⁸ To this end, it is part of the task of one of the respondents to identify and share good practices and what works, across the courts and HMCS.¹¹⁹ It is the task of this respondent to use the data to coordinate performance and identify weaker or stronger performances in civil and family court.

There is a "Performance Committee", which is chaired by a regional director, and consists of the (7) regional performance managers, representative of performance standards in the civil and family jurisdiction, and a representative of performance standards in the criminal jurisdiction. This performance committee discusses performance standards, and resetting targets based on data collected. However, they also discuss problems associated and reported on data collection issues.

Monitoring

This performance committee is tasked with monitoring the performance standards set. Judges are not involved in this directly, but the committee does report to the HMCS Executive Committee (which is accountable to the HMCS Board, which further contains judges).¹²⁰ On top of this broad monitoring, another respondent said that, local assessment is also made against standards for each court and area to see how they are doing, and support is further offered on this assessment.¹²¹ The same respondent explained that

¹¹⁴ 'Quality policy: Barnsley Magistrates' Court' Her Majesty's Courts Service 2006 p.33

¹¹⁵ Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p.25

¹¹⁶ Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008

¹¹⁷ Interview on quality management in courts with Policy maker3, Service Excellence Team: HMCS Customer Services Directorate 2008

¹¹⁸ Ibid.

¹¹⁹ Interview on quality management in courts with Policy maker2, Ministry of Justice: Performance & Analysis team, access to justice policy 2008

¹²⁰ Ibid.

¹²¹ Interview on quality management in courts with Policy maker3, Service Excellence Team: HMCS Customer Services Directorate 2008

“each applicant must demonstrate how they work with customers locally and nationally. Assessment services will pick up on whether courts have acted on feedback. Furthermore, they must also demonstrate meaningful and beneficial outcomes.”

Furthermore, an annual assessment is made of each court by an external agent, and can receive a pass or fail. If there is a poorly performing court, HMCS can withhold or suspend accreditation, but there are always recommendations on how to improve customer services and organisation.¹²²

The respondent with personal experience with the ISO accreditation at Barnsley said that there were internal and external audits to ensure compliance with the standards set, and both gave valuable feedback for making improvements. IT systems were developed as a result of this process.¹²³

Quality management and finance

Each respondent has stated that there are no financial consequences for failing to meet performance targets per se. However, one respondent says that directors are given incentives in the form of performance bonuses.¹²⁴ In the experience of another respondent:

“There have been certain court managers, who have taken a short-sighted view to meet targets. For the independent judiciary, the ultimate goal should be the administration of justice.”

Question: if court managers have this attitude, is it not logical to assume that they have been hired to have this attitude?

“Basically yes. Court managers are encouraged to meet performance indicators, and their wages are linked to meeting performance targets. This means that ideas on how to improve court performance are not always aligned between court managers and the judiciary, and can lead to perverse consequences”¹²⁵

At the end of the day however, resources for the administration of justice are fixed. From the monitoring and evaluation processes, managers at any level should be able to adjust the use of resources or refocus resources, such as borrowing staff from one court to help out an overburdened court.¹²⁶

One should also not forget the Technical Note by the Department of Constitutional Affairs (no longer operational) in its target to save money at the same time as increase or maintain a high standard of work.

Other methods to support the quality of administration of justice¹²⁷

In the original questionnaire, a question was asked: Are the following in operation to support the quality management of the courts: A complaints procedure, publication of annual reports, organizing e.g. peer performance review, ‘customer’ or ‘citizens’ juries on organisation performance? Customer surveys have already been discussed as part of the quality policy. One respondent also mentions

“Her Majesty’s Inspectorate of Court Administration (see Courts Act 2003), which, though sponsored by the Ministry of justice, provides a very independent review of court administration.”¹²⁸

HMICA has the remit to inspect the administration of Crown, County and magistrates’ courts, but not to “inspect persons making judicial decisions, or exercising any judicial discretion”. It works closely with the independent judiciary to ensure that their work respects the independence of judges. It seeks to contribute to the improvements in performance and service provision to users.¹²⁹ They are also tasked with inspecting the courts performance against targets set out in Public Service Agreements.¹³⁰ On top of HMICA reports, HMCS also has annual reports and business plans published.

¹²² Ibid.

¹²³ Interview on quality management in courts with Policy maker1, HMCS: Customer services and Communications 2008

¹²⁴ Interview on quality management in courts with Policy maker2, Ministry of Justice: Performance & Analysis team, access to justice policy 2008

¹²⁵ Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008

¹²⁶ Ibid.

¹²⁷ Please note that all of the following measures apply to court administration only, and not to the independent judiciary

¹²⁸ Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008

¹²⁹ HMICA, ‘Annual Report 2006-2007’ Her Majesty’s Inspectorate for Court Administration 2006-2007 (<http://www.hmica.gov.uk/annreps.htm>) p.9

¹³⁰ These have not been mentioned by any respondents. See Ibid. p.11

One respondent mentions “service level agreements”, which takes into account specific performance review by lawyers, police, and prosecutors.¹³¹ The Framework Document highlights the role of the parliamentary ombudsman. It has jurisdiction over the HMCS under the Courts and Legal Services Act because it is defined as an administrative body. However, work done by the HMCS at the direction or authority of the judge or people acting in judicial capacity is not subject to the ombudsman’s direction.¹³² Furthermore, the National Audit Office can also write reports on the efficiency of the courts.¹³³ Reeves describes in his book that civil courts hold “users meetings”.¹³⁴ Such meetings allow people to put questions to court managers and district judges on matters of administration that affect the court. These meetings take place every six months, so there is plenty of time to open up the agenda to the public and ensure that each person who has a question can ask it.

Results

With all these policies, what results can be expected? According to one respondent,

“Results do help in developing new ways of doing things. E.g. the Criminal Justice, simple, speedy and summary justice: This is a project initiated by the independent judiciary to reduce the time it takes to process accused who have (allegedly) committed relatively low level criminal activities such as drink driving, burglary etc through the Magistrates’ Courts where previously there was a culture of adjournments and delay. This project brings together the police, crown prosecution service, courts and defence lawyers to work to ensure that cases are dealt with as quickly as possible, if possible at the first hearing. This means that people arrested one night could be processed the morning after (if they plead guilty). It means that the cases are disposed of much faster, timeliness increases, and victims see justice happen faster. This project is now being extended from the magistrates’ courts up towards the Crown Court and into the youth criminal justice system.”¹³⁵

In terms of the experience of ISO 9001 accreditation, Barnsley Magistrates’ Court became one of the highest performing courts in England and Wales.¹³⁶ There was increased efficiency due to changing the working processes; improved communications with lawyers, whereby expectations were clarified and service level agreements were created (which are still in use). Furthermore, there was a higher quality of work, because of all the time freed up due to the monitoring of court processes in the back and front office. This left people with more time to do their tasks and focus on doing a good job. Tasks became streamlined, which created a better consistency in product and service. *“Customer feedback was one really good example of good practice – a change in culture within the Magistrates’ Courts at the time!”¹³⁷* Even though the court stopped with accreditation, it is still considered to be one of the highest performing courts in the country.¹³⁸

Other examples of results of implementing quality policies in the courts have been highlighted in the LCJ review, and include the creation of dedicated drugs courts, listing reviews to equalise work and waiting times.¹³⁹

When I asked some of the respondents whether they considered this implementation to be a success or not, they answered yes. For the respondent connected to the ISO accreditation at Barnsley magistrates’ court, it was considered to be a huge success, whether talking about ISO, or other government sponsored policies, such as the Charter Mark (customer service improvement tool), EFQM or investors in people. For the respondent who is a Judicial Member of HMCS Board, performance management is successful in that it is a “good start”. Accordingly, there is always “room for improvement”. This respondent is also careful to highlight that the implementation of standards is not a guarantee of quality. Therefore standards should be seen as a means and not an end.¹⁴⁰

6. Judges and quality

All interview respondents were very careful to iterate that quality standards are not oriented at judges (although it has been established that they felt the effects of implementation on case listing practices). However, there has been a marked change in attitude of judges towards the organisation to accommodate factors of timeliness and

¹³¹ Interview on quality management in courts with Policy maker1, HMCS: Customer services and Communications 2008

¹³² HMCS, 'Her Majesty's Courts Service Framework Document', HMCS, The Stationary Office 2008 p.112

¹³³ See for example J. Bourn, 'Effective use of magistrates' courts hearings' National Audit Office 2005-2006 http://www.nao.org.uk/publications/nao_reports/05-06/0506798.pdf (last access date: 28.10.2009)

¹³⁴ A. Reeves, 'The Path to Justice: A review of the County Court system in England and Wales', Emerald Publishing, Brighton 2006 p.28

¹³⁵ Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008

¹³⁶ Interview on quality management in courts with Policy maker1, HMCS: Customer services and Communications 2008

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p.19. More examples can be found in this report of results of implementing quality policies

¹⁴⁰ Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008

efficiency of case management.¹⁴¹ With this has come the recognition that case management is not one whole process, but is comprised of several elements.¹⁴² Judges understand that they do not control the whole process, but where they have responsibility, they can control the process, such as the management of adjournments. In this sense, judges can be active in maintaining momentum of a case and make sure it does not drag out to an unreasonable delay.¹⁴³ Whilst judges should not allow government policies to affect their independence in decision-making, they do believe that parties have a right to have their cases heard within a reasonable time.

If quality policies are not to have an effect on maintaining a high quality of justice per se, how does quality thinking affect judges? One respondent says that there is the appeals system that should police itself, although it is a formal mechanism.¹⁴⁴ However, given that fewer cases go to appeal than are heard in the first instance court, this may not be a perfect system.¹⁴⁵ The respondent also describes an informal system. There is what is termed "pastoral assistance", which is a peer-to-peer system of aid.¹⁴⁶ This is where a senior or managing judge will approach a judge who is considered to be struggling with a case load, or having difficulty with expertise. In this case judges will be offered clerical assistance or extra training. On that note, one can see a human resources policy developing on behalf of judges. The LCJ is responsible for making and maintaining arrangements for the welfare and guidance of judges and magistrates.¹⁴⁷ To that end, there is a grievance procedure in place, a helpline for judges and their families, and a health service. The LCJ also provides guidance on deployment and proprietary issues. There is a plan in place to set up mentoring schemes for newly appointed recorders, district and circuit judges at the first instance courts. A committee of Judges Council reported on career development, resources and health issues affecting judges in 2007.¹⁴⁸

Quality of justice is also connected to the appointments system. This is not the place to describe the whole appointments system of judges in England and Wales.¹⁴⁹ However, two new policies can be highlighted. On the one hand, there is a policy to increase diversity of the judiciary. To that end, human resource policies have been adjusted to create part-time positions and "reasonable adjustment policies" for judges.¹⁵⁰ The other policy is the Judicial Appointments and Conduct Ombudsman. This body has the remit to hear complaints about the appointments procedures of the Judicial Appointments Commission. The intention is to create transparency in the appointments system and correct any failings in it.¹⁵¹

Judges are also taking on more management duties. According to the LCJ review, the new leadership tasks of the LCJ are not his to bear alone. Aside from the assistance given through the Judicial Office, the LCJ can delegate specific responsibilities to individual judges.

*"The consequence is that there has been a significant increase in the number of judges who undertake a variety of onerous leadership and administrative duties in addition to their judicial work."*¹⁵²

However, the majority of judges conducting management work is within the courts. For example, the LCJ review describes the role of the resident judges of the Crown Court, and how they, in collaboration with court managers have worked (successfully) to improve efficiency of the criminal justice system. They have taken responsibility for monitoring the volume of work coming into court, and for ensuring that delays are minimised. They also have the task of monitoring trials that are not heard when listed, and lengths of trials (disposal rates). They also have the responsibility for monitoring witnesses who, on the one hand are called to testify but in the end not required,

¹⁴¹ Ibid.; Interview on quality management in courts with Policy maker1, HMCS: Customer services and Communications 2008

¹⁴² A. Reeves, *The Path to Justice: A review of the County Court system in England and Wales*, Emerald Publishing, Brighton 2006 pp.33-36

¹⁴³ Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008

¹⁴⁴ Ibid.

¹⁴⁵ C Guanieri and P Pederzoli, *The power of judges: A comparative study of Courts and Democracy*, Oxford University Press, Oxford 2002 pp.80-82

¹⁴⁶ Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008; see also Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p.54

¹⁴⁷ Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p.54

¹⁴⁸ Ibid. p.54

¹⁴⁹ K. Malleon, 'The New Judicial Appointments Commission in England and Wales: New Wine in New Bottles?' in *Appointing judges in an ages of judicial power: critical perspectives from around the world*, K. Malleon and P. H. Russel (eds), University of Toronto Press, Toronto, Buffalo, London 2006 pp.39-55

¹⁵⁰ Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p.53

¹⁵¹ J. Brigstocke, 'Annual Report 2007-2008' Judicial Appointments and conduct ombudsman 2007-2008 <http://www.judicialombudsman.gov.uk/docs/annualreport07-08.pdf> (last access date: 28.10.2009) p.6

¹⁵² Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p.13

and on the other hand, the amount of time they have to wait before being called. Finally the resident judge also monitors that jury service is efficiently used.¹⁵³

One respondent described the role of the Presiding Judge in the High Court. These are managing judges, and receive some training in management techniques. There are 2 per circuit and they serve for a term of four years. In those positions they learn to ask questions and provide solutions for other judges in a “pastoral” framework. The appointment system of these judges is a matter of who happens to be available at the time a vacancy opens up.¹⁵⁴

The independent judiciary is also not completely immune from a complaints procedure, as long as it does not affect individual judgments in cases. The Constitutional Reform Act gives joint responsibility to the LCJ and Lord Chancellor to consider and determine complaints about the “personal conduct of all judges, magistrates and tribunal judges in England and Wales.”¹⁵⁵ There is an office for judicial complaints, and a final complaints appeal to the Judicial Appointments and Conduct Ombudsman. The Office for Judicial Complaints was set up in 2006 to handle complaints and give advice and assistance to the LCJ and Lord Chancellor in consideration of their responsibilities for complaints and discipline. This body is regulated by the Judicial Discipline (Prescribed Procedures) Regulations 2006 (under the Constitutional Reform Act).¹⁵⁶ The Judicial Appointments and Conduct Ombudsman can consider “concerns raised by a complainant, or a judge who is the subject of a complaint, about how a complaint was handled by the Office for Judicial complaints; and matters referred by the Lord Chancellor or LCJ relating to the handling of judicial conduct issues.” This empowers the ombudsman to make recommendations for redress, where it is considered that maladministration has led to the original decision being unreliable. He can also order a new investigation be undertaken.¹⁵⁷

On this issue, one respondent said:

“no government official can comment on or intervene in the actions or decisions taken by a judicial office-holder whilst carrying out their judicial function - they are independent and not accountable for the judicial decisions they take, but they are accountable by statute and by individual Terms and Conditions of Appointment for their personal conduct. In this instance, the matter would be referred to the Office for Judicial Complaints. Once the nature of a complaint about the judiciary's behaviour is clearly understood, you can start to take action to resolve the complaint. The complaint will either relate to the judiciary's personal behaviour or to the decision the judiciary made. A full report is prepared in order to respond fully to the complaint, when it maybe necessary to seek clarification from the judge on the course of action he/she recorded.”¹⁵⁸

Independent Judiciary and HMCS

Having looked at how quality policies affect these two organizations, it is now an important conclusion to this section to examine the relationship between these two organisations in delivering and administering justice. The respondent attached to the ISO accreditation of Barnsley Magistrates’ Court said that this process eventually led to greater communications within the court itself, and an “*understanding between the two sets of staff as to what is needed to attain the goal of administration of justice.*”¹⁵⁹ The respondent who is attached at a Judicial member of HMCS Board stated that the Framework Document addresses this relationship, in an attempt to create an “us” rather than an “us and them” situation. Both respondents acknowledge that this is inconsistent and different within each court. As has already been cited once, in this respondents’ experience, a well run court is usually one with good interactions.

At the time these interviews were conducted, the report on the Inspection of Leeds Magistrates Court had just been published. And whilst the failings were that of administration and judges were in no way responsible for the failings of the court, one can't help but wonder what the public's perceptions of court organisations are. Is one parts failure not seen as the failure of the whole? As unfair as that may seem, is it not more unfair to expect the British public to keep in their minds eye, two separate organisations for the administration of justice, let alone pay for it? The question therefore arose: Given the problems the court in Leeds recently had with its records, do you think it reflects badly on the whole court and independent judiciary, or do people understand that it was isolated to one part of the court system only?

¹⁵³ Ibid. p.28

¹⁵⁴ Interview on quality management in the courts with Judicial member of Board of HMCS, HMCS 2008

¹⁵⁵ Lord Chief Justice, 'The Lord Chief Justice's Review of the Administration of Justice' Judiciary of England and Wales 2008 p57

¹⁵⁶ Ibid. p.57

¹⁵⁷ J. Brigstocke, 'Annual Report 2007-2008' Judicial Appointments and conduct ombudsman 2007-2008 <http://www.judicialombudsman.gov.uk/docs/annualreport07-08.pdf> (last access date: 28.10.2009) p.6-7

¹⁵⁸ Interview on quality management in courts with Policy maker1, HMCS: Customer services and Communications 2008

¹⁵⁹ Ibid.

“This reflects badly on the whole court. The people using the courts often don’t distinguish between the independent judiciary and the administrative and support staff.”¹⁶⁰

When asked if work was being done to alter the perception of customers or alter the organisation to the perception of customers, the respondent was unsure. There is a communications directorate to deal with external and public relations that also manage the press.¹⁶¹ A follow up question was put to the respondent who is a Judicial Member of HMCS Board: do you believe that if judges had kept an eye on the reporting system in Leeds (though it’s not their responsibility), the situation would have gotten as bad as it did? In answer, he said

“I am sorry but I must decline to answer [this] question. That is just too “political” for a judge.”

7. Conclusions¹⁶²

The aim of this project is to give a preliminary overview of how standards and performance management are operated in England and Wales. The implementation of quality standards and management methods in the courts in England and Wales is no simple matter. There are a host of considerations, including legal, financial, organisational and political that appear to affect this process (given the preliminary nature of this report, this author is quite certain that not all considerations have even been discovered at this point). The other challenge faced was to present a balanced perspective. At first sight, it is difficult to make sense of the English and Welsh judicial system and its implementation of quality standards, but one can identify key trends.

When one considers what is needed to implement quality management, a precondition is that a whole organisation is needed for implementation. The “judicial system” in England and Wales cannot, in this sense, be considered as a whole organisation- not with HMCS on the one side and the Independent Judiciary on the other. This is so even though I was told that the Framework Document was in essence simply a written account of what was already taking place. Quality management requires consensus and working together to attain standards and goals in an organisation. However, this conclusion does not necessarily hold for the individual courts where members of the court, both administrative and judicial, have shown their capabilities to work well together. Nevertheless, the trend towards centralisation and the signing of the Framework Document shows a different (though still unclear) picture of cooperation. Furthermore, the nature of the Framework Document as a political tool also highlights particular difficulties and challenges the two organisations have and do face in working together at any level.

Given these circumstances, what then are the factors for success or failure in England and Wales for quality management in the courts, and what can be suggested to increase the chances of success?

It was highlighted in the section on monitoring and evaluation that in an earlier research conducted on behalf of CEPEJ, different stages of development were identified for the operation of monitoring and evaluation systems (which are the core activities of quality management and learning organisations in general): bureaucratic data collection, normative framework, institution building, evaluation and monitoring, and accountability and action.¹⁶³

It has already been seen that data collection has systemic problems. A trustworthy system therefore needs to be developed in order to effectively collect data and to transmit it without building in bias. For this a normative framework is needed. A normative framework for the operation of standards has, so far, not been developed. A trend that has been observed, however, is that the impetus for data collection is based on the need of the resources department to have data on the performance of the courts, as this is directly linked to the resourcing of the courts (and may well explain the visible activity of judges in the implementation of quality standards in the courts). Whether this is a solid normative framework on which to build a quality management system is a different question.

- Therefore, HMCS needs to be transparent in their reasons for and methods of data collection, both to its own staff and to the independent judiciary. What is evident from this research is that it takes some effort to learn about these quality policies and what is required to make them work.

¹⁶⁰ Interview on quality management in courts with Policy maker3, Service Excellence Team: HMCS Customer Services Directorate 2008

¹⁶¹ It is unclear whether this is a separate communications office or the same one as the one that service the Judicial Office that assists the LCJ in his duties.

¹⁶² This is a preliminary research. All conclusions are based on the authors own analysis work and observations and do not necessarily reflect the views of those interviewed in the course of this research. Following from a meeting where this report was presented, it was requested that the author add some suggestions for next steps based on the observations made in the course of this research.

¹⁶³ G. Y. Ng, M. Velicogna and C. Dallara, 'Monitoring and Evaluation of Court System: A Comparative Study' Council of Europe: EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ) 2007 http://www.coe.int/t/dghl/cooperation/cepej/series/Etudes6Suivi_en.pdf (last access date 28.10.2009) p.47

In terms of institution building, it is a positive step that the Framework Document goes some way to “improving cooperation” between the two organisations. It is clear that the Independent Judiciary are playing a larger role in the administration of courts and cases, and I believe the Framework Document acknowledges this role and the judges’ further role in policy creation for the future of the judicial system.

- However, this needs to be further developed and supported through joint management training policies for HMCS and the Independent Judiciary.

Furthermore, for an efficient and quality judicial system to operate, a strong and clear normative framework for management is also needed, and from this research, it is unclear which values are or will be steering the process and how they interact or are intended to interact in the future (financial, quality management, politics and justice).

- I would tentatively suggest a joint office for the judicial system, comprised of the Independent Judiciary and HMCS. Separate offices, and separate communications is a matter of politics, and not necessarily of good governance.

Finally, in terms of accountability and action, one can see that the ministry of justice has centralised courts service (HMCS) in order to create consistency in courts administration across England and Wales. However, from the preliminary review of quality policies above, and the context in which they have been implemented, the impression this effort leaves is rather unclear, especially in terms of the pace and success of implementation and of a common understanding of the end goals. This is an area which requires much more in-depth research.

- By separating accountability for court performance, one separates end goals for the workers in the courts. People will become focussed only on narrow objectives and lose sight of the overall goal of improving court performance. I would tentatively suggest looking across to the Netherlands at the policy of integrated management between judges and professional managers in the courts.¹⁶⁴

Furthermore, the bureaucracy built up to support quality management in the courts also appears to be too large to know properly what it is doing and which way it is going. It appears that people may not realise that effectively they have been set the task of simply collecting data and sending it upwards to help gain efficiencies and ensure that the system stays within budget. Many layers have been built up between the courts and HMCS board and the ministry of justice, including regional and area boards and directors, committees of all sorts between the regions and areas and courts, and directorates within the ministry of justice and HMCS. The energy of these various layers is directed at creating standards, impetus to implement those standards, and impetus to collect data on the operation of standards. But it is also unclear how many more such organisations exist, or if this author has managed to describe a complete picture. What would be interesting here would be a network analysis of this system to see how the different organisations collaborate horizontally and vertically and which values they are each working with.

- Aside from the academic interest in network analysis, it is important for reasons of transparency to clarify what organisations exist to do the job of data collection and analysis. For efficiency’s sake, it may also be useful to know how data can be transmitted without such a complex network- especially in the 21st century where internet technology governs the majority of modern communications.

It could be hypothesised that this policy is intended to be a steering and unifying tool from a centralised point of view, even though so much is still unclear. From a legal academic point of view, what is a cause for concern is the lack of transparency in the change process, and the overall effects this has also on the various legal frameworks for the operation of the judicial system. From an organisation science perspective, uncertainty and experimentation are very much the norm in a period of change management, and it takes some time and considerable effort before results of organisation development become visible.

It appears the policy makers have attempted to create a sort of railway track to access to justice. The two lines of a track represent the two lines of the judicial system: the Independent Judiciary and HMCS. Each going in the same direction, but separate, connected by policies on access to justice, and the “common purpose” of transporting customers to efficient and quality justice. Each part of the track is carefully laid out, with inspections along the way to guarantee standards. Whilst this is very logical in principle, given that these two organisations do not appear to have a commonality of purpose and are trying to hammer out the details of an evolving relationship based on quality management and financial restraint, it means that these two lines may not be going in the same direction, and it may mean a bumpy ride for those who choose to use these services (or research about it).

At the beginning, the researchers of this project asked to give personal opinions as to whether the judicial system or any part of it can be considered to be a “learning organisation” in the quality definition of that term.

¹⁶⁴ Ng, G.Y. 'Quality of Judicial Organisation and Checks and Balances', Intersentia, Antwerp 2007

Whilst it can be said for sure that certain elements have exhibited “learning organisation” tendencies, the various problems described, leads to the conclusion that the “judicial system” in England and Wales is not a learning organisation in the strict sense of quality management.

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II BUILDING NEW APPROACHES TO THE QUALITY OF JUSTICE IN FINLAND

Francesco Contini

1. Introduction

This report introduces two cases of quality management developed by the Finnish judiciary. The first one, deployed at national level by the Ministry of justice, is a management by objective tailored on the peculiarity of the court system. It is based on selected indicators of court activities used in the budget negotiation between each single court and the Ministry of justice. The second case is the well known quality project developed by the judges of all courts in the jurisdiction of the Appellate Court of Rovaniemi, winner of the first edition of the Cristal Scale of Justice. We think Judges in the whole jurisdiction of the Rovaniemi Court of Appeal found a new way to improve the quality of justice and for this reason their experience should be kept under a narrow focus.

The report has been written for the CEPEJ research project "Quality management in courts" coordinated by Philip Langbroek. The author wishes to thank all the persons that in different ways contributed to its writing, in particular Judge Harri Mäkinen and Judge Jyrki Määttä for the data and the documents provided, the feedbacks and the help in the writing of the report.

2. Management by objectives and court budget

Following the introduction of a system of MBO across the whole national public administration in 1995, the Finnish Ministry of justice has introduced a system of MBO for courts linked with the budgeting process¹⁶⁵. The system assesses the courts' performance using indicators of their productivity, economy and effectiveness. Productivity is calculated in terms of the *number of decisions* per judge or per *unit* of administrative staff. The principal indicator of the economy or efficiency of the courts is the *cost per decision*, calculated by dividing the annual budget of a particular court by the number of decisions made by its judges. The calculation of *effectiveness* is more complex. It is based on the assumption that expeditious proceedings are fundamental to the judicial process and the rights of the citizens. Consequently *case processing times* are taken as the key measure of effectiveness.¹⁶⁶

Even though these indicators were developed in order to allocate resources to particular court offices, their use for this purpose does not follow automatically. The indicators, instead, form a source of knowledge on which to base discussion around the *negotiation of the budget* of each individual court. This approach, that seems to be taken for granted in Finland and Sweden, just to mention two of the countries considered in this research, is still not accepted by judges in other countries that see in the negotiation a possible threat to judicial independence¹⁶⁷.

They are also used during annual meetings to help the Ministry of justice and the heads of each court office to define the objectives to be met. This means that officials of the Ministry of justice do not set up the objectives by themselves. Rather objectives are agreed between the Ministry and the head of each court during the negotiation. Therefore, it may happen that an agreement is not reached¹⁶⁸.

In the objectives for 2009 of one of the courts considered in this study (Raahen district court), for example, the case processing times for criminal cases were 35% of cases decided within 2 months, 10% cases decided within 10 months and a maximum of 10% of cases decided in more than 10 months¹⁶⁹.

The result of the negotiation is not a binding contract between the court and the MJ, but rather an agreement about what objectives are reasonable for the court. As in the Swedish case, the MJ and the court are not acting in a principal-agent framework or following reward-sanction mechanisms at organisational or individual level (courts administrators, judges or staff). Rather the Ministry of justice and courts use MBO as a means to understand if there are problems that need a fix. So the MBO works more as a monitoring system than a reward sanction mechanism. Indeed, the negotiation represents also a place where it is possible to discuss the problems of the court and to look for possible shared solutions.

"In that discussion you can find if there's the need of reorganisation of a specific section, and then to find the way and the resources to do the job. [...] In my experience, it is a fruitful situation when you negotiate face to

¹⁶⁵ Uusikylä P, Virtanen P. 1999. Public Sector Performance Contracting in Finland, OECD, Paris

¹⁶⁶ Aarnio A, Laukkanen S, Liljeros H, Raitio J. 2005. Finland. In *L'administration de la justice en Europe et l'évaluation de sa qualité*, ed. M Fabri, J-P Jean, P Langbroek, H Pauliat, pp. 227-48. Paris: Montchrestien pp. 231-232

¹⁶⁷ Sapignoli M. 2009. *Qualità della giustizia e indipendenza della magistratura nell'opinione dei magistrati italiani*. Padova: CEDAM

¹⁶⁸ Mäkinen H. 2009. Quality management in courts and judicial organisations: comments and integration to the first draft.

¹⁶⁹ Määttä J. 2009b. Quality management in courts and judicial organisations. Telephone interview

face with the representatives Ministry of justice. You can discuss problems you are facing with, and if you have any needs to have more judges you can reason with the Ministry in that sense. It was useful¹⁷⁰.

However also with this approach it is possible to have some unintended consequences.

“As a matter of fact if a court has been functioning poorly, the Ministry of justice is forced to reinforce that court, because they need more people to do the work [...]” Therefore the system could produce an unfair allocation of resources: “For example if there is lack of good leadership or good management and for that reason the court’s caseload is unbearable and case processing times alarming, you might get more temporary resources. So, this is the problem. But on the other hand I haven’t heard that there would have been any punishment if the court has not reached the objective. And it sounds a bit odd to me if there would have been that kind of consequences.¹⁷¹”

When introduced in the nineties, this soft approach has been criticised by the judiciary. Some have argued that the definition of objectives by officials of the Ministry would violate judicial independence which is protected by the Constitution. Others maintained that with the introduction of the system of management by results the judge’s attention would shift to the number of cases and their processing times, thus reducing the quality of the decisions.¹⁷² It was also suggested that the system of measurable objectives could not be implemented by the courts. The Ministry of justice replied,

‘The judiciary through its management by results system may not interfere with the objective and subjective independence of the courts in their decision making and other application of the law, which is the real essence of the independent judicial power safeguarded in the constitution. The fact that general information about handling times, [...] is written in documents of courts dealing with management by results does not in itself lessen or endanger the independence of the court in reaching a decision in individual court cases’.¹⁷³

So it can be seen that the Finnish Ministry of justice’s gentle and collaborative approach, while avoiding open conflict between the judiciary and the executive as happened in other European judiciaries¹⁷⁴, may nonetheless provoke a judicial reaction¹⁷⁵.

However, after several years from the implementation of the MBO, we don’t have identified concerns about the MBO that, at this writing, seems to be taken for granted by the Finnish judges.

“In my ordinary work, I don’t think to MBO or anything else the court has settled with the Ministry of justice. The pressure comes by itself. It is there with the caseload you have and you just need to deal with the cases to give to the parties a decision in due time”.

We can conclude affirming that, based on the data we have collected, the MBO has been accepted by Finnish judges and works fruitfully as a system to allocate resources to single courts and face organisational problems. However more research on this issue should be undertaken.

3. The Quality Project of the Courts in the Jurisdiction of the Court of Appeal of Rovaniemi

The quality project carried out by the judges working in the district of the court of appeal of Rovaniemi (hereinafter called Rovaniemi quality project) was begun in 1999¹⁷⁶ as an initiative promoted and conducted by the judges of the district. From the beginning the project has been based on a new practice of communication between all the judges in the jurisdiction and on forums supporting these communications including an Annual Quality Conference of the judicial district. This conference, opening and closing a year-long quality cycle, provides a space where quality issues are discussed and where judges select the ‘quality themes’ to be addressed in the forthcoming year. The goal of the project is to

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Aarnio A, Laukkanen S, Liljeros H, Raitio J. 2005. Finland. In *L’administration de la justice en Europe et l’évaluation de sa qualité*, ed. M Fabri, J-P Jean, P Langbroek, H Pauliat, pp. 227-48. Paris: Montchrestien p. 176.

¹⁷³ Ibid. pp. 177

¹⁷⁴ Several examples of this tensions can be found in Fabri M, Langbroek PM, Pauliat H, eds. 2003. *The Administration of Justice in Europe: Towards the Development of Quality Standards*. Bologna: Lo Scarabeo See also Ng GY. 2007 *Quality of Judicial Organisation and checks and balances* Antwerp: Intersentia. 428 pp.

¹⁷⁵ Contini F, Mohr R. 2008. *Judicial Evaluation*. Saarbrücken: VDM

¹⁷⁶ At that time there were nine district courts. After a court consolidation program 8 courts operate in the district at this writing.

“support the basic work of the courts and to develop it further and further, so that court proceedings meet the requirements of a fair trial, so that the decisions are well reasoned and correct, and so that the services of the courts are accessible also in terms of their financial impact”¹⁷⁷.

The starting point of the project is an understanding of the working situation of judges as isolated from colleagues and unaware of practices and professional experiences of other judges.

“Judges serving in the District Courts have become fragmented as a professional body. Normally, the judges sit alone, with no contact to their colleagues, and with virtually no knowledge of procedures adopted by them. For all practical purposes, the transfer of judicial tradition from more senior judges to younger ones has ceased. As a matter of fact, procedures may have diverged not only from one court to another, but also from one judge to another.”¹⁷⁸

Moving from this assumption, the core idea of the Quality Project is to influence the professional skill and competence of the judge, considered as the main factor in the quality of adjudication.

“The *objective* of the Quality Project is to develop the functioning of the courts so that the proceedings meet the strictest criteria of fairness, that the decisions are well reasoned and justified, and so that the services provided by the court are affordable to the individual customers. The main *working method* consists of systematic discussions among the judges and between the judges and the stakeholders, aiming for improvements in the quality of adjudication”¹⁷⁹.

The **project organisation** is quite articulated and is based on the idea of quality circles where different quality issues are addressed. The development work is steered by the *Development Committee* of the Quality Project; the term of the members of the Committee is three years. At present [September 2009] the Development Committee is chaired by a judge of a local District Court and members are the President and a justice of the Court of Appeal, two chief judges and two judges of the district courts, three advocates, a prosecutors and a representative of the police (head of investigation). In addition a district judge acts as *co-ordinator for Quality*, supporting the *Working Groups for Quality*, to implement the training, to maintain contacts with the various constituencies, and to edit the *Report on Quality*¹⁸⁰.

More recently the organisation of the project has been improved with the establishment of a Quality secretariat composed by four judges¹⁸¹.

“Four Working Groups for Quality are set up for each year; the membership consists of judges from each of the District Courts in the jurisdiction of the Court of Appeal, members of the Court of Appeal, and referendaries of the Court of Appeal. Also prosecutors, advocates, and public legal aid attorneys may serve as members in the Working Groups for Quality. The leading principle is that every judge participates in the work of the Working Groups”.

“Each Working Group for Quality is tasked to deal with one of the development themes. The Working Groups map out the problems relevant to the theme, look into the practices adopted in the different District Courts, define a procedure that can be mutually accepted, and make a proposal for the harmonisation of the court practices. Follow-up measures are designed already when the objectives are being set”.

Quality themes are selected considering both their relevance and the possibility of implementing changes. It's important to stress that working groups analyse and make proposals about a given quality theme, and do not work to set or reach specific goals. Therefore, the emphasis is on improvements, and not on targets to be reached as in most of managerial approach¹⁸².

Then *quality teams* are set up to work on each theme in order to analyse the current practices and implement improvements. These teams can also operate as forums where quality issues are addressed and evaluated. Allowing a strong interaction between participants, they facilitate communication and the identification of workable solutions to improve the quality of justice in regard to a given theme. It must be pointed out that teams do not implement improvements, since their task is limited to make proposals.

¹⁷⁷ Määttä J. 2008. Quality work and quality benchmarks in Finnish courts. In *Quality Development in the Field of Justice*, ed. P Staes, N Thijs, p. 148. Luxembourg: European Institute of Public Administration

¹⁷⁸ Mäkinen H. 2005. The Crystal Scales of Justice. Competition Entry p. 10

¹⁷⁹ Ibid.

¹⁸⁰ Määttä J. 2009a. Quality management in courts and judicial organisation. Integration to the draft report.

¹⁸¹ Mäkinen H. 2009. Quality management in courts and judicial organisations: comments and integration to the first draft.

¹⁸² Määttä J. 2009b. Quality management in courts and judicial organisations. Telephone interview See also the English summaries of the Annual quality reports.

“We just discuss about our work when we are there. It is our daily work, and we just share our experiences and opinions, how do we see things from different perspectives. And from that discussion we try to give a sort of solution to the problems we may face. So, we don't set any goals or objectives ... and you can speak freely there, because you are just giving your opinion about an issue¹⁸³.”

Such proposals (reports) are then presented at the next Annual Quality conference. During the conference, new quality themes are identified for the next year. In this way, the conference represents the end of the old quality cycle and the beginning of the new one as the judges develop their views on the themes to be set for the following year and new quality themes are decided.

“The *Quality Conference*, which takes place every autumn, [is] attended by the judges in the jurisdiction of the Court of Appeal, referendaries, trainee judges and representatives of stakeholder groups. When the themes are being selected and the objectives set, due care is taken not to compromise the independence of the courts or the judiciary”¹⁸⁴.

It must be stressed that the whole process and the key issues like the quality themes and the results of the quality work as a whole are not discussed with or influenced by the Ministry of justice. However the Ministry did not had a critical position. It contributed to the project with founding appropriate to ensure that the courts are able to go on with the quality work, and not to steer it toward some direction. The funds for the quality project are assigned to the Oulu district court that pays the different activities such as lecture fees, meeting, staff, conference, printing of annual report. It must be noticed, however, that for judges and staff the quality work is part of the normal working hours. Just the quality coordinator and the quality secretary are rewarded with a small additional fee.¹⁸⁵

From judges to stakeholders - As seen, the quality project is aimed to an improvement of judges' skills, competences, and practices. At the beginning it was exclusively a judges' initiative, and the topics were mostly dealing with pure legal issues related with the question of how a judge should proceed in specific situations. In the first years, the quality project was concentrated “on the very core of the courts functioning that is how judges apply the law, how they should behave in the court proceedings”¹⁸⁶.

However, since 1999 the project has had the clear intention of including non-judges (lawyers, police, court administrators, and more generally stakeholders) in the discussion of quality issues, and in particular on those issue in which quality affects (and is affected by) the stakeholders work.

The involvement of courts stakeholders occur in 2003. This shift led to a progressively greater involvement of non-judges in the project, as prosecutors, public legal aid attorneys, advocates and heads of investigation began participating in the Annual Quality conference and in the quality teams. As seen above, they are now involved in setting the quality themes as well as in identifying and implementing the improvements.

Themes have been chosen for their social relevance and salience.¹⁸⁷ They initially included increased consistency in sentencing (initially in theft, drink driving, and assault, expanded to narcotics cases the following year) and judicial involvement in the preparation of civil cases. The involvement of lawyers and of other judicial actors in the quality project allowed consideration of issues like overcoming impediments to the preparation of civil cases (2004 and 2006) or the procedures and proofs in matters of imprisonment and travel bans (2006). Other themes dealt with by the project are leadership skills in the admission of evidence, and improvement in the quality of written judgements.

More recently (2009) administrative staff and court administrators joined new quality working groups dealing with access to court documents. So the group can be integrated by staff or administrators or other legal professions, when issues dealt with the quality projects involve their skills or the competences. Finally, the growing involvement of “non-judges” in the quality groups indicates that the themes dealt with by quality project are moving from “legal issues” to questions of other nature, such as court administration.

¹⁸³ Ibid.

¹⁸⁴ Mäkinen, H. (2005). Op. cit.

¹⁸⁵ Määttä J. 2008. Quality work and quality benchmarks in Finnish courts. In *Quality Development in the Field of Justice*, ed. P Staes, N Thijs, p. 148. Luxembourg: European Institute of Public Administration

¹⁸⁶ Ibid.

¹⁸⁷ Langbroek P. 2005. Quality management concerning judges, judgements and court services. In *L'administration de la justice en Europe et l'évaluation de sa qualité*, ed. M Fabri, H Pauliat, P Langbroek. Paris: Montchrestien Savela A. 2006. *Evaluation of the quality of adjudication in courts of law Principles and proposed Quality Benchmarks Quality Project of the Courts in the Jurisdiction of the Court of Appeal of Rovaniemi*. Oulu: Painotalo Suomenmaa p. 2.

There are no doubts about the fact that the quality project has been a great success. However, the project leaders have now to face the question of keeping high the interest of the persons involved in the project, especially the judges. Therefore project leaders are surveying the courts about how to develop the project further¹⁸⁸. The main working method is systematic discussion as indicated above. (see footnote 13). There will be no changes in this aspect of quality project. Following this assumption, project leaders are asking about judges and stakeholders experiences, pros and cons and ideas of how to develop the project. This theme will be discussed in the Quality Conference in November 2009.¹⁸⁹

Finally, within the framework of the Quality Project, a Quality Benchmarks Working Group was established in 2003 to draw up a set of benchmarks on the quality of adjudication and its development. This led to the development of a new project called 'Quality benchmark for adjudication' that has been rolled out as a means to evaluate and improve the courts' activities, and that is discussed in the following section.

4. The benchmark project of the courts in the jurisdiction of the court of appeal of Rovaniemi

The Quality Benchmarks Working Group established in 2003 presented a draft of "benchmarks on the quality of adjudication" to the Annual Quality Conference in 2004. Quality benchmarks were published in 2006 and successfully tested in a pilot project in 2006-2007. Their goal is to measure the quality of the adjudication of entire judicial units (and not of individual judges), from two perspectives: the point of view of the parties and of other persons participating in the proceedings (external) and the point of view of court personnel and workflow (internal)¹⁹⁰. To pursue this goal, the quality benchmarks take into account six aspects: the process, the decision, the treatment of the parties and the public, the promptness of proceedings, competence, and professional skills of the judge, and finally organisation and management of the adjudication. These aspects aim therefore to evaluate the functioning of courts from a legal, a managerial, and a public perspective. For each quality area a certain amount of criterion has been identified and described. In total there are 40 quality criteria.

The measurement of each quality criteria is based on a combination of different evaluation methods. Some of them are "subjective" such as self evaluation, surveys, evaluation by a group of expert evaluators (a judge, an attorney, a prosecutor and a legal scholar), while other are "objective" like the statistics. This is to allow the gain of a realistic and comprehensive view of the different quality criteria¹⁹¹, taking into account not only what is measurable but also what can be only judged¹⁹² or evaluated with other criteria.

Once the evaluations have been collected, they are codified into a scale measuring the achievement of the different criteria. The scale ranges from zero (none achievement of the quality criteria) to 5 (exemplary achievement). To give an idea of the structure of the benchmarking system, the Table 1 illustrate for the Aspect 1 (the process), the first quality criteria (out of 9), its description, the point scale and the evaluation methods to be adopted in this case. The project documentation – also available online¹⁹³ – clearly explains the reasons why each quality aspect and criteria have been selected, and why the different evaluative methods have been used.

At the end of the benchmarking exercise, the total points reached by a court offer a snapshot of the court's development at a given moment. But it's much more important, for quality development, the points get by the court in each single quality criteria. Indeed, this offers an extremely analytical view (40 quality criteria grouped in six quality aspects), working as a "reflective tool" driving the analysis of quality strength and weaknesses of each single court. The piloting of the project showed that this articulated evaluation offers a strong platform to improve the different quality criteria.

The term "benchmark" has a well defined managerial connotation, pointing to an evaluation of the current functioning of an organisation against *best practices*. However, we can notice how this connotation of best practice is not present in the Rovaniemi project. In this case the benchmark is intended as a means to support and ease the learning of judges, of external parties and the improvement of working-practices. Indeed, one of the outcomes of the benchmarking exercise is, for each single court and each quality criterion, an evaluation

¹⁸⁸ Ibid.

¹⁸⁹ Määttä J. 2009a. Quality management in courts and judicial organisation. Integration to the draft report.

¹⁹⁰ Määttä J. 2008. Quality work and quality benchmarks in Finnish courts. In *Quality Development in the Field of Justice*, ed. P. Staes, N. Thijs, p. 148. Luxembourg: European Institute of Public Administration

¹⁹¹ Ibid.

¹⁹² See on this topic the speech of the Chief Justice of the New South Wales, Spiegelman, J. J. (2001). Judicial Accountability and Performance Indicators. Paper presented at the The 300th Anniversary of the Act of Settlement. from http://www.lawlink.nsw.gov.au/lawlink/supreme_court/ll_sc.nsf/pages/SCO_speech_spiegelman_100501.

¹⁹³ See in particular pp. 31-47. Savela A. 2006. *Evaluation of the quality of adjudication in courts of law Principles and proposed Quality Benchmarks Quality Project of the Courts in the Jurisdiction of the Court of Appeal of Rovaniemi*. Oulu: Painotalo Suomenmaa

that can be compared with different criteria such as the average of the points of the courts of the district for that quality criterion or the points reached in other quality criteria. This should trigger an organisational inquiry about what is going well and what could be improved, as it actually happened with the piloting.

Table 1 A Section of the quality benchmark system

Aspect 1, the process			
The process is of high quality, when it has provided proper procedural guarantees for the enforcement of people's rights and when the people have perceived the process to have been reliable and fair ¹⁹⁴			
Quality criterion	Description	Point scale	Evaluation methods
a) the proceedings have been open and transparent vis-à-vis the parties (There are other 8 quality criterion for this aspect, each with its own description, and evaluation methods to be used. The point scale is the same for all the quality criterion)	<ul style="list-style-type: none"> • the proceedings have been predictable for the parties • the parties have been constantly informed of the current stage of the proceedings and of what will happen next • the presiding judge has practiced informative case management so as to advise the parties and the other participants of the course of the proceedings • the parties have been allowed to make their case and to present their grounds and evidence • the parties have been allowed to comment on their opponents' claims, grounds and evidence • the parties have been allowed to comment also on the information procured by the court ex officio 	Achievement None = 0 Partial = 1 Satisfactory = 2 Good = 3 Laudable = 4 Exemplary = 5	<ul style="list-style-type: none"> • self-evaluation by the judges • survey of attorneys, prosecutors and parties ("extensive survey")

Source Adapted from Savela (2006). Op. Cit. p. 58-59

5. The piloting of the Quality benchmarks

The functioning of quality benchmark has been piloted to test the overall benchmarking system. Many of these data have been collected through a web based application (Webropol) so that the persons involved can enter their evaluations using their own computer. The 80% of the judges assessed their own operation with this tool.

As far as concern statistical data, the quality benchmark requires both data regularly collected by the court, both additional data to be collected on ad hoc bases. The piloting exploited just the data regularly collected by the justice system¹⁹⁵, to avoid the collection of ad hoc statistics.

The involvement of attorneys and prosecutors through a self-administered survey has been more problematic. They had the possibility to answer to questionnaire in paper format (duly distributed), or to its online version. Surprisingly, the replies were just the 15%, a low rate is in contrast with the active participation of attorneys and prosecutors to the working groups of the quality project (see above). The use of the self administered survey, and some problems in the functioning of its online version, could explain this fact, since a low reply rate is usually associate this techniques¹⁹⁶. One of the hypotheses that will be considered, is to change the method used to collect such information, also in the light of the Swedish experience in which "external parties" where interviewed face to face¹⁹⁷. Even with these problems, the piloting showed the usefulness of the quality benchmark.

6. A first assessment of the Quality Project and of the Quality Benchmark

The Quality project, as well as the services provided by the courts involved, have been externally evaluated,¹⁹⁸ with such positive results that the scheme was recommended for nationwide adoption and was awarded the European 'Crystal Scales of Justice' prize for 'innovative practice contributing to the quality of civil justice'.¹⁹⁹

¹⁹⁴ Määttä J. 2009b. Quality management in courts and judicial organisations. Telephone interview

¹⁹⁵ Määttä J. 2008. Quality work and quality benchmarks in Finnish courts. In *Quality Development in the Field of Justice*, ed. P Staes, N Thijs, p. 148. Luxembourg: European Institute of Public Administration Savela A. 2006. *Evaluation of the quality of adjudication in courts of law Principles and proposed Quality Benchmarks Quality Project of the Courts in the Jurisdiction of the Court of Appeal of Rovaniemi*. Oulu: Painotalo Suomenmaa

¹⁹⁶ Corbetta P. 2003. *Social Research: Theory, Methods and Techniques*. London: Sage. 320 pp. See in particular p. 147.

¹⁹⁷ See the Swedish report of this research project.

¹⁹⁸ This is a notable exception the remarkably low rate of evaluation of specific reforms in European Judiciaries Contini F, Mohr R. 2008. *Judicial Evaluation*. Saarbrücken: VDM

¹⁹⁹ Aarnio A, Laukkanen S, Liljeros H, Raitio J. 2005. Finland. In *L'administration de la justice en Europe et l'évaluation de sa qualité*, ed. M Fabri, J-P Jean, P Langbroek, H Pauliat, pp. 227-48. Paris: Montchrestien pp. 181-2.

“In addition, the Finnish Bar Association recognised the Quality Project with its award for ‘Legal Achievement of the Year 2005’. According to the recognition criteria, the award is given to one or several persons, groups or communities who have made a significant contribution to the development or popularisation of the judicial system, the furtherance of justice or the promotion of access to justice.”

Presentations of the Quality Project have been given on request in the Supreme Administrative Court, in the annual Chief Judge convocations and in events organised by other Courts of Appeal, as well as to the Legal Affairs Committee of the Parliament of Finland, the Consultative Committee on Access to Justice, the Police Command in the Province of Lapland, the Board of the Finnish Bar Association and several foreign delegations visiting the Court of Appeal of Rovaniemi (e.g. from the People's Republic of China and from the Russian Federation)²⁰⁰.

Last but not least a quality programme is carried out in the Helsinki Court of Appeals district following the model of Rovaniemi Court of Appeals, but as pointed out by Matti Palojarvi (Administrative Director and District Judge in the Helsinki District Court) with a ‘lower profile’:

*“We have annually certain themes which are prepared and discussed in working groups and formed into a report. The reports are presented in an annual meeting of judges within the district. The reports are not binding for an individual judge, they are recommendations at their best.”*²⁰¹

However, this example points to the question of the transferability of the Rovaniemi quality approach to other contexts. If on one side there are other quality projects in Finnish courts, they don't have the same rich features of Rovaniemi project. One of the hypotheses is that quality work takes much time even if it generates many benefits including a greater efficiency, time savings, and eases the work of judges and their control on workload. As Judge Määttä observed, considering the Rovaniemi experience *“when the quality of the work increases, there is a corresponding decrease in its difficulty and burdensomeness”*. This is because with the quality work “problems and the weaknesses are constantly being investigated, as well as improvements are being proposed and implemented”. This evaluation is supported by the data collected that shows an increase in consistency and a reduction in the appeal rate. The applications for a summons and the responses have improved in quality, the preparation of civil cases has improved also in other respects, the practical procedures relating to the trial have become more uniform, and the management of evidence has improved.

However it must also be considered the question of the complexity of the quality project and in particular of the benchmarking system. No doubts that such system offers a very rich and useful picture of many different issues strongly associated with the quality of the adjudication. However, this richness is the consequence of a very complex system. As the experience with the Trial Court Performance Standards shows²⁰², the high complexity of the system and difficulties in collecting the data can lead to very difficult implementation.

At this writing the development committee of the project has not decided yet when to do the next evaluation round, that is expected in 2011 or 2012. To reduce the risk of having a system too complex, it may be advisable to reflect about possible simplifications.

*“Yes, it might be a good idea to simplify the benchmark system or ask questions concerning certain areas, and leave other areas outside, if you want a focused system. In a way it may be useful to try to do it in a smaller way than it was done in the pilot, but of course the nature of the piloting is that you test the entire system”*²⁰³.

The simplification could be a way to diffuse the system in other Finnish jurisdictions. Indeed, one of the paradoxes of the project is that it received more visibility and acknowledgements internationally than nationally.

7. Concluding observations

This concluding section aims to discuss some general issues related with quality management in court emerging from the Finnish experience.

The development of a *culture of communication* between all the actors involved in the judicial process is one of the interesting achievements of the project discussed in this report²⁰⁴. Such achievement is based on the

²⁰⁰ Mäkinen H. 2005. The Crystal Scales of Justice. Competition Entry p. 10 p. 1

²⁰¹ Palojarvi M. 2008. Quality management in courts and judicial organisation: reply to written questions.

²⁰² Schauffler RY. 2007. Judicial accountability in the US state courts. Measuring court performance. *Utrecht Law Review* 3:112-28

²⁰³ Määttä J. 2009b. Quality management in courts and judicial organisations. Telephone interview

²⁰⁴ Aarnio A, Laukkanen S, Liljeros H, Raitio J. 2005. Finland. In *L'administration de la justice en Europe et l'évaluation de sa qualité*, ed. M Fabri, J-P Jean, P Langbroek, H Pauliat, pp. 227-48. Paris: Montchrestien, pp.181-2; See also

recognition that disputes resolution does not solely depend upon the court, its officials and its funding body, but also upon the various actors involved in the proceeding and in particular the Ministry of justice (as far as concern the MBO), as well as lawyers and prosecutors (in the case of Quality project and benchmarks).²⁰⁵

This emerging culture of communication and dialogue among the participants, removing the judges from their isolation and aloofness, could lead to measures having a negative impact on judicial independence. In hearing a case, a Rovaniemi judge must consider the facts and the law. In addition, and on voluntary base she/he can also consider the standards set by the Annual Quality Conference for the writing of decisions. They are not binding, but they have been established by the Quality conference.

At the beginning, the question of independence was a significant issue. However, after several years of practice, this is not anymore the case. On one side judges have the control of the project, and on the other the stakeholders did not made attempts to compromise the independence of judges.²⁰⁶ In this framework the Ministry of justice promotes but not steer this or other quality project in any way.

Another issue in the quality projects discussed in this report is the role of the forums in which the evaluation of the quality is carried out and measures are identified: the Annual Conference and the Quality teams. They offer a physical and temporal space dedicated to the evaluation of justice and to the identification of possible improvements in different areas. In this way, the courts are not locked into approaches that evaluate just one area or value (legitimacy, efficiency etc.) with consequences restricted to the same area. Rather, being a relatively open space for the evaluation of justice, the outcomes of different evaluations can be brought in and assessed from different perspectives in a non adversarial way. This is possible also because the participants are not only judges or members of the court, but also practising lawyers, prosecutors, policemen and so on. In these terms, Rovaniemi offers strong empirical support to the idea that the administration of justice, its evaluation, and quality improvement are benefitted by the involvement of all the relevant players. The recent involvement of court staff and court managers in quality working groups confirm the openness of the project to all the key players, and its ability to deal also with managerial issues.

A key advantage of initiatives like the one from Rovaniemi is that the quality areas to develop are defined by the same personnel who implement them. This should promote a greater degree of commitment and willingness while the transparency of the quality project operations is granted by the publication of the quality reports and by their wide dissemination.

The key *role of judges* in the project is underlined by the project leader

“It is my sincere belief that that the Quality Project of the Courts in the Jurisdiction of the Court of Appeal of Rovaniemi, with its systematic working methods can serve as an excellent model for judicial quality work in any part of Europe. The independence of the judiciary dictates that quality cannot really be developed by way of orders or directives; instead, it requires that the judges make a personal commitment to quality work and truly internalise the importance of the issue. Discussions among the judges, and also among the broader constituency in the administration of justice, are probably a necessary element in the development of quality in adjudication — in many respects, they may indeed be the only element in such development”²⁰⁷.

The assumptions of judge Makinen lead to identify key questions for policy making. The quality project is based on the internalisation of the new “quality discourse” by the judges and on the involvement of the constituencies of courts. The questions are how to facilitate or promote the internalisation of such values and how to involve the constituencies.

In Finland, as in many other European countries, the starting point is a judge operating as a “solo practitioner” isolated from the organisation and the professional community. Now, we can observe judges discussing with colleagues and stakeholders about inner issue of judicial practices and, in general terms, about judicial

[http://www.coe.int/T/E/Legal_Affairs/Legal_co-](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Operation_of_justice/Efficiency_of_justice/Finalists%20E.asp#TopOfPage)

[operation/Operation_of_justice/Efficiency_of_justice/Finalists%20E.asp#TopOfPage](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Operation_of_justice/Efficiency_of_justice/Finalists%20E.asp#TopOfPage) accessed March 2006.

²⁰⁵ This conception is perfectly consistent with the one developed by the European Commission for the Efficiency of Justice of the Council of Europe: CEPEJ. 2004. *A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe. Framework Programme.* [https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2004\)19&Sector=secDG1&Language=lanEnglish&Ver=rev2&BackColorIntranet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2004)19&Sector=secDG1&Language=lanEnglish&Ver=rev2&BackColorIntranet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6) CEPEJ. 2006. *Compendium of “best practices” on time management of judicial proceedings.* [https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2006\)13&Sector=secDG1&Language=lanEnglish&Ver=original&BackColorIntranet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2006)13&Sector=secDG1&Language=lanEnglish&Ver=original&BackColorIntranet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6)

²⁰⁶ Mäkinen H. 2009. Quality management in courts and judicial organisations: comments and integration to the first draft.

²⁰⁷ Mäkinen H. 2005. The Crystal Scales of Justice. Competition Entry p. 10

decisions²⁰⁸. This requires a deep change of values and assumptions that define in the professional identity of judges, and their organisational behaviour. In a nutshell, it is a switch from the identity of the judge as solo practitioner, to a new one in which the judge is a professional involved in a community of practices. The key questions become now how to facilitate this process of change.

On the other side, some consideration can be made about what *constituency* may be involved in quality work and how it may be empowered. Lawyers? Local authorities? Judicial governance bodies? Civil society organisations? The question is critical, but a workable solution has to be identified to avoid the risk of a judiciary still closed to external legitimate questions about the service they deliver to the People. Here, the key questions become how to develop a robust constituency, qualified to have a profitable discussion with courts and judges about the quality of the services they provides, and how to create communication channel to listen court users. In this area, the Quality Benchmarks initiative helping to make adjudication and the debate on adjudication more transparent to persons who are not court insiders (users and the constituency) is a step in the right direction. The same apply to the use of surveys to court users as done by the project.

Finally, quality projects as the Rovaniemi one are useful also

*"to apply the most functional and the most appropriate procedures for the particular case at hand. It should also be kept in mind that real court proceedings involve a great deal of activities and measures which have not been regulated at all. In order to reach an outcome that is as positive as possible in view of all of the considerations referred to above, it would appear that Quality Projects are in fact needed in all European courts"*²⁰⁹.

So quality project can transform the discretionality still present in any bureaucratic organization into appropriate organizational and procedural solutions. This perspective emerging from the Rovaniemi case, differs from the traditional approach of civil law (*latin*) judges, that once discovered some discretionality make a claim to reduce it through new and more detailed regulations. So, another policy issue emerging from the analysis of this case is the trade off between the degree of regulation and the degree of discretionality.

The Finnish case how different initiatives to improve the quality of justice and judicial independence do not necessary lead to harsh tensions or conflicts. However, also in this case, frictions may exists as illustrated by the above mentioned critique to the MBO and by the following case reported by Matti Palojärvi

*"One "eternal" dispute when quality management is being discussed concerns the independence and impartiality of judges, which is secured by the Finnish constitution. In that respect the president of the Supreme Court in Finland, Mrs Pauline Koskelo has strongly criticized the quality management policies if they offer a violation of the above mentioned independence and impartiality. A recent example is a project run by our Ministry of justice, which aims to increase the expertise of judges in certain fields of law, in this case family law and children. The project is to form a network of judges all over Finland, who handle such cases – those selected to the network are called "key-judges" in family law as they represent expertise in that field of law. However, the fact that these judges are selected by the Ministry of justice - a political organ – after a proposal of chief judges, has in itself been considered as a violation on the constitution and the nomination policy of judges. The nature of such network is also undetermined, especially if the education of the network and consequently other judges is provided solely by the Ministry of justice. The role of such network is feared to become "an extra court level".*²¹⁰

As far as we know, however, the implementation of this project has been suspended.

Without making comments on this or other cases discussed in this chapter, it's important to point out how Finnish key actors have faced the issue of quality management in court. We have found a general attention and respect to the institutional values that inform the functioning of the institution (judges, courts, and Ministry of justice) as well as the understanding of the different points of views of the institutional subjects involved, internal and external. However divergent opinions and expectations will always exists, and different institutional players and stakeholders may have legitimate but sometimes different interests in the functioning and quality of justice. For this reason it's necessary to identify places in which the different needs, expectations, goals, values can be represented and discussed by key institutional actors. The Annual Quality Conference is an example of a place where such discussions may have place.

²⁰⁸ Clearly this does not absolutely means that judges and stakeholders discuss pending cases. The discussion is always in general terms.

²⁰⁹ Palojärvi M. 2008. Quality management in courts and judicial organisation: reply to written questions.

²¹⁰ Ibid.

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III QUALITY MANAGEMENT IN THE JUDICIAL SYSTEM AND THE COURTS IN FRANCE

Laurent Bertier and H el ene Pauliat

1. Introduction

Quality²¹¹ is usually presented as a “way of being” and consequently involves the assessment of a product or service in positive or negative terms. Quality is traditionally contrasted with quantity, with a greater emphasis being placed on excellence and a certain quest for improvement. Criteria therefore need to be established so that the effects of this improvement are actually felt. Quality has been defined as “the characteristic of a product or an activity that meets its objectives (‘external’ quality) and develops in an optimised fashion (‘internal’ quality)”.²¹² As well as the final quality (of the finished product), quality therefore involves looking for the quality of the improvement process²¹³ using a set of rationalisation techniques. It therefore takes the form of a complex system of norms, criteria, tools for questions such as evaluation, empowerment and commitment through management principles.²¹⁴

Traditionally integrated in the private sphere, in that it “lies in its remarkable ability to absorb the dominant themes of an era and, in a way, to corner them in order to confer a supplementary dynamic on them”²¹⁵ and makes it possible to give renewed legitimacy to an activity by a more rational *process* approach, the concept of quality has had formidable success and thus quietly found its way into the theoretically hermetic sphere of public services.²¹⁶ The approach thereby pursues a more positively expressed wish to place the user at the heart of this new dynamic,²¹⁷ and consequently to find the key to a new legitimacy for public services, which are too often accused of being archaic, opaque, dysfunctional and in widespread crisis,²¹⁸ notwithstanding the fact that the ideal of quality co-exists with the ideal underlying the public services.²¹⁹ Therefore, quality expresses the redefinition of the relational model between the Administration and those whom the administration serves more than it really generates a profound re-examination of the very existence of public

²¹¹ C. Doucet, *La qualit e*, PUF Que sais-je, 2nd edition, 2007.

²¹² C. Doucet, *op. cit.*, p. 11.

²¹³ The ISO standards defining quality management distinguish between fundamental principles (ISO 9001:2005), requirements (ISO 9001:2000) and also guidelines for performance improvements (ISO 9004:2000).

²¹⁴ ISO 9000:2000 is based on essential management principles: customer orientation, leadership, staff involvement, process approach, management by system approach, continuous improvement, factual approach to decision making and mutually beneficial supplier relations; see, in particular, M. Weil, *Le management de la qualit e*, ed. La D ecouverte, Paris, 2001, p. 43.

²¹⁵ M. Weil, *op. cit.*, p. 75.

²¹⁶ “Quality, which has been promoted to the rank of an axiological constraint and is regarded as the key element of procedures for administrative adaptation, has become the essential component of any discussion of the administration and has thus taken over from declining values such as the general interest”, J. Chevallier, “Le discours de la qualit e administrative”, *RFAP* 1991, no. 46, p. 287.

²¹⁷ L. Cluzel-M etayer, *Le service public et l’exigence de qualit e*, Dalloz 2006; M. Voisset, “La reconnaissance, en France, d’un droit   la qualit e dans les services publics”, *RFDA* 1999, p. 743.

²¹⁸ “Under the combined effect of economic change, social and political changes and the process of community construction, the myth of the public service has crumbled. The legitimacy of the public administration has become blunted: the dogma of the general interest no longer suffices to guarantee it; accused of being a factor of cumbersomeness, of delays, the public administration must be renewed in order to demonstrate its efficiency. Consequently, the dogma of the general interest is replaced by the religion of performance”, L. Cluzel-M etayer, *Le service public et l’exigence de qualit e*, D. 2006, p. 4; see also the enlightening work of J. Chevallier, *L’Etat post-moderne*, LGDJ 2003. The Cannac report of 2004 also presents quality as a means of overcoming the real crisis in the public services: “The quality of the services of the State has long been a subject of pride and a real force for our country. Today, it poses a serious problem. It is not that our public servants are no longer committed to the services for which they are responsible, or that the overall volume of appropriations allocated by the State for the production of those services has declined, far from it! But, on the one hand, as is normal, the requirements of citizens/users have increased. They are less and less inclined to be treated as mere members of the public and prefer to see themselves as “customers”. On the other, and above all, our public services, especially those run directly by the State, suffer from numerous organisational and functional weaknesses: the complexity and compartmentalisation of structures, the confusion of powers, hierarchical “red tape”, rigidity of all kinds, lack of clarity as to responsibilities, lack of managerial culture”, Report, “La qualit e des services publics”, La documentation fran aise 2005, p. 2.

²¹⁹ “This approach of the public service, directed towards the satisfaction of the needs of the user, who is seen as a responsible individual and no longer simply as a passive recipient of the services provided, is perfectly consistent with quality logic ... One of the ways of defining the public service is to say that it is at the service of the public. Commissariat   la r eforme de l’Etat, *D evelopper la qualit e du service. Chartes qualit e et engagements dans les services publics*, La documentation fran aise, 1997, p. 22 et seq., cited by G. Dumont in *La citoyennet  administrative*, th. Paris II, 2002, p. 474.

services.²²⁰ Quality, in this way, became an element of political discussion²²¹ before it became a practical reality, but is integrated with such facility that it transcends it in order to become an obvious fact. The quality of the public service thus pursues two types of aims: external aims, which it pursues by redefining the Administration/general public relationship and therefore by seeking to provide real citizen satisfaction, and then internal aims, which it pursues by seeking improvement through a rationalisation of the administration system.

In such a context, which combines standardised procedures²²² and specific actions²²³ which are nonetheless brought together by a common intention to simplify and modernise,²²⁴ it was inevitable that the public service of justice would embrace the curve thus defined by the theme of quality. But the quality of justice is still difficult to grasp from a theoretical point of view:²²⁵ what are the criteria against which it can be measured? What opinions must be taken into consideration? Is any quality approach not condemned to be measured solely in terms of quantity, by reference to indicators of activity (rate of reform of judgments, management of flows, length of detention, length of proceedings, amount of compensation, etc.)? It is therefore not clear that the quality of justice can be evaluated in strictly “qualitative” terms²²⁶ other than by an analysis of the complex repertory of its critics.²²⁷ The situation may therefore seem at the outset to reveal a paradox. Quality seems to constitute a genuine issue for justice, since a user dynamic becomes established.²²⁸ Nonetheless, it cannot impose itself on its own, as its integration is made difficult by the specific institutional character of justice, which according to the Constitution is a constitutional authority,²²⁹ but which is organised and functions as a public service, admittedly a specific public service,²³⁰ and is therefore necessarily pitted against the opinion of the user. If there can be a quality approach, it must necessarily reconcile those two facets and thus consist in a compromise between the guarantee of the independence of justice and the quest for citizen satisfaction. The fact nevertheless remains that, taking full advantage of its legitimising nature in that it has been the source of a reconciliation between the administration and its users, quality should be capable of constituting the remedy for the judicial crisis that exists in France. Nonetheless, it is not applied in a uniform manner and appears to exist only through a very general modernising discussion,²³¹ which generates what is sometimes a cacophonous reformism.²³²

²²⁰ D. Maillard Desgrées du Loû, *Droit des relations de l'Administration avec ses usagers*, PUF 2000, especially p. 23 et seq.; see also J. Chevallier, *Science administrative*, PUF, 3rd ed. (2002), especially p. 438.

²²¹ The Prime Minister's circular of 26 July 1995 on the preparation and implementation of the reform of the State and the public services sets out eight new principles for the public services: quality, accessibility, simplicity, speed, transparency, mediation, participation and responsibility, OJ, 28 July 1995, p. 11217.

²²² The CIRE of 12 October 2000 had set out three lines of conduct: each ministry was to define a quality policy in the form of a political statement; the decentralised public services were to define user commitments and make them public; the CIRE emphasised, last, the development of self-evaluation.

²²³ In the form of ministerial reform strategies, for example.

²²⁴ The Directorate-General for the modernisation of the State was established by decree of 30 September 2005. Its general objective is therefore to advise the ministries which undertake modernisation. In that regard, it pursues four objectives: to adapt the missions of the State, simplify relations with users, optimise the management of the administrations and improve the quality of the service; www.modernisation.gouv.fr.

²²⁵ “The requirement for quality in the sovereign and social services reveals numerous areas in which rights do not exist”, M. Voisset, “La reconnaissance, en France d'un droit des citoyens à la qualité dans les services publics”, *RFDA* 1999, p. 744; see also S. Gaboriau, “La qualité de la justice: une nouvelle légitimité pour une institution en crise de confiance”, in *La qualité: une exigence pour l'action publique en Europe*, PULIM, p. 123; S. Renan, “Amélioration de la qualité de la justice: difficultés théoriques et pratiques”, *RRJ* 2002-5, p. 2111.

²²⁶ See, for example, *La mise en place d'indicateurs de résultats dans trois ministères*, Investigation report and findings of the committee on the cost and performance of public services, June 2001, La documentation française, especially p. 29.

²²⁷ J.-P. Jean, “La qualité de la justice face aux attentes du justiciable”, in *L'éthique des gens de justice*, PULIM 2000; M.-L. Cavois, H. Dalle, J.-P. Jean, *La qualité de la justice*, La documentation française, 2002; B. François, “Les justiciables et la justice à travers les sondages d'opinion”, in L. Cadiet and L. Richer (dir.), *Réforme de la justice, réforme de l'Etat*, PUF 2003, p. 41.

²²⁸ L. Dumoulin and T. Delpeuch, “La justice: émergence d'une rhétorique de l'usager”, in P. Warin (dir.), *Quelle modernisation des services publics? Les usagers au cœur des réformes*, Ed. La découverte, 1997, p. 103.

²²⁹ Constitution of 1958, Title VIII: “On the judiciary”.

²³⁰ E. Guigou, *Le Service public de la justice*, Ed. O. Jacob, 1998; see, in particular, D. Truchet, “La justice comme service public”, *op. cit.*, p. 31 and J.-M. Sauvé, “La justice dans la théorie française du service public”, *op. cit.*, p. 65.

²³¹ A. Vauchez and L. Willemetz, *La justice face à ses réformateurs (1980-2006)*

²³² See the establishment of local courts by the Outline Law on the programming of justice 2002-1138, the aims of which are to “improve the efficiency of justice ... and to develop the efficiency of the criminal response to offending by adults and minors”, OJ, 10 September 2002, p. 14934, called into question by the reform undertaken in 2008 to rationalise the judicial map.

Justice, which has traditionally been unreceptive to any modern quality approach,²³³ is proving to be increasingly sensitive to themes such as efficiency, performance and rationalisation. As a result, quality is making its entrance in the law courts (II.), but first and foremost within the judicial system as a whole(I.).

2. General approach to quality in the judicial system

Quality is a course of conduct closely linked to the idea of justice. Even though the term is a relative newcomer to the language of the judges, over the last ten years or so, the judges have appropriated it widely but have conferred on it a primarily functional dimension, as strictly speaking there is no organisational approach, that is to say, in terms of the administration of the judicial system.

A diversified function-oriented approach

The quality of justice is based first of all on the application of the principles of the European Convention on Human Rights and on the interpretation of those principles by the European Court. The quality of justice therefore refers to the requirements of Article 6 of the Convention, which establishes the right of access to an independent and impartial tribunal, the right to be heard within a reasonable time, etc. Those elements undoubtedly constitute a first system of reference for the courts, compliance with those requirements by the French courts being a measure of the quality of the judicial process. The same applies to the existence of remedies. In addition, a judicial decision must be correctly drafted, it must not be “insulting” to the lawyers, it must set out the reasons on which it is based in such a way that it can be understood and accepted by the parties.²³⁴ Consequently, the first approach to the quality of justice generally amounts to the quality of the process and not to the quality of justice understood as an institution.

It would therefore appear difficult to understand justice in terms of quality, insofar as such an approach means that a set of what are sometimes contradictory elements must be taken into account, so that any attempt at systemisation becomes delicate and indeed to no avail. The quality of justice cannot be analysed as a homogenous and indivisible whole; on the contrary, it is a complex notion,²³⁵ consisting of several components which, however, are directed “unanimously” towards a final result: the quality of the judicial decision and therefore the quality of the service provided. Yet, while much thought has been given to defining the quality of the judicial decision itself,²³⁶ the result is quite frequently inconclusive. The French courts appear to ensure appropriately the quality of the proceedings, in spite of the numerous occasions on which France has been condemned by the European Court of Human Rights, in particular for having violated the requirement that proceedings be concluded within a reasonable time.

Nonetheless, the judicial services inspectorate verifies, by reference to quality, that certain requirements are met: the effectiveness of the judicial investigation and the calling of the victim in the case of expedited criminal proceedings or the statement of reasons in the decisions adopted constitute indicators which make it possible to understand the functioning of the services of a court. The latter requirement to state reasons²³⁷ could in itself, moreover, represent the idea of the quality of justice²³⁸ in that it ensures compliance with two requirements: it provides the legal support for the operative part and it represents a means of understanding for the person to whom it is addressed, and therefore follows two directions, one intrinsic, as it is directed towards the “arithmetical” work of the judge, and the other extrinsic, as it is aimed at the user²³⁹ of the public service of justice; this double requirement participates in the essential function of adjudication.²⁴⁰

²³³ “The judicial institution is one which has long remained a stranger to any managerial rationality. The concept of singular justice was constructed around a professional ethos composed of four essential features: the autonomy and independence of the judiciary, the particular status of the law; the quality of justice or ‘glorification of slowness’, a concept in which technical rigour and weighing up take precedence over criteria relating to time; and, last, the inability to think of the judicial institution as an organisation”, C. Vigour, “Justice: l’introduction d’une rationalité managériale comme euphémisation des enjeux politiques”, *Droit et Société*, no. 63-64/2006, p.428.

²³⁴ See, in particular, L. Berthier and A.-B. Caire, “La motivation des décisions et la Convention européenne des droits de l’homme. De l’intime conviction des jurys d’assises à la conviction des destinataires des décisions de justice. Réflexions autour de l’arrêt Taxquet c/ Belgique, 13 janv. 2009, req. n°926/05”, *RFDA* 2009, p.677.

²³⁵ The International Organisation for Standardisation defines it as “The totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs.”

²³⁶ L. Berthier, “Regards européens sur l’idée de qualité des décisions de la justice administrative”, *RFDA* 2008, p. 245.

²³⁷ For an overview in comparative law, see John R. Spencer, “Quelques observations préliminaires”, in *Juges et jugements: l’Europe plurielle, l’élaboration de la décision de justice en droit comparé*, Société de législation comparée 1998, p. 73.

²³⁸ It is, moreover, in association with remedies, the first way that the quality of justice was perceived by certain judges interviewed at the Limoges Court of Appeal.

²³⁹ However, there needs to be a genuine move towards educating people about judicial decisions in such a way as to “explain, other than by mere logic, how and why a decision has been taken ... A litigant is certainly not satisfied with that

This first approach therefore shows the difficulty in distinguishing the quality of justice in terms of the quality of the decision delivered from the quality of justice in terms of the quality of the service that delivers the decision. Sometimes the two are closely linked. If it is the quality of the decision of justice that is being considered, the work carried out prior to that decision and the process that generates the “result” must also be of quality. Accordingly, the quality approach tends to distinguish the entire “production process” from the “end product”. The inevitable conclusion is therefore that, when applied to justice, quality could be conceived only in terms of the process, that is to say in the drafting of the decision:²⁴¹ quality justice would be justice capable of dispensing quality proceedings themselves, and presenting a satisfactory administration of justice.²⁴² The “administrative” aspect would necessarily be geared towards the judicial aspect to such an extent that the two would merge.

It is therefore difficult to dissociate the administration of justice from the judicial decision. If this were the case, the administration of justice would be detached from any consideration of quality and would be experienced (endured?) more as a constraint than as a means of improving the function of justice. As a result, the difficulty remains that of determining the “strategic” positioning of the administration of justice, which seems to be situated at the crossroads between organisation and functioning, thereby revealing the full extent of the conflict between the administrative and the judicial aspects that the French administration of justice characterises so well.

The difficulties of an organisational approach: an intermediate system of administration

Administration is sometimes seen as a waste of time for the judges and as a possible threat to the independence of justice. It is possible, however, to imagine a way for the administration to emerge from the shadows, in the light of the new perspectives afforded by quality,²⁴³ in such a way that a restructuring of the link between administration and justice might be envisaged. Armed with the quality “mark”, the administration must no longer be seen as an admittedly necessary “evil”, an opaque and complex bureaucratic “yoke” – it is in those terms, moreover, that certain criticisms may be made with respect, more particularly, to the administration of justice²⁴⁴ – but indeed as a tool that generates modernity, rationalisation and more generally legitimisation of the public sphere. Professor Jacques Chevallier precisely defines the outlines of that modern administration, and in so doing echoes recurrent criticisms.²⁴⁵ He states that “quality is a means of transforming conduct and adapting the models in force ... The discussion of quality is an ideological catalyst and a driving force of reform and cannot therefore be disregarded”.²⁴⁶ He goes on to say that quality, as applied to the administration, would take two directions: the quest for efficiency, “which means that the administration is required to perform its tasks in the best conditions possible, while paying attention to the

spirit of deduction and aspires to being convinced ... To put it plainly, judges must explain and argue, and not be content with the logic of rationality alone, so that their decisions are accepted by the parties”, L. Berthier, *op. cit.*, p. 250.

²⁴⁰ “As the grounds are the soul of the judgment, having a judgment which does not state the grounds on which it is based is like having a body without a soul”, Ferrière, *Dictionnaire de droit et de pratique*, Paris, 1779, quoted by E. Jeuland, “La motivation”, in *Dictionnaire de la justice*, L. Cadet (dir.), PUF 2004, p. 912.

²⁴¹ “Theories about the quality of justice should be formulated only in terms of the means employed and not of strict results”, S. Renan, “Amélioration de la qualité de la justice: difficultés théoriques et pratiques”, *RRJ* 2002, p. 2222.

²⁴² The “proper administration of justice” should combine the known requirements of independence, impartiality, publicity and speed of the proceedings, *Les Grands arrêts de la Cour européenne des droits de l’homme*, PUF 2005, 3^{ème} éd., p. 295 et seq.

²⁴³ J. Chevallier, “Le discours de la qualité administrative”, *RFAP* 1988, n°46, p. 287; see also M. Voisset, “La reconnaissance en France d’un droit des citoyens à la qualité dans les services publics”, *RFDA* 1999 p. 743. H. Pauliat, “Justice, performance et qualité”, in *Le Droit administratif: permanences et convergences*, Festschrift in honour of J.-F. Lachaume, Dalloz 2007, p. 823; Nadine Poulet, “Le concept de qualité”, in *La qualité: une exigence pour l’action publique en Europe?*, PULIM 2003, p. 17 et seq.; Lucie Cluzel, “La promotion de la qualité dans les services publics, un précédent pour la Justice?” in Emmanuel Breen (dir.), *Evaluer la Justice*, PUF 2002 p. 53 et seq.; and L. Cluzel-Métayer, “Le service public et l’exigence de qualité”, *D.* 2006

²⁴⁴ M. L.-M. Raingeard de la Blétière, “Peut-on adapter l’administration aux finalités de la justice?”, *RFAP* n° 57, January-March 1991, p. 61. The author makes five main criticisms of the administration of justice: it is archaic in its territorial districts, young, insufficient in quantitative terms, extremely complex and subject to great tension in connection with the management of its staff.

²⁴⁵ “It was during the 1960s that the first real weakening of the traditional administrative model occurred. French society then went through some profound changes, which helped to undermine the foundations of administrative legitimacy and to compromise the relevance of the ways in which it acted: there was strong criticism of its rigidity, its formalism, the slowness of an administration restricted by the bureaucratic yoke and not managing to satisfy the aspirations of the public”, J. Chevallier, “Le discours de la qualité administrative”, *op. cit.*, p. 123.

²⁴⁶ J. Chevallier, *op. cit.*, p. 122.

quality of the services which it provides and making maximum use of the means available to it”,²⁴⁷ and also the general ideology of participation, “which tends to replace the style of rigid command, based on authority and constraint, which prevails both in the internal order and in relations with society, with a new, more flexible and more tolerant model, which seeks to involve everyone in the exercise of administrative responsibilities”.²⁴⁸ More generally, the administration would be faced with new requirements of rationalisation, modernisation and transparency and therefore with a general philosophy of re-legitimation.²⁴⁹ Quality thus makes it possible to seek a new method of organisation and functioning and thereby leads to a reconsideration of the administration, this time in a more positive way.

At heads of court level, the idea seems to be emerging that the administration of efficient justice is of genuine interest; which is all the more true because it is a reality: justice is a public service and therefore requires a coherent administration in order to meet a social demand. The administration may appear to be useful because it would be the vehicle for rationalisation techniques: administration of justice would accordingly become administration for justice. There is therefore a debate in France about the role of the administration in respect of the quality of justice, but the fundamental question, namely “what is the best administration of justice or the best model of the administration of justice to improve the quality of justice”, is not really discussed today. The model applied is likely to change, but without being radically challenged.

France has in fact an “intermediate” form of the administration of justice. Significant powers are conferred on the Ministry of Justice and a rather traditional role is given to the Judicial Service Commission. In spite of the criticism of the courts and the crisis of justice following the “Outreau” case, France has not embarked upon reforms comparable with those undertaken by Belgium in the aftermath of the “Dutroux” case. The successive reforms of the Judicial Service Commission, for example, the most recent of which dates from the constitutional revision of July 2008, essentially concern the composition of that Commission²⁵⁰ and the ways in which it functions, but not its powers. There is no question today of giving the Judicial Service Commission budgetary powers; nor of the possibility of making it a guarantor of the quality of the judicial system, by drawing up and defining indicators. The Judicial Service Commission continues essentially to be a supplementary authority²⁵¹ responsible for protecting the independence of the judges, in spite of different reports which have been submitted to the public authorities, suggesting a change in its role. The upgrading of the traditional powers of appointing judges²⁵² shores up a rather inflexible concept of the independence of justice in France, since it is limited to protecting the status of the judges in their judicial functions. There has never been any question of adopting a more open concept that would allow the entire judicial system, headed by the Judicial Service Commission, to be more independent in administrative or managerial terms, in spite of the pleas to that effect made by the European bodies.²⁵³

The model applied by France thus has certain limits: the powers of the Minister of Justice are, at a time of crisis regarding the legitimacy of the system, perceived as abnormal and sometimes give the impression of being used not to guarantee coherence and efficiency, and therefore the quality of a system, but to regulate difficulties on a case-by-case, or even judge-by-judge, basis.

The question of means is therefore recurrent, the reorganisation of the judicial map has shown the limits of the intermediate model: neither the Ministry nor the Judicial Service Commission delivers quality management. Reform was probably necessary, but it was carried out in a purely administrative (and political) manner, without sufficient involvement of the courts. However, if the Judicial Service Commission had been able to act as the sole single intermediary with the Ministry, it would have been conceivable to propose a consultation-based reform, with the Judicial Service Commission ensuring the legitimacy of the indicators used for the purpose of determining whether courts were to be retained or closed. The weakness of that level

²⁴⁷ J. Chevallier, “Le discours de la qualité administrative”, *RFAP* 1988, no. 46, p. 123.

²⁴⁸ *Ibid.*

²⁴⁹ “From axiological constraint, quality has an irresistible tendency to transform itself into a vehicle for administrative legitimisation: the promotion of the theme of quality thus has the effect of renewing and bringing up to date the discussion on which the administration bases its legitimacy”, J. Chevallier, *op. cit.*, p. 140.

²⁵⁰ Article 65 of the Constitution of 1958, as amended by the constitutional revision of 2008, reflects a move towards the democratisation of the composition of the Council; see also draft Institutional Law no. 460 of 10 June 2009; J.-M. Pastor, “Présentation du projet de loi organique relatif à la réforme du CSM”, *AJDA* 2009, p. 1133.

²⁵¹ Art. 64 of the Constitution of 1958: “The President of the Republic shall be the guarantor of the independence of the Judicial Authority. He shall be assisted by the High Council of the Judiciary”.

²⁵² J. Gicquel, “Le nouveau CSM”, *JCP G.*, no. 31, 30 July 2008, I, p. 176.

²⁵³ Opinion no. 10(2007) of the Consultative Council of European Judges argues in favour of the latter concept of independence in defining the competences of the Councils of the Judiciary as follows: selection and appointment, promotion, evaluation, discipline, ethics and training, control and management of their own budget, court administration and management, protection of the image of justice, power to provide opinions to other powers of State, co-operation with other relevant bodies at national, European and international level and responsibility towards the public.

probably precludes quality management, such is the extent to which the involvement of the Ministry at that level may appear suspect. The example of the reform of the judicial map without prior consultation shows that France lacks a coherent “quality” policy which would make it possible to avoid a “waltz” giving rise to a very pronounced opaqueness, a very pronounced loss of credibility and also a loss of user confidence in the public service of justice. Quality is more “used” than actually integrated in a global policy. It is therefore more an instrument serving the political class, and accordingly at the origin of a blind reformism whereas its sole basis and its sole aim are user satisfaction. The theme of quality was notably used (indeed transformed) in the context of the recent reform of the judicial map.²⁵⁴ The necessarily “frustrated” nature of the requirement of quality, applied to the quest for an optimum judicial map, may in fact involve two contradictory movements: the quest for real proximity to the citizen (involving the creation of additional courts) or the quest for savings in justice by means of budgetary rationalisation (involving the closure of certain courts and the grouping of courts in specialised centres). Since a decision had to be made, in France quality was at the origin of a wide movement to rationalise the geographical distribution of the courts.²⁵⁵

Quality and legitimacy of the judicial system

The theme of quality appears to have been favourably received by the courts when defined in reference to the quest for judicial legitimacy and the redefinition of the link between the judicial authority and users of the public service of justice. That approach may be readily explained by the fact that initially it related not to the quality of justice, in the sense of an independent authority, but to the quality of justice as a conventional public service. The emergence of the legitimising discussion of quality has thus been able to penetrate the law courts and thereby confirm the “overturning” of the relational model defining relations between a traditionally “authoritarian” administration and “subservient” users.²⁵⁶

The fact that users or litigants were taken into account has made it possible to evaluate the quality of justice in certain spheres, while attempting to restore a link of confidence or in any event to restore legitimacy to justice.²⁵⁷ France has therefore belatedly undertaken an analysis of the opinions of persons who have been involved in justice; opinion polls have been conducted, across the board, at national level.²⁵⁸ The first large-scale inquiry had given rise to a solemn presentation to the public authorities. The courts now have a “Marianne Charter”, both in the administrative courts and in the ordinary courts. This charter is based on the principles applicable to the public services, the initial model having been applicable in the traditional public administrations. Questionnaires on satisfaction, completed at local level, are then passed on to the central administration. In addition, almost all the courts have set up mechanisms to deal with complaints. However, these give rise to difficulties. The courts and tribunals, like the other public services, have improved the conditions for the reception of users or litigants. The “one-stop” registry counters, for example, enable an individual to complete all the formalities at a single access point; in France the emphasis has been placed on the accessibility of justice and its proximity. Reception and information indicators are designed to evaluate directly the quality of the services offered to litigants. The Inspectorate-General of Legal Services (*Inspection Générale des Services Judiciaires* – “IGSJ”) implements a quality approach to the public by distributing a questionnaire on satisfaction to persons attending the court which is being monitored. Letters sent to the court by litigants are also covered by the monitoring exercise.

But in fact these letters are problematic. It may happen that a litigant formulates a complaint – about the dysfunction of a service, of having had to wait too long, of the aggressive manner of a registrar, etc. These complaints must be dealt with in principle and the courts have conducted a genuine policy of following up complaints. Yet the judges called upon to deal with these complaints confirm that in almost 90% of cases the

²⁵⁴ This is borne out, in particular, by a speech given on 27 June 2007 by Rachida Dati, then Minister of Justice, on the occasion of the establishment of a special commission responsible for examining the reform of the judicial map: “The principle of proximity cannot in itself justify maintaining courts with a low level of activity. The persons who render justice, whether professional or not, cannot acquire or retain the necessary level of competence below a certain threshold of activity. It is for that reason that I hope that in addition to the requirement of proximity itself, which is undergoing radical changes owing to the development of new technologies, those active in the judicial system may continue to satisfy a requirement of quality and efficiency”.

²⁵⁵ Decree no. 2008-145 of 15 February 2008 changing the seat and the jurisdiction of the district courts, local courts and regional courts.

²⁵⁶ See, in particular, S. Braconnier, *Droit des services publics*, PUF 2007, 2nd edition, especially p. 323 et seq.; D. Maillard Desgrées du Loû, *Droit des relations de l'administration avec ses usagers*, PUF 2000, p. 23 et seq.; M. Voisset, “La reconnaissance, en France, d'un droit des citoyens à la qualité dans les services publics”, *RFDA* 1999, p. 743.

²⁵⁷ L. Dumoulin et T. Delpeuch, “La justice: émergence d'une rhétorique de l'utilisateur”, in P. Warin (dir.), *Quelle modernisation des services publics? Les usagers au cœur des réformes*, ed. La découverte et Syrus, Paris, 1997.

²⁵⁸ J.-P. Jean, “La qualité de la justice face aux attentes du justiciable”, in *L'éthique des gens de justice*, Actes du colloque des 19/20 octobre 2000 organisé à Limoges, PULIM 2000n, p. 149; H. Dalle, in M.-L. Cavrois, H. Dalle and J.-P. Jean (dir.), *La qualité de la justice*, La documentation française, 2002, p. 11; B. François, “Les justiciables et la justice à travers les sondages d'opinion”, in L. Cadiet et L. Richer (dir.), *Réforme de la justice, réforme de l'Etat*, PUF 2003, p. 41.

complaints relate to the substance of the case and the litigant concerned cannot therefore receive satisfaction, the only possibility being the traditional remedies. That does not mean that the judges do not deal with those complaints; they emphasise that, on the basis of the complaint, they carry out checks to determine the cause of the dysfunction. The only limit relates to the fact that, if the criticism concerns a question which the court has settled, it cannot be called in question or given an “administrative” treatment. An effort is placed globally on the clarity and speed of justice, which appear to occupy an intermediate place between the administrative role and the judicial role of the court.

The “opening up” of the public service of justice to the criticisms of its users therefore illustrates the general trend towards making the public services more “customer-oriented”. With more specific regard to the public service of justice, this trend provides evidence of a reversal of the relational approach between a traditionally “sovereign” service, which was therefore legitimate because it was authoritarian and in a sense “unilateral”, and its users, who were more in the nature of “forced users” than actually “customers”. However, the emergence of a democracy of opinion has given rise to difficulties within the sovereign sphere of justice. The transformation thus described of the relationships between justice and users marks the litigant’s desire to obtain satisfaction from the service provided by justice, just as the “customer” demands satisfaction from services of a more commercial nature. However, while justice must face up, through the emergence of a democracy of opinion, to a trend towards “consumerisation”, satisfaction is not found at the same level. A satisfied litigant will clearly be a litigant who has been the successful party in court proceedings. The relationship to justice is one which is more affective than a simple consumerist relationship. The legitimacy of justice is therefore not the quest for the complete satisfaction of its users but must be sought taking account of a more transverse dimension which takes into consideration the interest of the litigant and the general interest for the benefit of social cohesion.

3. The quest for quality at court level

There are two aspects to the quality at court level. The professional quality of the judges and the personnel of the public justice system are its first level. However, quality is often synonymous with productivity, performance or rationalisation and therefore implies the arrival of a new, more managerial culture. This new culture entails, at court level, not only the development of individual training and empowerment of judges, but also the improved internal distribution of all the information which judges need in order to strengthen the quality of the decision-making process and the development of the principle of participation by making partnership or “group” working policies more general. In other words, beyond a simple quest for quality among the personnel, certain tools, admittedly isolated, could enable a genuine managerial culture to become more widespread at court level.

The quality of the personnel

The quality of the personnel is necessarily linked to the training offered and provided to future judges, and, in addition to that first obvious fact, the introduction of a more coherent and more efficient human resources management policy at ministerial level.

1) Quality in respect of training

Training at the Legal Service Training College has developed. The reform was driven by the quest for quality: it is essential that a judge leaving that college does not subsequently cause problems. Training now seems to be directed towards greater individualisation and therefore to go beyond its “technical” yoke. “Good” judges will not simply be good students, that is to say, individuals in possession of all the “technical” data of the profession, but rather individuals who will know the best way of using the knowledge required to exercise the profession of judge, recognise their strengths and weaknesses and thus shape their career intelligently. The intention was therefore to attempt to provide better training and supervision for future judges. But once that training has been acquired, judges will choose their posts: it is clear that the judges in charge of training at the Legal Service Training College may inform the human resources department of the Ministry, within the judicial services directorate, of any reservations which they may have about a particular judge, in the light of the post for which he or she proposes to apply. However, an attempt must be made to match the personality of the future judge and his or her next post. This partiality is widely condemned by the court management.

But there is also training designed to improve quality. For example, certain court presidents welcome the introduction of training common to first-instance and appellate judges, lawyers and expert witnesses. This global approach helps to forge a common culture and to develop relationships between the different professionals involved in justice.

2) *A better circulation of information*

At local level, the court presidents place the emphasis, in line with a quality approach, on the circulation and dissemination of information. A specific tool, the “justice intranet”, enables the judges to be given maximum information. The case-law must also be circulated, access to judicial databases must be further improved, while electronic access to legal writing is still at the embryonic stage. On the other hand, there is no provision for all judges to have access to the virtual office of the Court of Cassation. However, “*Jurinet*” and the guide to the drafting of judgments are essential for improving the quality of drafting judgments, with the further aim of standardisation of the case-law. There should be a real methodology, at national level, for the logical presentation of decisions. The “documents and studies” department at the Court of Cassation is accessible for courts of first instance. Senior registrars were sought to create that department in order to resolve delicate matters; they can therefore be contacted by judges or court presidents in order to carry out research into a particular problem, while the judge, on the basis of the information provided, is free to decide in the dispute at hand. However, this needs to be publicised more effectively, in order to increase awareness of the “documents and studies” department and the legislative department of the Ministry of Justice. For the latter department, it is important that judges realise that they can approach it for an interpretation of a text which it has drafted, thereby avoiding in advance any annoyances or discrepancies in the case-law; this tool also helps to improve the quality of decisions. In short, real electronic tools should be available as soon as a new legal problem arises. That comes under the policy of the Court of Appeal. A specific policy might be defined at that level, thereby improving the processes of the judicial decision.

Likewise, a sort of conference for the analysis of decisions could be set up at Court of Appeal level. Certain court presidents would like to develop meetings between academics and first-instance and appellate judges. The idea would therefore be to take stock, around once every quarter, of the decisions delivered on appeal that take issue with decisions delivered at first instance. A more thorough analysis of the reasons why those decisions were censured and the grounds upheld would serve to improve the quality of decisions at first instance. A quality policy could therefore be put in place, under the external supervision of the academics responsible for analysing all the decisions.

An annual report on the decisions delivered at first instance and on appeal within the jurisdiction of the Court of Appeal would also be a tool for information and quality. The objective would be to draw up a document analysing, for each particular area of law, the decisions delivered over one year in the jurisdiction of the Court of Appeal. This document would not necessarily be intended for external distribution, but would enable all the judges within the jurisdiction of the Court of Appeal to be aware of the decisions delivered, with a brief analysis for each area of law concerned. This approach would be consistent with the obligation laid down in Article 15 of the Declaration of the Rights of Man of 1789, which states that every public agent must give an account of his administration. The annual case-law report is important, but the annual report of the court in its entirety is very useful for those outside the court, and in particular for litigants and citizens.

Internal partnership policies would also be worth developing between judges, the bar and expert witnesses; the same applies to committee work, which has a basis in the Code of Judicial Organisation. Some court presidents consider that quality presupposes a genuine policy of participation not only by all judges, but also lawyers, registrars, bailiffs and expert witnesses, by means of thematic, cross-disciplinary meetings which, among other things, would allow for an analysis of the dysfunctions and focus on the preventive treatment of disputes.

3) *The need to establish a human resources management policy*

Although the Ministry of Justice is not seen as an authority in charge of quality, the fact nonetheless remains that it has a key role to play in that sphere by means of a human resources policy. Yet for a long time human resources management has not seemed to be a priority within the Ministry. There, too, the events which have sustained or brought to light the defects in the French judicial system have led to a thorough reorganisation of the departments and to the creation of a human resources directorate within the Ministry.

In point of fact, it is essential for the Ministry to develop a genuine human resources management policy. The judicial appointments procedure is still not perfect: the qualities of a particular judge are not sufficiently taken into account when he or she is being assigned to a specific post. The profiling of posts is unsatisfactory, including in the course of a career; for example, it frequently happens that a judge arrives at a court with a specialisation in social law, for example, and ends up doing criminal work because of the lack of staff. The management of replacements is more successful than it was: there are now judges and registrars “placed” with the courts of appeal, who are then able to make up for the absences of certain colleagues. Appropriations for filling vacancies have also been unblocked.

But it is also necessary to give further impetus to the specialisation of functions by distinguishing between a judge's legal qualities and his or her management qualities. Accordingly, the profiling of future judges should be improved by means of a genuine human resources management policy. The Ministry therefore has a key role to play here. It is noticeable that, even in the choice of heads of courts, it is not always easy to recruit the person with a more "management-oriented" profile.

The emergence of a managerial culture

The culture of performance (economic and management) in reality arrived with the LOLF (Institutional Act on the Finance Laws) and is backed up by genuine administrative support.

1) The LOLF – a response to the expectations of enhanced performance

The LOLF constitutes a new budgetary framework which is less resource-based and more result-oriented, enabling a rational administration of the results achieved and the means employed. The LOLF is organised in missions and then in programmes, which consist of two elements: the presentation of the appropriations of the programme and the related fiscal expenditure and the annual performance project (strategic presentation, presentation of objectives and performance indicators, etc.). Two missions therefore relate to justice in the broad sense: the "justice" mission in the strict sense and the "State advice and control" mission, relating in particular to administrative justice. In the strategic presentation of the annual performance project relating to the "judicial justice" programme of the "justice" mission, Léonard Bernard de la Gatinais, the Director of Judicial Services, emphasises the need to adapt justice to citizens' expectations by reducing the time taken to deal with cases, modernising the institution and taking firmer measures to combat re-offending, which will give rise to a series of objectives and, consequently, to a panel of indicators. The "judicial justice" programme thus brings together the activities of the ordinary courts, the Judicial Service Commission, the National Criminal Records Office and the National College for Registrars. The programme is divided into 43 operational programme budgets. Accordingly, the progress made towards achieving the objectives defined by the LOLF relating to the "judicial justice" programme of the "justice" mission can be measured by a series of indicators.

OBJECTIVES	INDICATORS (examples)
Deliver quality decisions within a reasonable time	Average length of time taken to deal with proceedings by type of court; theoretical time to work through the caseload; rate of applications for interpretation, rectification of material errors and failure to adjudicate, number of cases dealt with per official, etc.
Expand upon and diversify the penal response	Rate of penal response; rate of alternatives to prosecution
Improve the enforcement of penal decisions	Rate of enforcement; average time taken for enforcement
Bring the increase in the costs of justice under control	Average expenditure on costs of justice per case in which a penal response is given
Ensure the rapid registration of judicial decisions and speed up the issue of reports	Time taken to register judgments after receipt of the relevant papers
Develop modern modes of electronic communication	Rate of equipping the judicial services with videoconferencing facilities

Concerning the "administrative justice" programme, which is part of the "State advice and control" mission, J.-M. Sauvé, the official in charge of the programme, notes that the main problem lies in the need to combat the excessive time taken to deliver judgments. Administrative justice must also pursue an objective of a qualitative nature by endeavouring to maintain the quality of court decisions and also by improving the efficiency of the courts. Accordingly, the Conseil d'Etat must address three separate issues: rationalisation of the activities of the administrative courts, prevention of contentious proceedings and improvement of the efficiency of the work by the signature of contracts covering objectives and resources with the Administrative Courts of Appeal and also by making use of new information technologies ("tele-proceedings", hearings using video links, etc.).

Budgetary priorities must therefore be identified, which presupposes discussion of performance management; performance tables are prepared, internal performance appraisal tools, such as performance indicators, are created; contracts covering objectives also mean that actions can be targeted and related to the resources available; these elements contribute to the emergence of a series of indicators, court by court,

objective by objective, and also judge by judge. The IGSJ (Inspectorate General of Judicial Services) plays a key role here. The LOLF introduced accrual basis accounting and Section 27 provides that “the State’s accounts must be regular, sincere and give a faithful picture of its assets”. The objective of accounting quality and the internal accounts control which enables it to be achieved result from this new framework. The same applies to the internal accounting audit, whereby an independent department carries out the internal accounts control.

Pursuant to Section 58-5 of the LOLF, the Auditor General’s Department certifies the State’s accounts. It verifies that they meet the accounting quality criteria, which it understands in a global sense: from the administrator to the accountant.

A Ministerial action plan (the PAM) was drawn up on the basis of a mapping of the risks and accounting issues of the Ministry. Guidelines were sent to the decentralised services coming under the DSJ, the DAP and the DPJJ.

The IGSJ is responsible, at the request of the Auditor General’s Department, for verifying the effectiveness of an internal accounts control within the courts in order to make it easier to certify the accounts. Internal audits, on the basis of a special reference system, are carried out in the relevant departments of the courts.

2) *The administration at the service of quality – supporting enhanced performance*

The administration of justice in France is very centralised. The management of the courts moved against the tide of decentralisation in the 1980s, whereas previously those same courts had been administered by the local authorities. Accordingly, there emerged no real administration at local level, except in the case of the registries. To speak of the administration of justice was the same as describing the organisational chart of the Ministry of Justice. The *Préfet* was therefore logically the secondary body empowered to authorise the expenditure of the courts. In spite of an attempt to introduce management at *département* level in the 1990s, the Courts of Appeal were retained as the relevant level of the management of the system (Decree of 1 July 1992 and Law of 6 January 1995). The regional administrative services were created to assist that movement and provided “administrative” support to the jurisdiction of each Court of Appeal. For example, they manage resources, staff, IT facilities and real estate and control public expenditure. Each regional administrative service is headed (Decree of 14 March 2007) by a co-ordinator who is responsible jointly to the First President and the Principal State Prosecutor at the Court of Appeal. The administration of the judicial system is therefore somewhat complex, and – on the organisational level – confusing, as it is sometimes difficult to distinguish responsibilities and therefore to co-ordinate the roles even within a court, since there is often some overlap between the administrative powers of the First Presidents, the Principal State Prosecutors – who are assisted by Secretaries General and the registry department – and those of the regional administrative service.

The administration is therefore essential to the efficient management of a court.

The Ministry of Justice, following a thorough reorganisation, now tends to be a driving force. Within the sub-directorate responsible for the organisation and functioning of the courts there are a number of departments: the “judicial organisation legislation” department, the “courts support” department, which contains a number of sections, the “budget, performance and resources” department, which has two sections: the “performance and network activities” section and the “financial analysis” section; and the “organisation and methods” department. The last two departments are important as regards defining or monitoring a quality policy. The mere fact that there is a “budget, performance and resources” department shows that a managerial dimension has been taken into account; the “performance and network activities” department assists the officer in charge of the programme for the piloting of performance and means, monitors the cross-disciplinary projects, analyses the replies to questionnaires or audits relating to budgetary and accounting matters, draws up the budgetary documents, carries out the global audit of the appropriations of the programme, is responsible for network activities, in particular by engaging in management dialogues with those responsible for the operational budgets of the programme, in conjunction with the human resources department, allocates resources and delegates appropriations. The “financial analysis” section analyses applications for financial appropriations; monitors and evaluates the consumption of appropriations; defines and implements the management and monitoring rules; and analyses the financial impacts of the new regulations.

The “organisation and methods” department also has an important role: it analyses the activities of the courts, defines the processes, devises and proposes, in conjunction with the courts, organisation charts resulting from the evaluation of the workload of the judges and officials; anticipates and provides support for the impact of the reforms and also the integration of new technologies and procedural software in conjunction with the “courts support” department; analyses impact studies in connection with legislative or regulatory reforms in collaboration with the human resources department; evaluates the audit and inspection reports and identifies areas in which progress has been made; recommends and implements the contracts defining objectives to be concluded with the courts; devises methodological tools; supports the development

of experimental projects; distributes and disseminates innovative projects and capitalises on know-how; and implements the principles of the state's quality and modernisation approaches in the judicial institution.

In addition, the Ministry of Justice has developed the "Pharos" ("Pilotage HARmonisé pour l'Organisation des Services") project, which the Ministry describes as a real performance tool; its objective is to design and implement an "infocentre" within the judicial services, with a view to having access to and sharing the same information. This infocentre will help to make the sources of information more reliable and more structured, to create a history of the information necessary for the judicial services; to measure and analyse the performance of the jurisdictions and courts; to draw up annual performance projects and reports for the attention of all those involved. In order to attain these objectives, the infocentre will be the depository of a considerable amount of disparate information relating to criminal and civil activity, the budget (estimated and implemented), human resources (payroll and workforce), and socio-economic environment data.

The obligation for the courts to draw up a court project, the need to apply national indicators and to define some specific indicators internally has led judges to take a close interest in administration aspects. This is primarily a matter for the heads of the courts (at both appellate and first-instance level), who seek to involve all the judges. But the former emphasise that the question of means is vital; if the objectives and means are properly defined at the beginning of the financial year the quality of justice can be improved.

This culture of performance within the judicial system therefore receives support from the administration: the role of the regional administrative services (set up by a circular of 1996 and by the Decree of 14 March 2007) has changed considerably. They were conceived as an example of the decentralisation of certain mechanisms. They are composed of different offices: budget, human resources, information technology, training and real estate. There is an office manager and a number of associates (registrars). The manager of the regional administrative service is in principle a senior registrar, except in certain courts where that role is performed by a judge. The service has a key role: it monitors judicial activity via circulars concerning, in particular, the theme "justice and access to the law".

The administration of the Court of Appeal is centred on the head of court assisted by the regional administrative service, the secretaries general and the registrar's department (the registrars are now more involved with management missions than with procedural activities; for example, they maintain numerous performance indicators: flows, recovery, compliance with capped appropriations, etc). They work together with the secretaries general and the heads of court and also with the regional administrative services. They are responsible for the day-to-day management (particularly with respect to staff and the implementation of the budget).

Management meetings are held to deal with administration matters. The secretaries general have very varied functions, their role depending on the First President, who defines it upon his or her arrival. However, they have room for manoeuvre: they manage the administration, they constitute the functional support for the First President in management matters, they act as intermediaries with the regional administrative services. They therefore occupy a position in between the administrative and the judicial and play a key role in the smooth functioning of the court, thereby helping to strengthen the quality of the system.

Because of this favourable environment associated with the implementation of the LOLF, the question of performance bonuses has arisen; many grievances have been voiced, but the resources available leave heads of court with little room for manoeuvre. Nonetheless, the appraisal interview provides the assessor with the opportunity to discuss with judges any difficulties they may be facing, their shortcomings and training needs, making it possible to explain the absence of bonuses, for example. The heads of court state that productivity needs to be viewed with discernment: some cases are dealt with very quickly and may give the (false) impression that the court has had no difficulties; but it is also true that some cases raise serious legal problems and can remain pending. It must be pointed out, however, that this theoretically attractive structure hides real difficulties. The regional administrative services and the registrars' departments are often in conflict. The general problem seems to lie in the fact that everything is managed at Court of Appeal level. The intention was to embark upon a form of "decentralisation", with the Court of Appeal as the relevant level, but what really happened was that the bureaucratic structures of the Ministry of Justice were reproduced. This decentralisation therefore sometimes seems rather irrelevant. However, the Ministry has undertaken to set up inter-regional platforms (judicial services, youth protection, prison administration, at administrative and financial levels). This requires specialists in administration, bringing the danger that the judges will no longer be involved in management and the decision-making process. The idea is to continue with the movement initiated with the creation of the regional administrative services. However, in order to arrive at a quality approach, some heads of court consider that it would be preferable if the operational unit were the *département*, possibly via a sort of judicial decentralisation. The LOLF leaves the presidents of the courts no room for manoeuvre, and the regional courts therefore have no particular existence. Any quality policies that

the presidents of the regional courts might wish to put in place can only be limited and with no increase in resources because they have no budgetary margin. As the operational unit is the Court of Appeal, the quality policy can be determined only at that level, which means that innovation in the courts of first instance tends to be stifled.

3) *A “quantity” culture overtaken by a global culture of evaluation and quality*

Here, quality entails a twofold evaluation. This involves, first of all and from an individual perspective, evaluating the professional quality of the judge before evaluating more “globally” the functional quality of the court. Lastly, themed, and therefore more specific, evaluations may take place by virtue of the key role played by the Inspectorate General of Judicial Services.

a) The evaluation of judges’ “professionalism”

It would be wrong to think that only performance and the willingness to comply with targets require appraisal. A genuine culture of appraisal seems to have been established in the Courts of Appeal. It is the professional quality, in the broad sense, of judges that is appraised. Very detailed appraisal tables make it possible to evaluate the qualities of the judges; the appraisal interview is a key part of the system and is conducted by the head of the relevant court. There is also hierarchical supervision: the regional court monitors the district court, the Court of Appeal monitors the regional court; the Judicial Services Inspectorate also has an important role to play.

Furthermore, from the time when a case is brought, it is closely monitored. Quality thus implies a fresh look at the progress of cases (in particular criminal cases): a prosecutor will show greater vigilance, will go over the case, follow up the files, ensure genuine internal control, request an inspection of a particular department. Together with his or her colleagues, he/she carries out a thorough *ex post facto* analysis and corrects any errors. The monitoring and evaluation of the case are thus carried out entirely in the interests of the quality of the judicial system. It is conceivable that when a particular criminal case is examined by the Principal State Prosecutor, the investigative methods of a particular authority are called into question, or the procedures followed by a different authority are criticised. The objective is to ensure that there is no repetition of any dysfunctions found within the department in question.

More specifically, the IGSJ is responsible (Decree of 5 January 1965) for ensuring the quality of the service provided by the judicial institution and therefore the quality of the processes that contribute to it (organisation of the courts, management, social dialogue, time taken to reply and the manner of doing so, etc.). In that respect, the IGSJ develops a range of actions that will enable it to ascertain whether or not this objective has been attained. It is also responsible for evaluating certain areas of public policy and is then required to address them from a qualitative aspect.

An innovative approach is due to be introduced: “*intervision*”, an internal appraisal tool originating in the Legal Service Training College. It is defined as a “benevolent method of observing and considering the professional practices of judges, which forms part of the approach to improve the quality of justice” (definition provided by the Intervision Charter of the Legal Service Training College). Its distinguishing feature is that it is carried out by peers, in confidence and outside any hierarchical framework; the charter therefore distinguishes it clearly from appraisal, self-appraisal and supervision. The objective is that each judge or court president chooses another judge to assess his or her work. It is clear, in effect, that appraisals are not always easy to carry out in the world of the judiciary. The fact that the judge is, in a sense, given the choice of appraiser to cast a fresh eye over his or her colleague’s work, may make that evaluation useful. The difficulty lies in the fact that this technique has not yet been put in place and that it has scarcely been discussed internally. Nonetheless, this “*intervision*” would apply to all judicial or administrative activities, between judges of all functions, including lay judges and between judges of different courts. Two judges will exchange, in confidence, their views on their professional practices; but that exchange cannot be used in the context of an appraisal or for management purposes. “*Intervision*” lies in a freely consented approach, based on reciprocity: the judge is observed in his or her professional activity and then observes the practices of his or her colleague. The aim of this “*Intervision*” is not necessarily to identify good practices nor to lead to uniform practices. There are two stages: first, an observation stage, during which the observer spends one or more days watching the judge at work, making a record of his or her observations (the questions are very varied and are divided between visual, verbal and others: how the judge is dressed, how litigants are received, for example with a handshake or not, language register, whether or not the conversation is one-sided, control of emotions, etc.); second, a feedback stage, highlighting strong points or any problem areas. If the introduction of “*intervision*” is part of a court or departmental project, it will have to be regularly evaluated in order to ensure that it works as intended.

b) The evaluation of the functioning of the courts

For almost three years the IGSJ has drawn up, each year, a programme to monitor the functioning of the courts (at first limited to the regional courts and extended to the Courts of Appeal in September 2008) based on a reference system used by the inspectors to evaluate the state of all the services of a court.

These “functional controls” are one of the ways in which the IGSJ evaluates the functioning of the courts. They are intended to enable the inspectorate to carry out its evaluation mission in full, in particular by providing increased opportunities for contacts with the courts.

The focus is on *control points relating to the most significant risks of dysfunction*, laid down in advance by reference to key objectives set in order to ascertain *the quality of justice delivered*.

The quest for quality in the action of the departments is one of the essential points of these controls. This will be verified by means of numerous indicators identified for each of the missions which each court is required to carry out: the administration and management of appropriations, civil justice, criminal justice, youth justice and access to the law. Several of these indicators illustrate the importance attached to quality in addition to the quantitative aspect that takes account of the activity of a court. The time which the heads of court and the director of the registry devote to the administration of justice, the effectiveness of the social dialogue, the running of the departments, the rapid detection of bottlenecks and the implementation of action to limit the expenditure associated with the costs of justice are among the elements considered in evaluating the capacity of the appointed officers to carry out their functions.

This method should be seen as the introduction of a constructive dialogue between the court and the IGSJ in order to lead to shared diagnoses of the state of the departments and the acceptance of measures capable of putting an end to the shortcomings identified. In that sense, it is reasonable to consider that the judges will be fully involved in these control exercises. The methodology is designed to be a tool for the heads of court, who will be able to use it in the inspections of the courts in their jurisdiction which they are required to carry out regularly (Article R 213-29 of the Code on the Judicial Organisation).

The functional controls are intended to be carried out systematically, independently of the specific situation of each court, even though, if one of them is having problems, it seems logical that it should be included in the first relevant control programme. In seeking essentially to determine the areas in which the court attains the objectives set for it and the areas in which the attainment of those objectives appears to be compromised, the functional controls seek to develop an inspection format which provides the Ministry of Justice with the means of ascertaining on a regular basis the functioning of all the regional courts and district courts. These controls are an appropriate means of providing the senior officers of the central administration, the Courts of Appeal and the courts with information about the performance of the courts in terms of management of resources, the extent to which those resources are commensurate with needs and also the efficiency of the organisational approaches adopted.

c) Thematic evaluations

The GSJ is frequently tasked with carrying out assessments either of the implementation of new mechanisms (for example, the “investigation centres”, the function of “judge with responsibility of assisting victims”), or the results of existing mechanisms (for example, prison education).

In addressing such mechanisms, the GSJ looks at the quality of the way in which they are organised and run and the results achieved.

4. Conclusion

France is only at the “beginning” of a real quality approach. Quality all too frequently comes up against a rather “closed” concept of independence and, consequently, cannot be applied in a standardised manner across the whole judicial system. Rather, quality is an element of political discussion which attempts to legitimise what are necessarily seen as authoritarian reforms. Where it really exists, it consists only of tools or approaches which are too isolated and too specific to be the subject of real systemisation. Nonetheless, there is now a clear link between the quality system which is gradually being put in place and the financing of the courts, especially at the level of the Courts of Appeal, which are the relevant level for the implementation of quality policies. The contracts on objectives clearly express that approach: if a Court of Appeal, by reference to the indicators, the objectives and its missions, is in a position to present a coherent project, it will be able to obtain additional funding from the Ministry, subject, of course, to a subsequent assessment to verify that the resources are properly used and that the results obtained by the Court of Appeal have improved. The first contracts on objectives were signed at the end of 2002 with the Douai and Aix-en-

Provence Courts of Appeal, with the aim of reducing the caseload of civil, commercial and social cases. Initially conceived as contracts for the reduction of backlogs, they were accompanied by measures for the reorganisation or modernisation of working methods, to ensure that the results obtained would be sustained after the agreement had come to an end. One of the lessons from those agreements relates to the fact that the analysis carried out before the contract is signed is one carried out jointly by the Ministry of Justice and the Court of Appeal; accordingly, it must be based on reliable civil and criminal statistics. The keeping of statistics, provided regularly and in line with a harmonised procedure by the courts, using simple standardised indicators laid down by the Ministry of Justice, will help ensure accurate analyses and, consequently, be essential for drawing up quality agreements. The objectives of the contract may be “quantitative” (reduction of the backlog of cases, the time taken to deal with cases, increase in the number of cases closed, etc.) or “qualitative” (improvement in the treatment of procedures: systematic central registration of proceedings, priority hearing in certain cases; improved reception of users, etc.). The need for the Courts of Appeal to maintain virtually daily indicators in budgetary terms, the rationalisation of expenditure, especially in criminal matters, the obligation to justify every euro spent are examples of the constraints which have obliged the courts, including the courts of first instance, not only to adopt a faultless financial approach but also to prioritise the choices made in line with indicators and objectives. Quality is dependent not solely on the financing of the courts, but also on all the above factors.

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Appendix 1: Organisational chart of the administration of the Ministry of Justice in France (November 2008)

DIRECTOR		
Head of the “organisation and functioning of the courts” department	Head of Private Office	Head of the “human resources” department
Management control	Communications centre	National college for registrars
Head of “interdirectorate platforms” unit	CASSIOPEE project	
	PHAROS project	
Deputy Director for the organisation and functioning of the courts (AB)	Deputy Director for human resources of the judiciary (A)	Deputy Director for human resources of the registries (B)
“Judicial organisation legislation department (AB1)	“Internal mobility, appraisal and enhancement of competences” department (A1)	“Administrative and skills management of registry staff” department (B1)
“Organisation and methods” department (AB2)	“Support and monitoring of external mobility and appointments to the central administration and overseas” department (A2)	“Staff regulations, recruitment, training and social relations” department (B2)
“Budget, performance and resources” department (AB3)	“Staff regulations, ethics and general affairs” department (A3)	“Assessment and enhancement of competences” department (B3)
“Court support” department (AB4)		“Registry inspection” unit (MIG)

Appendix 2: The “Organisation and functioning of the courts” Sub-directorate

The “Judicial organisation legislation” department:

- 1 draws up and monitors the texts laying down the rules for the functioning of all the ordinary courts, including specialist courts, and also the statutes of judges not governed by the staff regulations of the judiciary;
- 2 contributes its legal expertise to the discussions on reform projects;
- 3 drafts texts on the location, creation and closure of ordinary courts, after receiving the opinion of the ministries and departments concerned;
- 4 assists, in conjunction with the secretariat-general and the other directorates, in the drafting of legislative texts and regulations that might have an impact on the rules on the functioning of the judicial services;
- 5 is the legal point of contact for external collaborators in the provision of justice, apart from those coming under the jurisdiction of other directorates.

The “Budget, performance and resources” department consists of two sections:

The “Performance and network activities” section

- assists the person responsible for the performance and resources management programme;
- monitors cross-disciplinary projects, prepares summaries of the responses to questionnaires or audits relating to budgetary and accounting matters;
- draws up budgetary documents;
- carries out the global accounting monitoring of the programme appropriations;
- is responsible for network activities, in particular by means of management dialogues with those in charge of programme operating budgets, in conjunction with the human resources department;
- allocates resources and delegates appropriations.

The “Financial analysis” section

- examines applications for appropriations;
- monitors and evaluates the consumption of appropriations;
- defines and implements the rules on management and monitoring;
- analyses the financial impacts associated with the new regulations.

The “Court support” department consists of three sections:!!

The “Judicial Services geographical siting and follow-up” section

- provides input to the discussions on the geographical siting of judicial services;
- helps identify real estate needs;
- provides support for users in the organisational adaptation to the new judicial premises.

The “Courts security” section

- provides input to the discussion on and drafting of documents having a national scope;
- helps to define and implement the main lines of approach of the ministerial security policy in the courts;
- evaluates requests from the Courts of Appeal concerning the need for security staff or equipment;
- on the basis of targeted incident analyses, recommends the appropriate action and provides follow-up;
- operates the network of local security correspondents;
- devises and provides training, conducts awareness and communications operations;
- prepares methodological guides.

The “Business application monitoring” section

- proposes the strategy to be pursued by the “organisation and methods” department
- analyses the activities of the courts, defines the processes, draws up, in conjunction with the courts, proposed organisation charts based on an evaluation of the workload of judges and public servants;
- anticipates and provides support for the impact of the reforms and the integration of new technologies and procedural software in conjunction with the “courts support” department;

- summarises the impact studies relating to changes in legislation or regulations in conjunction with the “human resources” department;
- evaluates the audit and inspection reports and identifies areas in which progress has been made;
- recommends and implements contracts defining objectives with the courts;
- prepares methodological tools;
- provides support for the development of experimental projects;
- disseminates innovative projects and capitalises on know-how;
- implements the principles of the state’s quality and modernisation approaches in the judicial institution.

Appendix 3: Letter concerning the PHAROS project

French Republic

MINISTRY OF JUSTICE
JUDICIAL SERVICES DIRECTORATE Paris,
Circular

Date of application:

Tel.: 01.44.77.62.80 Fax: 01.44.77.60.20

From the Minister of Justice to the First Presidents of the Court of Appeal and the Principal State Prosecutors at those Courts (Metropolitan France and Overseas)

The Presidents of the Higher Appellate Courts and the State Prosecutors at those Courts (for onward distribution)

The First President of the Court of Cassation and the Principal State Prosecutor at the Court

The Director of the Legal Service Training College and the Director of the Registry Training College (for information)

Memorandum No.: SJ.08-184-CS-ADJ-DIRI26.06.08

Re: Introduction of the PHAROS project- Infocentre for the judicial services.

Please find attached a memorandum on the procedures for the introduction of the PHAROS project in your Courts of Appeal.

This project, which is a real performance management tool providing all courts and the Ministry with an "infocentre" type of facility, has been developed in pursuance of the responsibilities conferred by the Institutional Act on the Finance Laws on those in charge of the operational programme budgets and is a response to the proven need for rapid access to reliable and structured information for the implementation of new analysis and management practices.

Its purpose is to gather, compile and analyse information from many distinct sources: the activities of the courts, the budget, human resources and the socio-economic environment. The most recent management discussions have shown, moreover, the extent to which the operational documents drawn up by the management control unit of the Judicial Services Directorate have contributed to the efficiency and transparency of the talks between those responsible for the operational programme budgets and the person responsible for programme 166.

In parallel with the finalisation of the development of that project, work is going on in a number of areas are being held: the various components (source applications, databases, etc), communication and the organisation of project roll-out.

It is anticipated that the project will be available to users next autumn. Future users and local contacts therefore need to be designated, as arrangements must be made for the planning of training and the organisation of user support.

Please send me the list of staff whom you wish to nominate. Please be assured that the PHAROS project team are at your disposal for any further information.

IV QUALITY MANAGEMENT IN THE COURTS OF LOWER SAXONY

Philip Langbroek

1. Introduction

Germany has been discussing court reform for quite some time now. A principled debate has taken place on New Public Management in the justice field, known as the 'Neue Steuerungsmodell'. This however has not led to a federal justice reform. Furthermore, in the different German states an overall justice reform has not been effectuated, even though plans were developed and political agreements made to do so. This, of course, does not mean that German justice organizations have stood still in their development. It only means that the conditions for organization development were not standardized according to a national format and that the legislative and institutional settings of the German courts and its judiciary remained unchanged. The benchmark project we describe here was developed within this setting and has proven to be an interesting example for court organizations in other German states.

This specific project in the courts in Lower Saxony was born out of the need to improve efficiency in the courts. This resulted in a benchmarking project, which first focused on the first instance courts (Amtsgerichte im Leistungsvergleich - AGiL), and later at the secondary appeal courts (Landgerichte im Vergleich- LiVe) under the supervision and with the coordination of the departments of organisation of the Superior Appeal Courts (Oberlandesgerichte) in Lower Saxony (Braunschweig, Celle and Oldenburg). Since 2007 benchmarking has been extended to the superior appeal courts themselves. Circles of comparison have also been established with courts across the borders of the German states.

2. The Judicial system of Lower Saxony

The Judicial System of Lower Saxony is embedded in the German Federal Constitution. The administration of justice falls within the competences of the separate German states, but its organizational design is structured by the German federal constitution and, for the ordinary courts by the federal law on court administration (Gerichtsverfassungsgesetz). Justice Administration in Lower Saxony is a task of the Ministry of justice in Hanover, including finances, selection and appointment of judges. The superior appeal courts also fulfil an administrative function regarding the functioning of the first instance courts within their districts. Lower Saxony has a three-level system, for ordinary courts (civil and criminal cases), in 80 Amtsgerichte (first instance courts), 11 Landgerichte (second instance appeal courts) and 3 Oberlandesgerichte (superior appeal courts), and within this jurisdiction the Federal Court in Karlsruhe and Leipzig is the highest instance. Next to this there are special courts for labour, administration, finance and social, with their own hierarchy within Lower Saxony up to the Federal level. These specialized courts are grounded in the Federal constitution and separate federal laws apply to their functioning from first and second instance courts on the state level to the highest appeal court at the federal level. It should be noted that the ordinary courts also have tasks under the heading "Freiwillige Gerichtsbarkeit" concerning e.g. the land registry, the registration of businesses and associations. The "Länder" have their own Constitutional court, in Lower Saxony called "Staatsgerichtshof" and so has the German Federation with the Bundesverfassungsgericht.

Administrative organization

The administration of justice in Lower Saxony is organized in the Ministry of justice. For their administrative functioning, the court organizations act as agencies of the ministry of justice, and are accountable to it for that part (Dienstaufsicht). For the first instance and appeal courts, the superior appeal courts function as supervising agencies in this respect.

For the administrative organization of the courts the Ministry of justice follows an annual budget & control cycle, together with the courts:

"Based on the outcomes of the measurement of the needs of the courts, and taking into account the amount of cases and the personnel, we estimate the amount of money the courts need. We try to do this very carefully, as we value a good justice system. This budget is then proposed to parliament (Niedersächsischer Landtag). We have our own set of checks and balances. We as a ministry, but also the courts are subject to far reaching controls of the accounting office. We have some control over the court organisation, and the superior appeal courts control the organisations of the Landgerichte and the Amtsgerichte..."

The legal provisions preventing any inference from the administration in the judicial realm of hearing and deciding cases are strict. They do not only regard the appointment at and deployment of judges within the court organization; they also regulate the dismissal of judges. Within the Ministry of justice a special division has the task to administer the courts. It is a long standing practice that among the civil servants developing and executing the administrative policies for the courts and the judiciary are appointed judges, who are detached

from their court to the ministry of justice. This is intended to facilitate the administrative process in the relationship between the ministry and the courts, and also to prepare them for managerial positions in the courts or elsewhere.

3. The innovation process

In Germany a discussion on the reform of justice has been going on for quite some time, but it has proven to be very difficult to actually achieve this.

The conference of Ministers of justice of the German States decided in 2005 to start a Large Justice Reform, with the aims of unification of proceedings, a two layer court system, a flexibilisation of deployment of judges, more mediation, and the introduction of quality management in the courts. These plans met with resistance of the annual conference of the presidents of the secondary appeal courts and of the federal court, who held the Large Justice Reform is not necessary.²⁵⁹ From 1998 onwards, the German states started to develop a new way of planning personnel positions in the courts (and other justice organizations). A model was adopted in 2001 and 2003. It is based on time and production registration studies, and aimed at a more efficient deployment of personnel. This was also not positively received as especially the judiciary feared that standardisation of time in proceedings would affect the quality of their work negatively.²⁶⁰ In Lower Saxony, the Minister of Justice asked for a special study on the future of the judiciary. This study was published in 2004, but a follow-up could not be traced.²⁶¹ This has made us curious on what has happened with these plans and why we could not trace follow ups.

Question: what has become of the justice reforms in Lower Saxony?

Mathias Volker answers:

“The state of Lower Saxony will have a balanced budget for the first time in many years in 2009-2010. For the time being, the courts are understaffed... So, we are left with fewer employees to do about the same amount of work. Regarding the large justice reforms: nearly nothing had been implemented. There were some plans to merge first instance courts (Amtsgerichte), but eventually the institutional structures will not change. The average amount number of personnel in the Amtsgerichte is 100 persons (10 judges, 10 Rechtspfleger and 80 other personnel (like Wachtmeister, court staff)). Some are much larger (up to 800 personnel), others are smaller (down to 30 personnel. Size is not a real issue.

The civil servants of the Ministry of justice said:

“Basically we have a well functioning justice system, so there is not a pressing need for justice reform. It is quite difficult to achieve any major change in the justice system, because this is a federal competence. However, also the States as represented in the Senate (Bundesrat) should also support this, and it is not self evident at all that they will agree with proposals from the federal government”

So, there are two factors explaining the reluctance to accept major policy induced justice reforms in Lower Saxony. First, the necessary consent of the Länder, as justice policies should be agreed upon in the Federal Bundesrat, nationwide. Second, the lack of money for major investments in (judicial & court) infrastructure within Lower Saxony in combination with a perception of the justice system as “pretty good”, made it difficult to actually implement major reform plans.

It should be noted, however, that quality management on a court administration level based on benchmarking was presented and has been accepted at the same occasion – the justice conference of the ministers of justice in 2005.

4. The context of quality management

Quality management in the Courts of Lower Saxony does not have a specific legal basis. It is directly connected to the political and financial circumstances of the government of Lower Saxony, where a lack of resources has been dominant. The efforts in the Courts in Lower Saxony are born out of a need to work more efficiently; within the organizational setting and legal culture of the Lower Saxony courts this also involves special attention for content quality. The point of departure is therefore that improving efficiency is worth while as long as it goes not to the detriment of the quality of the legal and professional services delivered by court staff and judges.

The civil servants of the Ministry of justice said:

²⁵⁹ Conference 14 December 2005.

²⁶⁰ Elmar Herler, die neuen Pensen, 11 April 2004

²⁶¹ Horst Eylmann, Christian Kirchner, Rolf Knieper, Hartwin Kramer, Thomas Mayen
Zukunftsfähige Justiz, *Strukturreform durch Konzentration auf ihre Kernaufgaben*, Hanover, 2004

“The policy issues in Lower Saxony evolve around communication processes and quality management. This does not regard large structural changes. Regarding the quality management, a development has started where we try to compare key numbers of the justice administration, and to see if we can improve on quality and efficiency of processes, especially initiated and controlled by the OLG’s, because they fulfil administrative and control functions on the Landgerichte and Amtsgerichte.”

Since 2005, the amount of new cases brought before the courts appears to have slightly decreased within the ordinary jurisdiction.²⁶² It appears to be difficult to increase the productivity of the courts, considering a small decrease in productivity in 2007 compared to 2005 and an almost equal number of employees.²⁶³ An explanation may be the increasing complexities of society, internationalization included.

How was the quality system introduced in the judicial organization and in the courts? Who did it?

The project started in 2002, when the superior appeal courts in Lower Saxony decided to follow the suggestion of the organisation departments of these three courts. They had assembled their experience with quality management in the years before 2002, and wanted to develop a concept of quality management that would fit the courts in Lower Saxony and would have the support of stakeholders in the justice system, especially the judges and the ministry of justice, but also others interested in the judicial process, court staff in particular. The project team wanted to discuss the different working methods in the courts, and to develop a flexible system in which everybody involved could profit and learn.

But in order to be able to effectively do this, the project team has actively sought for the consent of the judiciary, the court staff and the Ministry of justice in Lower Saxony. The judiciary(-Richterräte) and the court staff (-Personalräte) in Germany have councils at the courts with a say in the court administration (case distribution), but also with advisory councils at the Ministries of Justice of the States (Haupttrichterrat/ Hauptpersonalrat). They were actively involved to advise on this project and eventually supported this project and so did the Ministry of justice.

Following the theory of organising change in organisations, Mr. Volker refers to the fact that in order to effectuate change, members of any working community should be seduced and persuaded to follow and participate in the change process. In order to do this, generally at the start of such a project, project leaders seek the support and cooperation of the persons most positively inclined towards change. This proved to be very successful in this benchmark project:

“We started doing this in two pilots. One with 6 Amtsgerichte and the second one with 8 Amtsgerichte. It was of great importance to get the support of the Richterräte and the Personalräte on all levels (local, and state-level). Eventually everybody supported this. But we started the pilots by seeking courts which were really willing to contribute to change. . Their efforts and enthusiasm, and of course, the practical outcomes of the first pilots were the engine of the eventual success because they convinced other courts to participate in other content sessions. This stimulated us to come up faster with new content sessions. By the way, in order to have maximum effects on the workloads, we tried to start all this with the content area’s with the largest numbers (for example civil, family, criminal).”

What is the attitude of the judges towards the quality system? And of the court staff?

The judges are generally more reluctant to participate in the process, but court staff are generally very enthusiastic about it. They, and the success of the early pilot projects, together with financial support from the ministry of justice have contributed to the fact that all the first instance courts are participating and that the secondary appeal courts and the superior appeal courts are also starting similar projects for themselves. Mr. Volker explained the success of this project thus:

“You should understand that for the ordinary court staff, this was quite new. Some of them have been working in their court for 20 years, and were never really asked anything. And now they were asked to give their vision on the court, and on the content issues of their daily work. This has enthused and motivated them considerably.”

Q. How did you find the right people to facilitate this work? You need quite special talented persons to perform this job well. It is not easy to accommodate a group session with such large differences in status as between judges, Rechtspfleger, Wachtmeister and other court staff. Mr. Volker illustrated:

²⁶² Übersicht über den Geschäftsanfall bei den Gerichten und Staatsanwaltschaften des Landes Niedersachsen im Geschäftsjahr 2007: see http://www.mj.niedersachsen.de/master/C797458_N1268279_L20_D0_I693.

²⁶³ http://www.mj.niedersachsen.de/master/C797458_N1268279_L20_D0_I693

“As a point of departure, we tried to seek persons with social abilities. We sent them on a training of a few days to develop their skills as organisation advisor. But that was basically it. To date we have experienced that some of these persons are asked to accept leading functions within the justice domain. That is a natural development, because these persons learn to know about everything that can be known about the courts in Lower Saxony. These processes generate deep insight into the functioning of the courts. So we have to deal with changes of personnel. We therefore have developed a protocol for new personnel in our team. They first just participate in a session and next they may assist in facilitating another one. So new personnel are trained on the job.”

“Furthermore, the facilities to gather data from the questionnaire and the right computer-equipment and programming to do this are very important for the success of this project. The team is qualified to handle this. We started with paper forms, but to date we also use online- questionnaires.”

5. Enhancing the use of best practices in first instance courts

In Lower Saxony courts there is not a total quality system operational as e.g. promoted by the European Foundation for Quality Management. The system developed by the Superior Country Courts of Lower Saxony basically aims at making an inventory of best practices of the different proceedings in the first instance courts. This is based on a system of measurements of opinions of persons working in the courts and stakeholders, and on a description of how similar proceedings are dealt with in a specific court. For these measurements benchmarks were developed, in order to make practices between the courts comparable and in order to be able to compare later measurement outcomes with initial ones. The comparisons focused on the tasks of specialized content groups (Fachgruppen) within the court organisations: for Example family, insolvency, inheritance, administration, execution, guardianship, registries, criminal, civil and forced sales. These groups developed their own benchmarks per subject within their domain. E.g. within the group for civil proceedings a subject of inquiry were the proceedings to calculate the costs of proceedings for the parties involved in the case. This has led to the following benchmark for timeliness:

Subject	Quality criteria
The procedure of cost calculations	Average proceeding time in the court
	Calculated from the arrival of the request until the time of sending of the decision on the request
	Measurement unit: days

In this fashion benchmarks were developed, actually 14 for the Amtsgerichte, 38 for the Oberlandesgerichte.. They served as a basis for the exchange of practices which aimed at finding the best solution. This would not necessarily be the fastest procedure, however. The benchmarks enabled the specialized groups to investigate the differences between the courts in the same proceedings. The resulting dialogue would lead to proposals for measures to improve the operation of proceedings in all the courts.²⁶⁴ Matthias Volker explained:

“Next, we would organize a session with the personnel of all the first instance courts in this content area, during a day, somewhere in the country where it is logistically the most efficient. The aim of such a session is to come up with an exchange of doing things the most efficient. Of course, this is not only about choosing to do things in a way that cost the least amount of time. We have also to take the quality of the content of the work into account. E.g. it is probably always less time consuming not to hear the parties in person, but sometimes it is better to hear them even twice and to give them time to deliver proof for their statements. The aim of the sessions is to look for the practical ways in which a file and proceedings can be handled in a balanced way considering efficiency and content.

Additional we ask the personnel of every court to fill out a questionnaire focused on the satisfaction with its working conditions.

We also ask the stakeholders (citizens, lawyers, others) to comment on their contentment with their court. In this way we can make a comparison between the different courts in our district. All results of the questionnaires are discussed in local workshops with interested, interviewed persons.”

All these identified “ best practices” (recommendations) are communicated to all persons of the other instance courts involved in the same specialized group. After considerable time (2 years), a new measurement is being held on these proceedings in the courts participating in the project and a meeting is organized to show the results of the intended adaptation processes. The outcomes are presented, and the differences between the first instance courts are shown to participants. And although this does not result in a formal ranking of the

²⁶⁴ Based on: dr. M. Volker, Quality management in the ordinary jurisdiction in Lower Saxony, October 2007

courts, this functions as a good stimulus for the first instance courts to come up with specific improvements, as no one wants to show bad results at the second measurement.

6. Relation between the Benchmark project and the court-management

The system of measurement of court performance in accordance with the outcomes of content group meetings results in a realization of the most of the recommendations (nearly 80%). But it is also possible that a court with a good performance at the first measurement appears to have fallen behind in comparison with other courts.

All this of course is information that is to be shown to the court management. So they need to improve themselves. Mr. Volker clarified:

“Anyway the results of the first measurements are shown to the participants in a content group and are also shown to the Courts’ leadership. So they get an impression how they perform in comparison to other courts. Also they are informed on how other courts do handle a certain type of file; organize a court hearing and so on. This then is debated during the session. Also sometimes new proposals are developed to improve a certain task. As I said, the outcomes of the sessions are communicated to the participants (and the courts’ leadership), in the form of recommendations with an exclusively advisory status. So, no force whatsoever is exercised. And after considerable time (a few years), we come up with a second measurement. And then it shows if a court has changed its ways for that content or that it has been quite conservative, or may have thought: well, we perform well enough; we do not have to change anything. Because that shows! Sometimes the court that performed the least in the first measurement comes up first in the second measurement, just because they worked very hard to improve themselves. No one wants to be the worst in these comparisons”.

7. Quality management and the central court administration

Quality management was a central aim in the proposals for a large justice reform, and therefore can be seen as a part of the strategies contained in these proposals. Nevertheless it is a project that is put into practice by and for the courts within the districts of the superior appeal courts.

Is there a relation between the quality system and the financing of the courts? How does it work?

There is no direct relationship. The Superior appeal courts of Lower Saxony started to develop this benchmark project out of the financial need to work more efficiently. The courts did not receive enough money to fill vacancies that under normal conditions would be considered necessary to deal with the work demanded from the courts.

We then asked if there is any interaction between the court-management and the central level going on to effectuate outcomes on central level and outcomes on the court level? This appeared not to be the right. The aim of the project is not to cut back expenses but to improve the functioning of the courts.

The point of departure in the court system of Lower Saxony is the autonomy of the judges (Artikel 97 Absatz 1 Grundgesetz) and of the bailiffs (§ 9 Rechtspflegergesetz) in their decisions the current benchmark project is based on this perception of autonomy, as Mr. Volker explained:

The relation between the courts and the ministry of justice is not the main concern for our project-organisation. The ministry has supported this process with some special funds because of the innovation of public administration. The OLG-courts must report on the functioning of the quality-management projects in their district. . For our quality management, we are certainly not going to give all the data to the ministry of justice. This is the domain of the autonomy of the courts and we use these data to help the courts develop best practices. They are not intended to base a certain central policy on. Nonetheless, sometimes outcomes of content sessions indicate that several regulations are unnecessary complicated and if our Land can do something about it we may give or be invited to give some advice. An example of this is e.g. the regulation on how files are stored at the court. Originally they contain the judgment somewhere in the middle of a large heap of papers. We are obliged to store the files for at least for 5 years, except for the judgment, which we must up to 30 years. So not storing the judgment in the file but separate from it spares a lot of work of sorting the judgment out of the file when we want to dispose of the file after 5 years.

Are there special court regulations on quality management?

No.

Is there a form of inspection and control on the quality system? By whom and how?

This does not apply. The Ministry of justice is, of course interested in improving the functioning of the court system, and therefore supports the quality project, as the civil servants interviewed explained:

“The comparison is also focussing on the internal administrative structures of the justice organisation. In Lower Saxony we are experimenting, especially in OLG Braunschweig, with a management information system. But this is not for strategic controlling purposes.”

Do you have any competences to correct malfunctioning of court-administrators or presidents?

The civil servants of the Ministry of justice said:

“We have a planning and control procedure and if it shows that something goes wrong or there is an indication that this might be the case, we have good instruments to stimulate timely corrections. It is never necessary to do this brusquely. We do not really take the lead in organisation development in the courts; we just try to support the processes that are actually going on in the courts. We think that changes should occur voluntarily. We are aware that the motivation of the judges, Rechtspfleger and the court staff is essential for the development of improved working methods in the courts. Therefore we are very reluctant to use the data generated in the process for political purposes. This would hinder the development in the courts, as the co-workers in the courts would no longer be willing to participate. Frankly, there is no need to know everything that goes on in the courts. So we will not get precise data on how co-workers evaluate their court management. To use these data is up to the courts themselves. Other data, on how to deal with certain issues (e.g. case management) are shared with all the courts.

We will never use management controlling instruments to interfere with the judicial work. That would be unconstitutional, and we take that border most seriously.”

Can the court involved be seen as an operational learning organisation? And the judicial organisation?

Q. How do the court-organisations follow up? Would you favour the development of standards for the courts?
Mathias Volker clarified:

Well, they report back to us what they actually did. And we have been quite successful. Not only do all the Amtsgerichte participate to date, but we are planning to go ahead with this with the Landgerichte and with the Oberlandesgerichte. It shows that about 80% of the recommendations are actually being used in the courts. For us this means we are quite successful so far.

After the second rounds per content-area, we are almost ready to write “standard protocols” for these areas. After two rounds the most relevant best practices have been identified. But it is still the responsibility of the courts themselves to realise the recommendations.

The civil servants of the Ministry of justice said:

“That is not an aim. The courts conduct their administration already in a quite uniform way. They all use the same case-management system. So basically, we are only involved in optimization of the functioning of the courts. For regular planning and control we have areas where we measure court activity. This is an indication for the needs of the courts for money, but the work of the courts is also focussed on content quality. Money is important but it certainly is not the only thing. From this perspective we are not so much interested in standards but more in guidelines. The courts should follow guidelines voluntarily.”

Q: Any further strategic views on your projects ?

Matthias Volker:

For the time being we have enough to continue with, e.g. the court administration, court management and so on. But it is true, after two rounds in the same content area, there actually is not so much left to improve. Anyway, many courts in other German states are copying our processes, so we are exporting our court improving process.

The answer to the research question is positive. Both the separate courts and the court-organisations within the district of the administrating superior appeal court appear to be learning and improving on their functioning.

8. Repeating the benchmark process across the borders of German states²⁶⁵

Benchmarking of courts performances in different fields of court activity is also applied to the superior appeal courts, and to courts across borders of the German states. This is a consequence of the agreement in 2005. Three circles of comparison have been established across state borders since that time, for 11 superior appeal

²⁶⁵ This paragraph is based on: Mathias Volker, Michael Kalde, Ralf-Günther Lüpkes, Qualitätsmanagement der Oberlandsegerichte, Deutsche Richterzeitung, Oktober 2008 p. 269-271.

courts, for large first instance courts and for central debt collection courts (Mahngerichte). They have proceeded in a similar fashion as the benchmark projects for the first instance courts in Lower Saxony. Initial researches and meetings have led to establishing 18 administrative benchmarks and 38 benchmarks for court hearings and jurisprudence. These were used as the point of departure for the discovery of best practices for each of these subjects in specialized workshops. These workshops aimed also at improving vested practices. It appeared that the initial and later processes of discovery of best practices, initial performance measurement and secondary performance measurement as developed in Lower Saxony was also applicable to Superior appeal courts in other German States, like those of Cologne, Brandenburg, Jena, Schleswig, Düsseldorf, Bremen, Naumburg and the three superior appeal courts of Lower Saxony. The initial objections of local differences appeared not to be prohibitive for a successful benchmark project.

9. In conclusion

The benchmarking project of the courts in Lower Saxony and beyond has been very successful so far. The explanation of this success may be as follows:

- The circumstances were pressing as the courts were running short of money and therefore of personnel, and therefore the superior appeal courts were motivated to start the benchmark project.
- The courts have a good working relationship with the ministry of justice; the ministry of justice respects the (constitutional) autonomy of the judges and bailiffs .
- The advisory councils (Richterräte / Personalräte) were consulted at all organisational levels, before the project started, and hence judges, bailiffs and court staffs did not resist the projects.
- The quality project and its outcomes typically are court-owned; this is well respected by the ministry of justice.
- The project management had a great deal of autonomy and the skills to develop and execute the project. They looked for the courts and court managements with a positive inclination towards change.
- The initial success of the projects in they courts in Lower Saxony enabled courts from other German states to borrow the process as developed in Lower Saxony and this proved to be successful.

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V QUALITY MANAGEMENT IN THE JUDICIAL ORGANISATION IN THE NETHERLANDS

Philip Langbroek

1. Introduction

Quality management in the Dutch judicial organization is not a matter of the separate courts alone. It is a nation wide, organized effort to enhance the organizational functioning of the court organizations, involving both judges and court staff in the process. It is a peculiarity of the system described below, that it is directly linked to the system of financing the courts. The designers of the modernized judicial organization deliberately wanted to counterbalance the economizing impulses of the financing system.

In this report I first describe the legal and organizational context of the system of quality management. Next I summarily describe the Dutch Judicial system. In the following paragraphs I will focus on the current system of quality management, its development and introduction into the Dutch courts and the on the outcomes of its evaluation in 2006, followed by a paragraph on the latest developments since then.

I will conclude this paper with some comments and remarks on the findings.

2. Judicial System

The Dutch judicial system consists of 19 district courts 5 appeal courts with a court of cassation. The ordinary courts deal with civil, criminal and tax cases. The 19 first instance courts also have the administrative jurisdiction within their districts. Next to that, specialised administrative single appeal courts exist for agricultural and industrial relations, and for environmental and land planning cases. For social insurance cases appeal can be lodged at the Central Appeals Tribunal, and for most other cases appeal can be lodged at the judicial division of the Council of State (not a part of the judicial organisation).

Each district court has a sector for small claims/small crimes, for civil cases, for criminal cases and for administrative cases. Within the civil law sectors specialized divisions may be set up for trade and family cases. Within these sectors and within these specialized divisions further specialization in chambers is possible, e.g. for juvenile crime, bankruptcy, social insurances, environmental, health care etc, depending on the size of the courts.

The Dutch judicial organisation dealt with 1.827.620 cases (incoming and cases decided) in 2008, with a total of 2.397 judges and 5.690 court staff.²⁶⁷ First instance courts vary in size between 30 fte judges (and about 180 court staff) and 176 fte judges and 531 fte court staff.

The courts are managed by a management board, consisting of a director of court management, a court president and the presidents of the court sectors. The district- and appeal courts are supervised by the Council for the judiciary, to which they are financially and organisationally accountable. The Council for the judiciary allocates funds to the courts in accordance with their production, but also enhances the organisation development of the courts and the judicial organisation as a whole.

The Public prosecutions department is disconnected from the judiciary and public prosecutors do not have the same independent status as judges have. The minister of justice may give them instructions in a concrete case. They are managed by a separate body, the College of Procurators general.

3. Legal and organizational contexts

The courts are instituted separately based on statute act; and also the Council for the judiciary is thus constituted. They are as public bodies a part of the Dutch state. They are not legal persons as defined by the Dutch Civil code; so they merely act as organs of the Dutch state.

Quality management in the courts is a responsibility of the courts' management boards prescribed by article 23 of the Judicial Organisation Act. It also is the task of the Council for the judiciary to enhance quality in the courts. Quality management is directly related to the output based system of financing of the courts. For that matter the quality management in Dutch courts is intended as a counter balance against financial pressures to enhance efficiency, in order to safeguard organizational and juridical quality in the functioning of courts and judges.

Quality management is institutionally embedded in the entire judicial organisation. The management boards of the courts have a duty to report production, efficiency and organisation quality to the Council for the judiciary. The Council for the judiciary has a double role: it is the agency controlling the court-organisations, but it also the

²⁶⁷ Annual Report 2008, p. 74.

agency that facilitates organisation development within the courts and within the judicial organisation as a whole. The Council for the judiciary presents itself as “de Rechtspraak” (The Administration of Justice), referring both to the judicial activity of hearing cases, judging *and* its organizational setting. By its logo, its letterheads and the website www.rechtspraak.nl, it presents the Dutch judicial organisation as *one* organisation where the separate courts are parts of a larger whole:

This does not necessarily represent the views of the management boards of the courts, but they do not have much of a choice in this.

Judicial independence is, of course, a constitutionally preserved norm in the Netherlands both by the Dutch constitution and the European Convention for Human Rights. It is essential to understand that the Dutch constitution especially enables provisions of international treaties that create rights for citizens may take direct effect into the Dutch legal order. The rights to an independent and impartial judge and to a fair trial within a reasonable time, as states in article 6 of the ECHR are such rights.

The tension between organizational accountability and judicial independence

In the Dutch Judicial organisation act the tension between organizational responsibility & accountability and judicial independence & accountability is stated as follows: The management boards are not allowed to interfere with judicial case management or with the content of judgments in concrete cases or categories of cases (article 23, subsection 2). However while performing their tasks of enhancing juridical quality and consistency of judging the management board may not interfere with concrete cases only (article 23, subsection 3). According to article 96 the same restrictions apply to the competences of the Council for the judiciary. In other words, based on their organizational responsibilities they may steer their organisations – including the judges - regarding juridical quality and consistency of judging. To put it more sharply: juridical consistency and juridical quality of judgments in general fall within the steering competences of organizational and managerial authorities within the Dutch Judicial Organisation.

4. How was the quality system introduced in the judicial organization and in the courts. Who did it?

Organisation development takes time and in it may take years, also in the public sector and in the courts. Considering the pace of change in society during the last 25 years it may be considered as a permanent process. It does not go by itself but it needs steering and strategic capacities, intensive cooperation between interested parties in fields that are often complex, investments in buildings and equipment and training of personnel and next to that ordinary service provision must continue. Furthermore, organisation development is not an aim in itself. The organisation development of the Dutch judicial organisation is no exception to that.

The situation before change evolved

By the beginning of the 1980ties most Dutch courts were badly housed, there was not enough space for files and judges, and basically the legal framework of the courts consisted of legislation drafted in the early 19th century. Courts were to be considered as formal institutions rather than as organizations.

In organisational terms this meant that the court administration was organised in a central department at the Ministry of justice and 19 territorially organised districts. These district organisations, in Dutch called “*arrondissement*” - referring to the French origin of the justice organisation in the Netherlands, served the courts and public prosecutions offices with buildings, security, and clerical staff. For example, in the district of The Hague, the ‘*arrondissement*’ served the The Hague Appeal Court, the Hague District court and 5 small claims/small crimes courts. In the same district, the Industrial Relations Appeal Tribunal was a specialized administrative appeal board, administered by the ministry of economic affairs - as most departments had their own administrative appeal boards, with its own set of rules of procedure.

Judges were appointed for life. They had their own legal position, and only the courts’ president could sanction a judge negatively in case of misbehaviour, or recommend dismissal by the Supreme Court; or recommend a judge for a career move. For the court, the assembly of judges was the highest body; they had to approve of organisational decisions, e.g. regarding the scheduling. Of course there had to be some kind of cooperation with court staff, but this cooperation was not very well developed.

During the eighties and nineties, societal needs and demands for justice increased. A gradual increase in numbers of cases, an increasing legal complexity, growing backlogs and delays, the constant pressure from the press and politics, criticism on the elitist character of the judiciary have been factors that played a role in the public debate on the judiciary in the Netherlands since the early 1970ties. Since 1985, when the ECtHR in Strasbourg condemned the Netherlands’ system of administrative appeals as contrary to the demand that courts and judges should be independent, change policies played a major role in the Dutch judicial organisation.

First of all, plans were made to modernise the system of administrative law and the system of legal protection in administrative law. This resulted in the General Administrative Law Act in 1994 and the introduction of

administrative court sectors at the district courts. The specialised administrative courts like the Central Appeals Council, the Industrial Relations Appeals board and the Students' grants and loans appeal board were administratively transferred to the justice department.

In 1989 a building program for the courts was initiated. This building program was quite autonomously drafted by the National Building Service, as a consequence of the poor condition of most court buildings. This building program has resulted in new court-buildings in most of the districts. The newest court building was delivered in 2002 in Utrecht. The consequences for the organisational functioning of the courts were considerable, as court rooms and offices for judges and court staff were combined in well designed buildings, and working at home for judges no longer was a necessity. This building program may be considered a happy coincidence with the change process in the judicial organisation, as it probably has created good conditions for success of the organisation development in the court-organisations during the last 15 years.

Judges and management responsibilities

From the beginning of the 1990, the Ministry of justice had tried to stimulate organisation development in the courts by attaching to the district courts and the appeal courts a 'director for the court administration'. This functionary would work exclusively for the court organisation, in close cooperation with the courts' president, but was formally embedded in the ministerial district organisation, the '*arrondissement*'. Because good cooperation between this manager and the court president and the chairs of the different court sectors was not self-evident, and sometimes appeared to be very difficult, the term 'Integral management' was launched, expressing that organisational and judicial responsibilities had to be combined, as they are inevitably intertwined. Thus the management of the courts was as a matter of fact done by this director, the court president and the chairs of the court sector together, in a board. But this board had no formal competences. The financing system was based on a classic input budgeting method; presidents had to go to the ministry of justice to ask for more resources when necessary, but the ministry of justice had not a good insight in how well or how bad courts were functioning. Court efficiency could not be exactly estimated. At the same time judges complained about the involvement of the ministry of justice in what they considered as 'their' affairs, via the director for the administration of the court.

Starting the change process

From 1994 to 1996 a parliamentary committee evaluated policing against drugs related crimes, and revealed that the public prosecutors office and the police had violated major rules concerning the gathering of evidence. This also had an indirect impact on the judiciary, as an outcome of that parliamentary inquiry implied that especially the examining judges in the pre-trial phase and the courts had trusted the evidence presented by the police and the public prosecutions office too much. The Public Prosecutions Office went through a major reform as a follow-up of this inquiry, but the courts were left in peace.

Nonetheless, a group of judges took the initiative, with the support of the ministry of justice, to start a change process. As one of them said: "if we would not have done these ourselves, others would have done this for us and over our heads". She understood the judiciary is not beyond political scrutiny, but it would harm its position within the state and society immensely if it would be scrutinized politically. This movement (called *ZM 2000 - Judiciary 2000*, and later: *Toekomst ZM - Future of the Judiciary*) resulted in several outcomes.

First, the judiciary came to the conclusion that they should engage in a process of organisation development, in order to be able to handle the complexities of the work of judges and courts in today's society. Second, the ministry of justice set up a committee to advice on the governance structure of the judicial organisation and the courts, and at the same time (1997) another committee came up with an advice for an output-based financing system for the courts. The judiciary was represented in both committees, but basically they were advising the government. The reports of these committees in 1997 and 1998 respectively were at the basis of the major changes imposed by the Judicial Organisation Act per 2002.

The four years between the presentation of these reports and the introduction of the new governance structure of the courts were not only used to prepare the change of legislation. This time was also used to transform the readiness of judges and court leaders into an actual change program, called the Judicial Organisation Reinforcement Project (PVRO). This project organisation mobilised judges and court staff for several projects on subjects like: the management structure of the courts; quality management, personnel management, knowledge management, the cooperation between judges and court staff, and last but not least, the management of the unity of law by the judicial organisation nation-wide *and* within the courts. Many of these projects - as far as not completed - were taken over by the Council for the judiciary after its installation in January 2002.

All in all the change process and the introduction of quality management originally evolved bottom-up but was supported and taken over by the ministry of justice and led to a new judicial organisation act. The actual

development of the quality standards in the quality system was based on PVRO projects. The outcomes of this were at the centre of the quality system that was developed and implemented in the courts between 2002 and 2007. The courts are at liberty to operate quality standards according to fit with their own particular organisation.

Overall the bottom-up change process, especially regarding the enthusiasm of several courts for quality management as a tool to enhance their autonomy and their organization development was caught in the national organizational framework of the new Judicial Organization act with uniform production and quality measurement systems as sources of information for the annual and multi annual planning and control cycles under the assistance, guidance and control of the council for the judiciary and, last, but not least, by the ministry of justice as controlled by the ministry of finance.

5. The system of quality management at hand 'RechtspraakQ'

Quality management is a general legal responsibility of both the Council for the judiciary and of the management boards of the courts. The management boards of the courts have to report each year to the Council for the judiciary and the Council for the judiciary must report each year to the ministry of justice.

Quality management was introduced to several courts already by the initiative of judges before the current judicial organisation Act took effect in 2002. During the years 1998, a special organisation was installed, the 'reinforcement of the judiciary project' (Project Versterking rechterlijke organisatie –PVRO). Apart from projects on organisational design of the courts and juridical consistency of case management, it also organised a project on quality management in the courts. After the new act took effect, these projects were adopted by the council of the judiciary. Since then, the council has gone through considerable efforts to develop the system of quality management in the Dutch judicial organisation and within Dutch courts.

Quality management in Dutch courts is based on the EFQM model²⁶⁸. The EFQM model has nine areas of attention that are based on the day-to-day practice of business operations, namely:

- 1 leadership
- 2 strategy and policy
- 3 management of staff
- 4 management of resources
- 5 management of processes
- 6 customers and suppliers
- 7 staff
- 8 society
- 9 management and finances

In essence the model enhances organisation development by defining different stages of organisation development. Interactions within the organisation and between the organisation and its societal environment and the way they are conducted monitored and followed - up upon are crucial for the organisation development. According to this model there are five stages of organisation development, and the courts and the Council for the judiciary strive for reaching level 4-5 in the next few years. In order to get more grip on organisation development for the management boards of the courts and the Council for the judiciary, they have added an extra factor to the EFQM list: 'improvement and innovation'.

The system of quality management of the Dutch judiciary is called 'RechtspraakQ'. It distinguishes between different functions: the normative function, the measuring function and 'other' elements. These other elements are the complaints procedure and peer review. The normative function consists of quality regulations of the courts and the judicial performance measuring system; the measuring function consists of court-wide position studies; client evaluation surveys; staff satisfaction survey; peer reviews and audits.

The crucial question in quality management always is, who is going to use the information generated by it? The answer is mixed. RechtspraakQ is not intended to be a management information system only. It is meant to be more than just that. It also is a tool for judges and the court organisation to generate feedback on their functioning. For the purpose of feedback to the Council of the Judiciary, to the management boards of the courts and to court staff and judges, performance has to be measured. The way this is actually operated is laid down in the quality regulations of each court.

²⁶⁸ See: www.efqm.org

6. Quality Regulations

Each court and each court sector has its own quality regulation, based on a standard set provided for by the Council for the judiciary. These standard sets were developed bottom up by judges from the different courts. Each court can vary the way in which its quality regulations are formulated and operated. These regulations state what the court should focus on. E.g. training and education, or on comporment, based on the outcomes of measuring of judicial functioning, but not how they should do it. They are not fixed. If circumstances change the regulations also change. One of the outcomes of the evaluation of the judicial organisation act was that judges had been stimulated to enhance productivity primarily and therefore neglected training to keep their knowledge up to date.²⁶⁹ Therefore training of judges has become a permanent issue from a quality management perspective and was inserted into the quality regulations.²⁷⁰

Measuring judicial functioning

Judicial functioning is measured on the levels of the court and of the court sector. It contains five areas of measurement with an ordinal system of points:

- impartiality and integrity
- expertise
- treatment of litigants and defendants
- legal unity (sentencing consistency)
- speed and promptness

E.g. the factor impartiality and integrity is operated as: sideline-jobs, (successful) challenges of judges, procedure of case assignment, complaints regulation, policy on deploying substitute judges, and deployment of substitute judges as a proportion of the entire judicial workforce in the court. E.g. Complaints regulation is normatively described as:

- 1 there is no complaints procedure in existence.
- 2 There is a public complaints procedure.
- 3 Litigants are informed of the existence of a complaints procedure.
- 4 Whether the complaints procedure is operating adequately is checked systematically and periodically.
- 5 Annual report on compliance with and operation of the complaints procedure

The situation in a court concerning the complaints procedure is measured by means of an audit. The challenges of judges are measure by means of registration. This is about the number of challenges and the number of successful challenges. The results give the sector chair and the management board of the court an indication on how judges and their staff perform in these fields.

Measuring Instruments

The measuring instruments focus on the performance of the courts and on the perceptions of customers and personnel. The performance of the courts is measured according to the EFQM model; this is done every two years by the management boards of the courts. The management boards of the courts analyse the position of their court every two years, in accordance with EFQM standards. The outcomes are input for strategic decision making.

The courts perform every four years a staff satisfaction survey. This gives staff members the opportunity to state their experiences with their own organisation.

The courts also perform every 4 years a customer satisfaction study. Customers are asked their opinion on the services of the court, including e.g. comporment of judges, comprehensibility of judgements and consistency of judgements, timeliness of court hearings etc.

Also the court performance is audited, and finally the courts are visited for peer review every four years by persons from outside of the courts. E.g. a law professor, an advocate and a public prosecutor. For the recent evaluation study, a peer review committee organised visits in 10 of the 26 courts of the actual judicial organisation. They evaluated these courts on the aspects of the quality system and found quite positive results, but, like the evaluators of RechtspraakQ, found that the interrelatedness of the different quality factors was not

²⁶⁹ Miranda Boone, Philip Langbroek, Petra Kramer, Steven Olthof, Joost van Ravensteyn, Financieren en verantwoorden, het functioneren van de rechterlijke organisatie in beeld, BJU, The Hague 2007, p. 173-178.

²⁷⁰ The Agenda van de Rechtspraak 2008-2011 formulates 4 aims: reliable judging; expert judging, effective judging and courts in society. See: <http://www.rechtspraak.nl/Gerechten/RvdR/Publicaties/Agenda+van+de+Rechtspraak+2008-2011>

taken for granted in the courts, and that quality apparently was seen to be a responsibility of the management boards mainly.²⁷¹

Other instruments

Peer review is an instrument to help colleagues to improve their behaviour in the courtroom. How does the judge deal with parties and their advocates? An experienced colleague will watch the court hearing and tell the judge his or her observations, possibly, when asked, with some suggestions for change. But peer review is also an instrument to have the functioning and performance of a courts' management board assessed by a team of colleagues from some other courts.

The clients of the courts have a right to complain at the court. Based on article 26 of the judicial organisation act the management boards of the courts have adopted a complaints regulation, operating a standard provided by the Council for the judiciary. Complaints may concern the entire domain of the courts' functioning, but the judicial domain related to the content of the hearings and the judicial decisions are exempted from that. Not a lot of complaints have been filed so far²⁷², but the internal complaints system is functional. For the external complaints proceedings (if a client is not satisfied with the outcome of the complaints treatment, he may file a complaint at an external instance) to date still the Procurator General at the Supreme Court is the complaints instance, whereas plans to attribute this competence to the Dutch National ombudsman seems to remain frozen.

Complaints are generally dealt with by the courts' presidents, by mandate of the management board. Complaints are registered and the courts have to report about the complaints and the outcomes of the inquiry following the complaints to the Council of the Judiciary in their annual reports.

All in all, quality management is to be considered as an integrated part of the national and local planning and control cycles. 'Rechtspraak' potentially has strong built-in correction mechanisms, especially the system of external visits to the courts for peer review on the actual functioning of a court. Last, but not least, to exercise control on the functioning of the courts, including their quality, is an assignment to the Council for the judiciary.

The relation between the quality system and the financing of the courts

One of the features of the Dutch judicial organisation is that the Council for the judiciary and the courts are not autonomous legal persons. They are legally a part of the organisation of the national state and their finances are a part of the ordinary financial accounting system under the Financial Accountability Act. The Order in Council on the finances of the courts therefore is of great importance for the relation between the Council for the judiciary and the courts, and for the position of the Council towards the Ministry of justice. It arranges for the Financial management of the Judicial Organisation and it prescribes the operation of a system of quality management in the courts.

During the years 2002- May 2005, the new accounting system was introduced into the courts. The system of production measurement and related budget allocation was not put into effect until the last date, even although measured production showed huge increases during 2003-2004. It was actually and finally implemented in May 2005. From input orientation the financing system was changed to output orientation, and of course this affected the functioning of the court organizations deeply.

According to the new financing system the separate courts and the judiciary as a whole receive money in accordance to the production of cases in the year previous to the budget year. A small part of the budget, however, is allocated lump sum, in relation to special projects and special costs for court-proceedings (e.g. hiring experts by the courts).

According to the output oriented system, the courts' production is measured in 49 categories of cases. To each of these categories an amount of minutes (time units) is attributed, meaning the average court time necessary to handle such a type of case. This amount of minutes is based on workload measurement to be repeated every 3 years. So, the annual production of the courts is measured in the numbers of minutes (time) spent. This system requires a reliable production registry and accounting system in the courts. Therefore, the money the separate courts are entitled to is: number of cases per category x minutes per case x minute price.

The Council for the judiciary receives money from the ministry of justice (as a part of the budget bill for the ministry of justice) according to the aggregate production of all the courts together. In the relation between the Council and the Ministry of justice, the number of categories has been reduced to 11 categories, but in the relation between the Council and the courts, the 49 categories remain. For these 11 categories the Minister of Justice sets the price per minute every three years.

²⁷¹ Rapport Visitatiegerechten, Den Haag 2006, p. 63-65.

²⁷² 1.094 in 2008 (jaarverslag 2008, p.77

A budget rule is that each court may have a reserve capital of maximum 5% of its annual budget. When they have earned more, this extra money flows back to the Council for the judiciary.²⁷³

The quality management systems' designed role is to counterbalance economizing influences from the financing system in the court organizations. The Judicial Organisation Act and the Order in Council on the Financing of the Administration of Justice prescribe a quality system. Article 13 of the Order in Council states that together with workload measurement, considerations of efficiency and considerations based on the outcomes of the quality system should determine the minute price of each of the 11 product groups to be set every three years by the minister of justice. The way in which these considerations actually do lead to minute pricing is not entirely clear, as the outcomes are based on an immense flow of information from the courts to the Council to the Ministry, and on 'budget – negotiations' between the ministry and the Council for the judiciary and the necessary exchange of information. Of course the room for the ministry of justice in this regard is limited, as within the framework of the Financial Accountability Act, the Ministry of Finance is quite powerful in accounting controls and budgeting negotiations, also for the part of the Judicial Organisation. However that may be, the outcomes of the quality measurement play some but not explicitly determined role in the budget and planning & control cycle of the courts and of the judicial organisation at large.

Evaluation of the Quality management system 'RechtspraakQ'

During the evaluation of the Judicial organisation Act in 2005-2006 a special report was drafted in which the quality system was evaluated. The outcome of this evaluation report was that the quality system was functional, and contributed to the improvement of the functioning of the quality of the courts. However, there were two major criticisms on the actual management of quality in the courts and by the council.

First of all, the researchers experienced that efficiency and timeliness in the court organisations were considered and treated as subjects separated from quality management. This finding was in line with the outcome of another evaluation study, stating that the management boards of the courts made the impression they had 'went for the money' in the first few years of the judicial organisation act. This could be derived of the increase in production and the fact that shortly after the introduction of the new financing system in 2005, by the end of 2006, 9 out of 26 courts had a financial reserve larger than 5% of their annual budget²⁷⁴.

Second, the evaluators also noted that quality management was predominantly perceived to be an issue of the management boards of the courts and not of the shop floor.²⁷⁵ It actually functions predominantly as a management information system, even although there is some commitment of judges and court staff.

Based on the evaluation studies and on an update of policy documents of the council for the judiciary I can say that the quality system of the judiciary is functional, and supported by at least the management boards of the courts and their staffs. Judges are aware of the system of quality management but are also highly aware of the considerable efforts necessary to monitor the different aspects of the quality system. A complaint was related to the financing system, as many of the interviewed showed concern for the fact that the management seemed to be interested predominantly in quantity and timeliness. They felt the council for the judiciary ignored the aspect of juridical quality in the courts. This feeling probably also was fed by the fact that in the years of organisational change up to 2007, several major (alleged) miscarriages of justice occurred: the Schiedammer park murder, the Lucia de B. case, and the Deventer murder case. These cases have been extensively exposed and debated in the media and no doubt judges felt themselves vulnerable under public and academic scrutiny. The evaluation study, however did not indicate a causal effect whatsoever between the change processes and the (alleged) mistakes. From the public debate emerged the finding that Dutch judges are not prepared to adequately evaluate the newest forensic technologies as an element of legal proof (in criminal proceedings). The council for the judiciary has taken measures to improve judicial skills and knowledge necessary to enable them to adequately review and assess forensic evidence. This involves a major effort to improve knowledge management in the courts.²⁷⁶

Relation between RechtspraakQ and Evaluation studies in the Judicial Organisation Act

It should be noted that 'RechtspraakQ' as a system for quality management was not fully developed and introduced yet in 2005; the development and 'role-out' were completed in 2006. This means this system of quality management as such cannot be evaluated as if it was completely functional at the time the major evaluation studies mentioned in this paper were done.

²⁷³ Besluit financiering rechtspraak 2005, Stb. 2005, nr. 55 (Order in Council on the Financing of the Administration of Justice)

²⁷⁴ Financieren en verantwoorden, o.c. p. 232.

²⁷⁵ A. Zuurmond, P. Castenmiller, P. Jörg, RechtspraakQ beoordeeld, Over het kwaliteitssysteem van de gerechten, juli 2006, p. 34-37

²⁷⁶ Programma Strafsector 2010, Deskundigheidsbevordering en Kennisinfrastructuur (2006-2010).

To date, the quality management system is fully functional, but from the broader evaluation studies conclusions can be drawn that it does not affect the juridical aspects of the work of judges. And from the policy developments since the beginning of 2007 after the evaluation studies were published, one can see that these evaluation studies on the functioning of the courts and the Council for the judiciary, and the public debate on supposed miscarriages of justice had a far greater impact than the quality management system. It should be stressed therefore that 'Rechtspraak' so far has had a limited scope and effect compared to the evaluation studies at hand.

Even although the outcomes of the evaluation of the renewed judicial organisation were predominantly positive about the achievements of the Courts and of the Council, the Council for the judiciary has taken responsibility to further develop the quality of the functioning of the judicial organisation, by expressly demanding attention for those aspects in which courts and judges appeared to perform the worst, also from the perspective of recent public debates on judicial performance in specific cases. The reactions of the Council of the Judiciary therefore should not primarily be understood as a reaction on outcomes of quality indicators measurement, but as a reaction to outcomes of the general evaluation studies.

Latest developments

The Council for the judiciary, following up on the outcomes of the evaluation of the Dutch judicial organisation Act, has taken action to improve on the actual functioning of courts and judges. First of all, it has stressed the need to pay a constant attention to juridical quality and legal consistency in judging. Next to that it has started a program to make judges familiar with the latest forensic techniques. And it also has started a training program to enhance managerial abilities in the courts. The council does much more, as it considers the organisation development of the Dutch judiciary as a continuous process.²⁷⁷ So, there is a special program to enhance the clarity of reasoning in criminal judgements²⁷⁸; for quality management, the focus will be on content quality and on the development of expertise in the courts.²⁷⁹ This goes together with a plan to reorganise the territorial jurisdiction of the courts in order to have optimum sized courts with national centres for different kind of expertise (e.g. health damages, environmental damages, intellectual property etc.), together with a flexible deployment of expert judges in the country from their specialised courts). And the courts and the council want to do all this while keeping an open mind for and seeking interaction with 'society'.²⁸⁰

7. Research and development as a source for further improvement of the administration of justice.

I want to point out that the council for the judiciary spends a lot of money on research for the courts. This enables scholars like myself to participate in and contribute to the continuous process of judiciary organisation development. The council for the judiciary publishes the results of the research in Research Memoranda, also available on-line.²⁸¹ For the public debate on adjudication in the Netherlands the Council also publishes 'rechtsreeks'.²⁸² Some of the reports are published in English.

Subjects for research have been e.g. juvenile justice, the consequences of the growth of European law for the judiciary, the gap between ordinary people and the courts, case management and so on. The council expects from these and other researches to be adequately informed for its strategic decision making.

8. Conclusion and comments

The basic question to be answered in this paragraph is: Can the courts and the judicial organisation be seen as an operational learning organisation? The answer to this question is a full 'yes', although there are a few notes to make.

- the quality system 'Rechtspraak' is a flexible system. Its focus areas can be adapted as need may be. Content quality is such a new area. However it still has to prove its functionality from the learning organisation perspective, as it is fully operational only since 2007
- the evaluation studies of 2005-2007 have had a major impact on the Councils' policy development for the development of the courts. One may praise the Council and the courts' leadership for that flexibility, but it should be noted that the impact did not come from the quality system.

²⁷⁷ Council for the Judiciary, Agenda 2008-2011, July 2 2007

²⁷⁸ Promis I and II.

²⁷⁹ Council for the Judiciary, Hoofddijnennotitie Kwaliteit 2008-2011, March 8, 2007.

²⁸⁰ Rapport Commissie Toedeling Zaakpakketten, Specialisatie, concentratie en kwaliteit van rechtspraak, June 2008 (report on the specialisation and concentration of court cases and quality of jurisprudence).

²⁸¹ <http://www.rechtspraak.nl/Gerechten/RvdR/Publicaties/Research+Memoranda.htm>

²⁸² <http://www.rechtspraak.nl/Gerechten/RvdR/Publicaties/Rechtstreeks/>

- To date, courts and judges are under intense public scrutiny. I can refer to public debates on the introduction of a jury (currently absent) or lay judges; public debates on criminal sentences, and public and academic debates on (alleged) miscarriages of justice.²⁸³

No doubt it is an element of good governance for a judicial organisation to continuously try to improve itself. In order to do so constant internal en external dialogues are a sine qua non. But from the perspective of safeguarding judicial authority too much openness may be counter productive. Also the constant process of organisation development and the inevitable management and evaluation processes that go hand in hand with these dialogues do incite the question how much authority a judge can have in a court room if she has become an object of continuous management efforts. This is the fate of so called 'professionals' in all public services that exercise legitimate power over citizens, and are integrated in the process of answering for their responsibilities.

There is a saying: 'trust comes on foot, but runs on horseback'. In the Netherlands a clear risk of all these necessary efforts is that the general public will see all these efforts as the true and only confirmation of their perception that something is definitely wrong with courts and judges. That may be seen as a risky paradox for public organisations sincerely trying to keep or gain the trust of the general public, whoever that may be.

²⁸³ Ph.M. Langbroek, *Administering Courts and Judges, An exploration of the administrative, political and public accountabilities of the judiciary in a media mediated society*, Utrecht 2009 <http://igitur-archive.library.uu.nl/law/2009-1111-200124/UUindex.html>.

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Cristina Dallara and Jaša Vrabec²⁸⁵

1. The Judicial System of Slovenia

The organization of the judicial system in Slovenia is based on the Constitution adopted in 1991 after the Republic of Slovenia became an independent and sovereign state²⁸⁶. The Constitution of the Republic of Slovenia introduced the principle of separation of powers and defined the task of the judicial branch. In addition to these basic provisions, the constitution determines that judges shall independently exercise their duties and lays out the basic principles on the organisation and jurisdiction of the courts, the participation of citizens in the performance of judicial functions, the election of judges, the Judicial Council, and other relevant principles (Supreme Court of the Republic of Slovenia).

The most relevant change introduced by the Constitution was the creation of the Judicial Council.

During the first years after the independence (1991-1994) there was no comprehensive reform of the judiciary; overall judges held a good reputation in the public opinion and other policy fields were perceived as priorities, for example the economy. However, in 1994, some important laws regulating the functioning of the judiciary were passed: The Constitutional Court Act²⁸⁷, the Judicial Service Act²⁸⁸ and the Courts Act²⁸⁹. The Court Rules were enacted in 1995. Although they were frequently amended and modified, these are still the laws that regulate the organisation and the functioning of the Slovenian judicial system.

Today there are 44 Local courts and 11 District courts and 2 stages of appeal, first to the Higher courts (4) and the second one to the Supreme Court of the Republic of Slovenia. The Supreme Court is the highest appellate court in the state. It works primarily as a court of cassation²⁹⁰. There are also four specialized Labour Courts, a Social and Labour Court, and a Higher Social and Labour Court. In 1998, an Administrative Court was established as a specialized court with divisions in four cities. Formally, the Judicial Council, the Ministry of justice and the presidents of courts shared the main function of the judicial system governance. The courts' presidents, assisted by the personnel councils, manage individual courts while the Judicial Council and the Minister of Justice share the administrative tasks at national level. This mixed system of judges' administration between judicial and political bodies should distribute control and accountability across various branches and institutions.

The 1991 Constitution established the Judicial Council (Art. 130-131) as an autonomous state body. The Judicial Council is composed of eleven members elected for a non-renewable six-year term; five of them elected by the National Assembly on the proposal of the President of the Republic from among university professors of law, attorneys and other lawyers²⁹¹, and the other six members are elected by judges holding permanent judicial office from among their own number²⁹². The Supreme Court elects one member among them.

The position and the competence of the Judicial Council were defined only in 1994, when the Courts Act has been settled out. Article 28 established in fact that the Council shall propose candidates to the National Assembly to be elected to judicial office; to propose the dismissal of a judge; decide on the incompatibility, give an opinion on the status, rights and duties as well as judicial personnel; and exercise other administrative functions (Courts Act 1994). The Italian "*Consiglio Superiore della Magistratura*" inspired the Slovenian Council model.²⁹³ However, unlike the Italian one, more competences remain in the hands of the Ministry or of the National Assembly. From its first establishment, in 1994, the Council worked quite well, it acquired a good level

²⁸⁴ Cristina Dallara has written paragraphs 1,2,4,5,6,7,9 on the basis of the reports prepared by the Cepej contacts following our questionnaire (see Literature and Sources). Jaša Vrabec has written paragraph 3 and partly paragraphs 2 and 4.

²⁸⁵ Jaša Vrabec is legal advisor to the Supreme Court of the Republic of Slovenia, Ljubljana; Cristina Dallara is Post-doc fellow at the University of Bologna, Department of Political Science (DSP), Bologna, Italy.

²⁸⁶ On 23 December 1990, 88% of Slovenia's population voted for independence in a plebiscite, and on 25 June 25 1991 the Republic of Slovenia declared its independence

²⁸⁷ Official Gazette of the Republic of Slovenia, 2 April 1994.

²⁸⁸ Official Gazette of the Republic of Slovenia, 13 April 1994.

²⁸⁹ Official Gazette of the Republic of Slovenia, 13 April 1994.

²⁹⁰ The Supreme Court is the highest appellate court in the state. It works primarily as a court of cassation. It is a court of appellate jurisdiction in criminal and civil cases, in commercial lawsuits, in cases of administrative review and in labor and social security disputes. It is the court of third instance in almost all the cases within its jurisdiction. The grounds of appeal to the Supreme Court (defined as extraordinary legal remedies in Slovenian procedural laws) are therefore limited to issues of substantive law and to the most severe breaches of procedure (Čarni and Košak 2006).

²⁹¹ Two professors, two advocates and one lawyer.

²⁹² One judge of the Supreme Court, two judges of the high courts and three judges of a first level court.

²⁹³ Interview with the Vice-President of the Judicial Council of Slovenia, 2007 April 12th, Ljubljana.

of legitimacy in its relation with both with the National Assembly and the other political institutions, and with the judge's representative.

The Judicial Council is entitled to propose the candidate for the first appointment to the National Assembly. Among other conditions (see Courts Act) the candidates for judges have to be lawyers with the state's law exam, with at least 3 years of work in law after the exam and be at least 30 years old.

The selection process for all levels involves judicial, executive and legislative input. The personnel councils within the courts formulate a reasoned opinion on the suitability of the candidate and send it to the Judicial Council. In electing a candidate, the Judicial Council shall not be bound by the opinions of the personnel council or the Ministry. The National Assembly decides the appointment of a candidate to the position of Supreme Court Judges. The National Assembly has rarely rejected the candidatures proposed by the Judicial Council; this is an evidence of a certain balance between the Council and the Parliament that in other countries has not been yet achieved. Court Presidents are appointed by the Minister of Justice from among the candidates proposed by the Judicial Council. If the candidate is rejected, he/she may request the Administrative Court or to the Constitutional Court to review the decision²⁹⁴.

2. Organizational and legal foundation of quality management in the judicial organization and in the courts²⁹⁵

Although in Slovenia there are no specific court regulations on quality management, there are partial methods of evaluation of judges and courts work, connected with quality management (such as detailed measurements of the case-load and case-flow, standards for the work-load of judges set by the Judicial Council and a specific project, the Lukenda project addressing the problem of judicial backlogs).

These are the laws that regulate the organisation and the functioning of the Slovenian judicial system, containing also some provisions regarding the quality management of the court system:

- **Courts Act**, Official Gazette of the Republic of Slovenia, Nos. 94/2007-UPB4, 101/2007, Constitutional Court decision: Up-679/06-66, U-I-20/07, 31/2008, Constitutional Court decision: U-I-304/07-11, 45/2008;
- **Judiciary Service Act**, Official Gazette of the Republic of Slovenia, No. 94/2007-UPB4;
- **Act on the Protection of the Right to Trial without Undue Delay**, Official Gazette of the Republic of Slovenia, No. 49/2006;
- **Court Rules**, Official Gazette of the Republic of Slovenia, Nos. 17/1995, 35/1998, 91/1998, 45/1999, Constitutional Court decision: U-I-144/95, 22/2000, 113/2000, 62/2001, 88/2001, 102/2001, 3/2003, Constitutional Court decision: U-I-204/99-22, 15/2003, 75/2004, 138/2004, 74/2005, 5/2007, 82/2007, 16/2008;
- **Free Legal Aid Act**, Official Gazette of the Republic of Slovenia, Nos. 96/2004-UPB1, 23/2008.

In 2005 a comprehensive project addressing court backlogs was settled out by the Ministry of justice. This project, named Lukenda Project, includes also relevant provisions for the quality management topic.

On the whole, it could be noted that the quality management of the court system is mainly based on the evaluation of judges' work and linked to career and salary progression. Rule and criteria used to evaluate individual judges' productivity are also applied to monitor the court work as a whole. Court Rules are by-laws prescribed by art. 81 of the Courts Act: "*Minister competent for justice shall prescribe Court Rules pursuant to the previously acquired opinion of the president of the Supreme Court of the Republic of Slovenia*". Court Rules shall determine: the internal organisation of courts, the way of operation of courts in specified types of matters, more detailed rules on the assignment of matters to individual judges, the way of operation in cases when a party, witness or injured party uses his own language and script in court, the organisation and operation of the investigating service on duty, the operation in matters of court management as well as the clerical-technical operation of courts, and the rules on the regulation of other issues when thus provided for by statute.

Courts are required to prepare an annual activity report, concerning: number of incoming cases, number of decisions, number of postponed cases, length of proceedings, and other.

²⁹⁴ Dallara C. (2007), *Judicial reforms in transition: Legacy of the past and judicial institutionalization in post-communist countries*, Unpublished manuscript.

²⁹⁵ Data and information were mainly drawn by the CEPEJ study Gar Yen G., Velicogna M. e Dallara C. (2007), *Monitoring and evaluation of court system: A comparative study*. European Commission for the Efficiency of Justice (CEPEJ) – Council of Europe (http://www.coe.int/t/dg1/legalcooperation/cepej/series/Etudes6Suivi_en.pdf) and by the replies to questionnaire sent to judges and policy advisors in Slovenia. These contacts were provided by CEPEJ.

Each court represents a single report unit, while the common report unit is the Centre of informatics at the Supreme Court of the Republic of Slovenia, performing the following tasks:

- in-time and accurate selection of data from single report units;
- offers professional support to report units
- in-time and accurate transmission of the gathered data to the Ministry of justice.

The courts send the relevant data to the Ministry of justice and the common report unit in the following time-frames:

- until the 20th of January for the fourth quarter of the previous year and for the whole year;
- until the 15th of April for the first quarter of the current year;
- until the 15th of July for the second quarter of the current year;
- until the 15th of October for the third quarter of the current year.

The common report unit reports the gathered data to the Ministry of justice in 5 working days after the time-frames for the reports.

The president of the court shall notify in writing the Ministry of justice and the judges on the operation of the court in the previous year by the 31st of January of the current year. The Ministry of justice publishes the gathered data on its home-page. As in many other European countries statements and policies aiming to introduce quality management tools and standards were initially perceived by judges as a threat for judicial independence. The main issue guiding this debate is that judicial system is not a "profit system" selling products and thus it could be not evaluated in economical and managerial terms. This issue is mainly supported by the Slovenian Association of Judges²⁹⁶.

3. How was the quality system introduced in the judicial organization and in the courts?

As specified, there is no thorough quality system – there are a number of legal provisions covering different aspects of quality. The main act that regulates the position of the judiciary is the Courts Act that has been amended regularly since its introduction in 1994. The essence of the amendments and their goals are presented here briefly, together with the year of the amendment.

The Courts Act (Zakon o sodiščih):

- 1999:

The previous existing provision on the budget for the judiciary (Art. 75) only specified that the annual volume of financial resources for the salaries of judges and other judicial personnel, for operating costs of courts and for the costs of equipment and for providing spatial conditions for courts would be determined in the budget. The new amendment strengthened the role of the Supreme Court, giving it a central role in the preparation of the budget. The new, added second paragraph now stated the following:

The volume of financial resources for the salaries of judges and judicial personnel, and for the operation costs of courts, shall be provided within the framework of the state budget of the Republic of Slovenia for all courts on the basis of financial plans of individual courts at the budget user, the Supreme Court of the Republic of Slovenia. The preparation of financial plans, their implementation and monitoring shall be performed in individual courts. Resources for the work of local courts in the territory of an individual district court shall be planned within the framework of the financial plan of that court, whereby the resources for the work of local courts shall be stated separately. The Supreme Court shall co-ordinate the preparation of financial plans and the consumption of resources by individual courts with regard to their financial plans and aggregately provided resources in the budget. The president of the Supreme Court and presidents of high and district courts are entitled to determine the allocation of resources to individual courts.

- 2000:

The role of the president of the court and of the president of the court of higher instance were strengthened by giving them the power to demand data in connection with the application of statute and examine the files in cases in which a final decision has already been reached, and exceptionally in cases where the final decision has not been reached (Art. 12);

The record of effectiveness was introduced – Art. 28 got three new paragraphs, *inter alia* paragraphs 3 and 4:

The record of the effectiveness of the work of courts shall cover the following data: title of the court, cases in hand, resolved cases, unresolved cases, and total number of cases in progress in the specified period. The

²⁹⁶ See interview with the President of the Slovenian Judges Association; see also replies to our the questionnaire in Appendix.

record of effectiveness of the work of judges shall embrace the following data: name and surname of the judge and data necessary for identification from personnel records, date of taking over the office, date of ceasing the office, number of cases in progress, number of resolved cases, number of cases in which an appeal was lodged, number of confirmed, amended or annulled decisions, data on absences, and other data which assists in determining effectiveness.

Powers of the personnel councils at the courts were transferred to personnel councils at courts of higher instance (Art. 30)

Changes in the organisation of court management aimed at eliminating backlogs were introduced (Art. 60, paragraphs 4-7):

If an increase in the number of unresolved cases occurs in a court as a result of the productivity which is lower than the average productivity of courts of the same type and same instance, or if according to statistical data a backlog is shown in the level of cases in hand in the last twelve months, the president of the court must, in compliance with authorisations under the statute and Court Rules, adopt a program for resolving these cases. Judicial Council shall monitor the productivity of courts, on the basis of data from court statistics.

If, despite the increased productivity and exceeded standards for the expected quantity of work of judges, it is not possible to ensure adjudication without unnecessary delay, additional funds may be allocated to the court for resolving these cases in accordance with the adopted program of resolving. If it is not possible to reduce the number of unresolved cases to a reasonable level with the described measures, the court may increase the job classification and approve additional employment. The Court Rules shall prescribe in more detail suitable records of court statistics by aid of which productivity can be established, and other measures determined for removing backlogs or unresolved cases.

The previous provision regarding the monitoring of matters of court management, which specified that they were monitored by the presidents of the court of higher instance, was amended with the provision that gave the president of the Supreme Court the power to monitor these matters in courts of all instances. The presidents got the power to demand written clarifications and reports on the implementation of specific tasks (Art. 67).

The previous provision specifying that the annual assignment of judges to specific legal fields shall be decided by the personnel council on the proposal of the president of the court was amended with the power of the president of the court to request that the personnel council of a high court decides on the proposal, if the personnel council rejected the proposal (Art. 71). New provisions on the supervisory appeal (that was lodged when a party believed that the proceedings were groundlessly lengthy) were added, stating the rights and responsibilities of the presidents of courts (Art. 72). The amount of financial resources for the informatization of the courts shall be formed and provided by the ministry competent for justice at the Supreme Court (strengthening of the role of the Supreme Court – Art. 75).

- **2004:**

A specific provision regarding the sequence of solving the cases is added, allowing the judge to give advantage to some cases by taking into account not only the time of arrival of the case, but also the type, nature and importance of the case to the relevant parties (Art. 13.a).

A new article addresses the content of the data that are to be posted on the notice board of the court, ensuring a better transparency of the work (Art. 17.a). The new amendment makes it the responsibility of the Judicial Council to adopt the criteria for the minimum expected quantity of work of judges and criteria for the quality of performance of judges for the assessment of judicial service, taking into account in particular the category and gravity of the cases, method of resolving and cooperation of judicial advisers, judicial assistants and other judicial personnel (Art. 28). The minister responsible for justice has the duty to give the opinion on the criteria before their adoption with a qualified majority. The powers of the Supreme Court are strengthened – while before the number of judicial personnel was determined for individual courts by the minister competent for justice on the proposal of the president of the court, now it falls under the power of the Supreme Court (Art. 59). The Supreme Court also decides on the allocation of additional funds to reduce the number of backlogs with the approval of additional employment (Art. 60). In exercising the matters of court management presidents of courts of higher instance got additional powers, while the minister responsible for justice can now exercise supervision over the work of courts through the presidents of courts of higher instance by demanding:

- submission of data on operation of the court and the work of the president of the court in matters of court management;
- submission of written clarifications and reports on organisation and supervision of the work of the court and on implementation of particular tasks of court management (Art. 67).

The presidents of courts also got additional powers in the case of supervisory appeals (Art. 72). The Supreme Court publishes its annual report in which it evaluates the execution of judicial power (Art. 109). The Judicial Training Centre has been taken from the Supreme Court and put under the responsibility of the Ministry of justice (Art. 74.a).

- **2006:**

The previous provision that specified that the head of an internal organisation unit led by a judge was appointed and dismissed by the personnel council on the proposal of the president of the court was changed so that now the head is appointed and dismissed by the president of the court (Art. 69). The president of the court now decides also on the annual assignment of judges to specific legal fields (Art. 71) – the task that was previously in the power of the joint session of the Supreme Court. Both changes indicate a strengthening of the role of the president of the court.

The mobility of judges is increased - special judicial posts may be determined for judges who will substitute for absent judges, resolve exceptional case loads or hear cases in other well-founded circumstances at another court within the same court district (Art. 38).

The Central department for Enforcement on the basis of authentic documents at the Local court in Ljubljana is formed, introducing a new service that depends mainly on computerized work (Art. 99.a).

The president of the immediately higher court can (upon proposal of the president of the court with judicial backlogs) decide to transfer the jurisdiction in a specific number of cases to another court within the same jurisdiction that has a lower caseload (Art. 105.a).

- **2007:**

Judges that participate in the programme of increasing the efficiency of the judiciary and the elimination of backlogs are entitled to receive payment for an increased workload in accordance with the provisions of the law, that regulates wages in the public sector (introduction of a more flexible system that allows judges to be paid differently, according to their individual involvement in the program of elimination of judicial backlogs) (Art. 75.b.). The mobility of judges that was previously addressed only at local court judges within the same court district is increased even further, for it is now valid for the jurisdiction of a higher court, meaning that local and district court judges may now in exceptional cases help at other courts. These judges are appointed by the Judicial Council, upon proposal of the minister, responsible for justice, on the previously acquired opinion of the president of the higher court.

The 4th of November is declared 'Day of the judiciary' in order to raise awareness of the importance of work judges as well as civil servants, working in the judiciary. Special awards for successful projects or special dedication are delivered (by the minister responsible for justice to the civil servants on one hand and by the president of the Supreme Court to judges on the other). The civil servants eligible for awards are not only those employed at the courts, but also employees at the State Prosecutor's Office, the State Attorney's Office and the Ministry of justice.

- **2008:**

Courts and other official institutions are required to provide decisions of other courts as well as other official documents, needed in the proceedings, by themselves, so that parties to court proceedings do not have to produce them as evidence (before these documents had to be provided by the parties) (Art. 13).

The mandate of the members of the Judicial Council is extended from five to six years (Art. 18).

The presidents of the courts get new powers in providing the security of judges, court personnel and parties. To do so they can demand video control of the buildings as well as control of the external electronic communications directed to the court (recording of telephone conversations to prevent false bomb alerts with prior warning of the act of recording, etc.) (Art. 73.c).

The Court Rules are prescribed by the minister, responsible for justice, on the basis of the previously acquired opinion of the president of the Supreme Court (before the opinion was formed by the joint session of the Supreme Court) (Art. 81).

General overview of the changes to the Courts Act

Looking at the various amendments to the Courts Act it can be seen that there are three main directions in which it has evolved:

- **the role of the presidents of courts has been strengthened** in the sense that the presidents got more powers and direct instruments to control and guide the work at each court – they determine the allocation of resources to individual courts, they have the power to demand data in connection with the application of statute and examine files, they adopt specific programs for the elimination of backlogs, they appoint the heads of internal organisation units led by a judge, they decide on the annual assignment of judges to specific legal fields;

- similarly, **the role of the Supreme Court and specifically of its president has been strengthened**, as the Supreme Court now coordinates the preparation of financial plans and the consumption of resources by individual courts, it decides on the necessary funds for the informatization of courts, the number of judicial personnel, the allocation of additional funds to reduce the number of backlogs with the approval of additional employment; the president has the power to monitor court management matters in courts of all instances, he gives the opinion on the Court Rules instead of the joint session of the Supreme Court;
- more and more attention and **focus is given to the urgent need of elimination of backlogs** – there are specific additional funds for judges who collaborate in the elimination of backlogs, the efficiency in this specific task has become a separate criterion for the evaluation of judges, additional employment has been allowed for this goal, the mobility of judges has increased to tackle the problem more directly.

The Judicial Service Act (Zakon o sodniški službi)

Similar changes have occurred in the amendments to the other most important law regulating the judiciary – the **Judicial Service Act**. As the Courts Act it was introduced in 1994 and various amendments concurred:

- the **control over the work of judges** is more and more **centralised** (wider powers of the Supreme Court and of the immediately higher personnel councils) and at the same time more **strict** – additional criteria were introduced for their evaluation, which occur in shorter intervals;
- a lot of **powers** in relation to the position of judges that were previously in the hands of the Judicial Council were **transferred to the presidents of the courts**, e.g. the promotion of judges;
- the **program of elimination of backlogs** influenced the possibility of a **more flexible remuneration** of judges – those that participate in the program of increasing the efficiency get higher wages – and similarly, the **mobility of judges** has increased, retired judges can be re-engaged for this purpose.

Other changes in the quality of work of the courts

In the recent years major investments have occurred to improve the quality of the buildings in which courts reside – some were completely renovated, other courts got new, specifically designed infrastructure. Specific funds were directed to the improvement of safety.

A lot was also done in the field of informatization – the project of the electronic land register has given excellent results, similar effects are expected from the introduction of the computerization of the enforcement procedure. The case-law of the higher courts and of the Supreme Court is now freely available on the internet.

Addressing judicial backlog: The Lukenda project

The problem of judicial backlogs is probably the biggest problem that the Slovenian judiciary has been facing during the last years. In 2005 a comprehensive state project addressing this problem was settled out by the Ministry of justice. Following a number of cases before the European Court of Human rights in which the excessive length of judicial proceedings in Slovenia has been recognised as a violation of the right to fair trial of Article 6 of the European Convention on Human Rights, (in particular the right to a trial without undue delay), a joint state programme has been adopted – the **Lukenda Project - The Elimination of Court Backlogs**. The project is named after the name of the applicant in the first judgment before the ECHR in which Slovenia has been found liable of violating article 6 of the ECHR because of the excessive length of court proceedings. The Operational Action Plan has been elaborated by the Ministry of justice in cooperation with the Supreme Court and the Office of the State Prosecutor General. Many questions that the Lukenda Project addresses concern the quality of the judiciary in general, not only the right to a trial without undue delay.

The main focus, concerning the increasing the efficiency of the judiciary, particularly the elimination of backlogs, is on the following issues:

- providing workplace conditions in accordance with the strategy of spatial development of the judicial system,
- additional provision and organisation of human resources or professional staff for a fixed period until 31 December 2010 when the court backlogs are planned to be eliminated,
- a stimulating remuneration of the court staff for eliminating court backlogs.

Other measures directed at the increase of the efficiency of judiciary are:

- the simplification of legislation and the standardization of judicial proceedings,
- complete computerisation of the courts,
- additional training of judges and prosecutors and the introduction of specialisation of judges,
- reorganisation and better management of courts – an analysis ought to be conducted of the size of the optimum-sized organisational unit of the smallest possible efficient court and, in criminal matters, of a possibility of specialization of courts – regulation of jurisdictions comprising larger areas,
- stimulating quality and efficiency of work of the prosecutors and state attorneys,

- (ix) modifications of court fees and lump sums directed at better proportion between the rates and the actual costs of proceedings,
- (x) modifications of attorney's fees in order to expedite the proceedings and acknowledge the necessary costs corresponding to the actual work done,
- (xi) establishment of a quick and efficient system of enforcing penalties, lump-sums and court fees,
- (xii) establishment of a system for facilitating and simplifying the decision-making process in the cases of minor importance,
- (xiii) promotion of civic consciousness in order to emphasize the trust and respect of judicial authorities and court staff,
- (xiv) provision of better security in the courts,
- (xv) provision of continuity of judges and opportunities for them to be promoted to a higher grade and rank within the same court and the same legal area,
- (xvi) provision of mobility of judges and/or case files,
- (xvii) the establishment of a single statistical database for statistical monitoring of the courts' work based on uniform criteria,
- (xviii) the establishment of a coordinating body in charge of statistical monitoring of the courts' work by the Ministry of justice, the Judicial Council and the Supreme Court,
- (xix) the data from the single statistical database should be made available to all users: the Ministry of justice, the Judicial Council, the Supreme Court and all other courts, taking into account the legislation on protection of personal data.

In the words of a Ministry of justice advisor the main information about the project history and contents: "The Lukenda Project represents a variety of measures pursuing a common goal: elimination of court backlogs in the courts and Prosecutor's Offices by 31st of December 2010 on a national level. The Article 23 Section 1 of the Constitution of the Republic of Slovenia establishes the Right to Judicial Protection in stating that everyone has the right to have any decision regarding his rights, duties, and any charges brought against him made without undue delay by an independent, impartial court constituted by law. The practical component of said right is therefore guaranteed through a speedy trial without unreasonable delay. At the request of the European Court of Human Rights in Strasbourg, which in the case of *Lukenda v. Slovenia* (6th of October 2005) and subsequently in 160 similar cases, established that violation had occurred of the right to a fair trial and of the right to effective legal remedies under the European Convention on Human Rights as well as following the decision of the Constitutional Court of the Republic of Slovenia no. U-I-65/05 (22nd of September 2005), the Ministry of justice on 11th of December 2005 addressed the issue with the Lukenda Project, which is intended to remove judicial backlogs. The Lukenda Project, which bears the name of the applicant, represents a joint state project that plans to cut the number of unresolved cases before the courts by the end of 2010 and incorporates an Operational Action Plan that has been elaborated by the Ministry of justice in cooperation with the Supreme Court and the Office of the State Prosecutor General. The project holders and other participants are the Supreme Court of the Republic of Slovenia and all other courts in Slovenia; the Judicial Council; Government of the Republic of Slovenia – Ministry of justice; Government of the Republic of Slovenia – Ministry of Interior Affairs; Police of the Republic of Slovenia; Government of the Republic of Slovenia – Ministry of Labour, Family and Social Affairs; National Assembly of the Republic of Slovenia – Internal Affairs and Justice Committee; Office of the State Prosecutor General; National Council of the Republic of Slovenia; Bar Association of Slovenia; Chamber of Notaries of Slovenia; Bailiffs Chamber of Slovenia; National Review Commission; Human Rights Ombudsman; professional legal institutions and professional associations and various non-governmental organizations. The implementation of the Lukenda Project does not by itself decrease the length of judicial proceedings. However, the project aims at reducing by half the number of backlog cases in courts, in the statistical context, by 31st of December 2010, i.e. to about 284,000 cases. In the substantive context, the period to examine a certain case by a specific court shall be determined in an agreement reached between the Supreme Court, the Judicial Council and the Ministry of justice for each type of courts and each calendar year separately and the Court Rules were modified accordingly."²⁹⁷

In the **statistical** context, **court backlogs** represent the pending cases in an individual court whose number exceeds one half of the average annual workload in an individual court in the territory of the Republic of Slovenia. The definition of backlogs in the statistical context needs to be completed by the substantive definition of court backlogs.

In the **substantive** context, court backlogs represent the pending cases in an individual court which are pending before the court for a longer period than the one prescribed for this individual type of court and type of cases in Article 50 of the Court Rules.

²⁹⁷ Data and information provided by a Ministry of Justice advisor replying to our questionnaire.

The main time frames prescribed in the Court Rules, after which a case is considered a backlog, are the following (Article 50 of the Court Rules):

Local Courts:

- Criminal cases - 6 months after case filing
- Criminal investigation activities - 6 months after case filing
- Misdemeanour cases - 6 months after case filing
- Non-contentious commercial cases - 6 months after case filing
- Civil cases - 6 months after case filing
- Inheritance cases - 6 months after case filing
- Enforcement cases - 6 months after case filing
- Land register cases - 1 month after case filing

District Courts:

- Criminal cases - 6 months after case filing
- Investigations - 6 months after case filing
- Criminal investigation activities - 6 months after case filing
- Juvenile criminal preparatory proceedings - 6 months after case filing
- Juvenile criminal proceedings - 6 months after case filing
- Commercial disputes – 6 months after case filing
- Civil cases - 6 months after case filing
- Non-contentious commercial cases - 6 months after case filing
- Labour and social security disputes - 6 months after case filing
- Court register cases - 1 month after case filing

High Courts:

- Criminal cases - 6 months after case filing
- Civil cases - 6 months after case filing
- Commercial disputes - 6 months after case filing
- Labour and social security disputes - 6 months after case filing
- Administrative disputes - 6 months after case filing

Supreme Court:

- All cases when deciding as a 1st degree court - 6 months after case filing
- Cases when deciding as a 2nd or 3rd degree court or deciding on extraordinary legal remedies - 6 months after case filing

As a part of the Lukenda project the Government of the Republic of Slovenia responded by defining suitable measures to eliminate court backlogs as its prime development priority and by including the measures in two fundamental strategic documents (Reform Programme for achieving the Lisbon Strategy goals and Framework of Economic and Social Reforms for increasing the Welfare in Slovenia), that were adopted in October and November 2005. The Convergence Programme for the period 2005-2008 has also been modified in accordance with these two documents.

Among the most significant measures for providing a more efficient judiciary and the elimination of the court backlogs as defined in the Reform Programme for achieving the Lisbon Strategy goals and in the Framework of Economic and Social Reforms for increasing the Welfare in Slovenia is foremost ensuring better court management through among others legislative regulation, adopting a strategy of spatial development of the judicial system, legislative optimisation of judicial proceedings, providing proper workspace conditions for the work of courts and State Prosecutor's Offices and ensuring proper training of judges, state prosecutors, state attorneys as well as for administrative court personnel. With the aim of increasing the efficiency of the judiciary, the ministry has among others prepared the following legislative changes²⁹⁸:

- *an amendment to the Judicial Service Act*, which uses the work performed to remove and prevent the occurrence of judicial backlogs as an additional criterion when assessing the judicial service, introduces the new institute of the circuit judge and makes it possible for retired judges to be re-engaged;

- *an amendment to the Courts Act*, which among other things strengthens the role of court presidents in court administration and introduces the institute of the packet transfer of court files from courts with a heavy workload to those with a less heavy workload;

²⁹⁸ Data and information provided by a Ministry of Justice advisor replying to our questionnaire.

- *an amendment to the Administrative Dispute Act*, which allows a single judge to rule in certain cases and clearly defines the competence of the Administrative and Supreme Court in an administrative dispute;
- *a new Labour and Social Courts Act* entered into force on 1st of January 2005 setting up specialist jurisdictions for social and labour litigation. This act also contains a specific provision for appeal proceedings in such cases (Article 30): in case of mistaken or incomplete finding of the material circumstances or an essential violation of procedural provisions, the appellate court may itself correct any irregularity in the first-instance judgment by collecting supplementary or new evidence or by other procedural acts.
- *an amendment to the Execution of Judgments in Civil Matters and the Insurance of Claims Act*, which lays down that the requirement no longer exists to enclose documents and evidence with an execution proposal and that proposals may be submitted on special forms, by post as well as electronically. The amendment also lays down that, in execution proceedings, decisions shall be issued at a central court in Slovenia on the basis of an authentic document;
- *Amendments to the General Offences Act*, which have simplified the fast-track and regular procedures.

Is there a relation between the quality system and the financing of the courts? How does it work?

Courts have to report at the Ministry of Finance. The Public Finance Act (PFA) prescribes in fact that: "Courts, as direct budget users must draw up financial statements of their financial plans and annual reports for the past year and submit them to the ministry responsible for finance not later than by 28 February of the current year. The explanation of the financial statement includes:

- Report on the realization of the financial plan of the direct user
- Business report (which includes report on the objectives and results)
- Explanation of the data in the balance sheet.

The annual records on courts work include also data about *the annual court budget* spent. This one is not prescribed by law, but was suggested to the courts by the Supreme Court to be included in annual reports.

4. The system of quality management at hand: What standards?

The Court Act is the legislative base that directly addresses the question of court management in Chapter 9. Art. 60 states *inter alia* the following:

(4) If an increase in the number of unresolved cases occurs in a court as a result of the productivity which is lower than the average productivity of courts of the same type and same instance, or if according to statistical data a backlog is shown in the level of cases in hand in the last twelve months, the president of the court must, in compliance with authorisations under the statute and Court Rules, adopt a program for resolving these cases. Judicial Council shall monitor the productivity of courts, on the basis of data from court statistics.(5) If, despite the increased productivity and exceeded standards for the expected quantity of work of judges, it is not possible to ensure adjudication without unnecessary delay, additional funds may be allocated to the court for resolving these cases in accordance with the adopted program of resolving. The Supreme Court of the Republic of Slovenia decides about the allocation of funds.

(6) If it is not possible to reduce the number of unresolved cases to a reasonable level with the described measures, the court may increase the job classification and approve additional employment.(7) The Court Rules shall prescribe in more detail suitable records of court statistics by aid of which productivity can be established, and other measures determined for removing backlogs or unresolved cases.

According to Art. 61 of the Courts Act the matters of court management shall be the responsibility of the president of the court.

Art. 67 states the following:

(1) The performance of matters of court management in courts of first instance shall be monitored by the president of the court of higher instance, and in courts of all instances by the President of the Supreme Court of the Republic of Slovenia and the Minister competent for justice who exercises official supervision over the work of courts through the presidents of courts of higher instance or through the President of the Supreme Court of the Republic of Slovenia.

(2) In exercising supervision over the court management, presidents of courts of higher instance, and through them also the ministry competent for justice, may demand written clarifications and reports on the implementation of specific tasks.

(3) The Minister competent for justice may exercise supervision over the work of courts through the presidents of courts of higher instance by demanding:

- submission of data on operation of the court and the work of the president of the court in matters of court management;

- submission of written clarifications and reports on organisation and supervision of the work of the court and on implementation of particular tasks of court management.

(4) These provisions shall not refer to the supervision of the performance of matters of court management in the Supreme Court of the Republic of Slovenia.

Apart from these provisions and the aforementioned time frames included within the Lukenda project, in Slovenia courts performance indicators and targets have been set considering in particular the evaluation of each judge's activity:

We quote the accurate description of the system that a local court judge provided us: "Two major factors to consider when evaluating the quality of judicial work in a broader meaning are the **quantity of work** (the amount of solved cases) and the **quality of the decisions** (the correctness of the decisions, respecting time schedules for solving cases etc.). However, both these subjects are difficult to measure in an exact and all-inclusive way. The judicial work (decision-making in the process of solving cases) is very individual and judges are allowed a certain degree of freedom in choosing the approach to their goal (solve a case); part of the judges are very precise and vigilant in their work and they study even simple cases with great attention. That method takes time so these »types« of judges usually solve less cases, but the decisions are (according to the control of the higher courts through the appeals of the parties) exceptionally correct and rarely need any change or return of the case for another decision. Some other judges put less effort in cases (particularly less important ones) and try to work faster, that way they solve more cases, but risk that more cases will be returned from the higher court to repeat the procedure. It is very difficult to say which approach is better – for example, one judge can solve 180 cases a year, all of them 100 % correct; the other solves 220, but 30 of them are cancelled and returned from the higher court, what means, a judge has approx. 86 % correct decisions; but anyway, the later one solved correctly 190 cases.

The main mechanism to control the quantity of solved cases is the »**lowest expected amount of work**«, attributed by Judicial Council of Slovenia, the so called »quota« or »standards«. They determine how many cases of different types every judge is supposed to solve yearly (for instance, on our (civil) department, a judge is supposed to solve 180 'average' cases or 90 'more difficult' ones – i.e. tort cases, law of property cases, construction disputes, public press cases etc. or 360 cases solved with procedural decisions). Legal basis to determine these standards are given by the Courts Act, the Judicial Service Act and the Court rules".²⁹⁹

Defined by whom?

The targets are set by different institutions and are also based on different legal provisions. According to the information gathered in the last Cepej evaluation report "Judicial Council, Ministry of justice and Supreme Court are responsible for setting the targets. The Judicial Council adopts the measures for quantity and quality of work of judges. On the basis of the Courts Act, the Judicial Council monitors, ascertains and analyses the effectiveness of work of judges and courts, on which it keeps annual reports. The Supreme Court and the Ministry of justice exercise supervision over the performance of court management in courts. The Supreme Court also co-ordinates the preparation of financial plans and aggregately provided resources in the budget."³⁰⁰

The Judicial Council has to set targets according to Art. 28 of the Courts Act, which prescribes competences of the Council, *inter alia*: "to adopt the criteria for the minimum expected quantity of work of judges and criteria for the quality of performance of judges for the assessment of judicial service, taking into account in particular the category and gravity of the cases, method of resolving and cooperation of judicial advisers, judicial assistants and other judicial personnel; and in the areas where the autochthonous Italian and Hungarian national communities live also the conducting of bilingual proceedings." The Ministry of justice sets targets in the Court Rules.

Article 28 of the Courts Act establishes that the Judicial Council is entitled to the monitoring and of the analyses of the effectiveness of the judges and courts work on which it shall keep annual records. Article 28 also specifies that: "The record of the effectiveness of the work of court shall cover the following data: title of the court, case in hand, resolved cases, and total number of cases in progress in the specified period. The record of effectiveness of the work of judges shall embrace the following data: name and surname of judge and data necessary for identification from personnel records, data of taking over office, data of ceasing the office, number of cases in progress, number of resolved cases, number of cases in which an appeal was lodged, number of

²⁹⁹ Reply to our questionnaire by a local court judge.

³⁰⁰ European Commission for the Efficiency of Justice (CEPEJ), European judicial systems, Edition 2006 Answer to the revised scheme for evaluating judicial systems – SLOVENIA 2004 Data (<http://www.coe.int/t/dg1/legalcooperation/cepej/evaluation/2006/Slovenia.PDF>)

confirmed, amended or annulled decisions, data on absences, and other data which assists in determining effectiveness.³⁰¹

5. Operation of standards in the judicial organization and in the courts.

We quote, once more, the depiction of a local court judge about the operation of standards. "Every judge is obliged to write a **monthly report** about his/her work, which includes a list of solved cases, type of the cases ('average', 'difficult', 'easy' etc.) and other data as the number of absent days, number of trials, etc.

This report is then reviewed by the civil office (an office within the civil department, which is responsible for maintaining the case registry, circulation of cases at the court, and many other administrative tasks), where a clerk, responsible for the particular case checks in the computer database, if the case reported was really solved on the certain date. If there are any discrepancies between the judge's report and the computer data, these are cross-checked and resolved with the involved judge; if necessary, a head of the department is involved to help about legal or court administration questions.

At the end of the year, every judge is supposed to fulfil this expected amount of work; if he/she fails, and if there are no obvious and sufficient reasons (i.e. prolonged illness, maternity leave), the head of department must invite a certain judge to an official interview to determine the reasons. If reasons are sufficient, a short statement is written about them, if not, that can be a reason for additional disciplinary procedures³⁰².

For control of the quantity of work of **other employees** than judges (legal/judge's aides, officials, typists, clerks etc.) the system is roughly the same: monthly expected amounts of work (determined by the president of the court on the base of recommendations from the heads of departments); monthly reports, checked by their superiors; a brief inspection by the heads of departments and the president, reports are filed. These reports for other court employees are also a basis for a (rather small) monetary stimulation that is paid every month to those who distinguished themselves with exceeding work quotas (a legal basis for these payments is in the labour legislation; judges are not allowed for these payments; they are allowed for additional payments for additional amount of work only on a special contractual basis).

The main aspect of control of the **quality of judicial work** (in closer means) is through the success of appeals against judge's decisions (judgments, resolutions). Appeals are not uncommon in Slovenia and we estimate to have about 10-15 % of appeals in the amount of all solved cases (including those solved with settlements etc.) at the civil department of Local court of Ljubljana. The appeals go to the Higher court of Ljubljana and when the cases return, they are inspected by the head of the department. The type of the appeal decision (appeal dismissed; appeal granted and decision changed; appeal granted and decision cancelled and returned for new procedure; combination(s) of these) is noted in the statistical records, maintained by the head of department as well as in the civil office. The higher the rate of appeals dismissed and judgments affirmed, the better these rates are used for periodic evaluation of judges (see in next paragraphs), for promotion etc.

There are also aspects of quality of judicial work in broader means, which are controlled more or less regularly, some of them sporadically:

- respecting the **time schedule to write a judgment** (a written judgment or other decision has to be made within 30 days since the end of hearing): if a judge is late with his/her written decision, a computer in the civil office sets an alert and a brief written annotation is sent to the judge, who is supposed to make a written explanation of the reasons for the delay. At the end of the month a list of »delayers«, together with their written explanations, is presented to the head of the department for inspection, as well as to the president of the court. If the delay is longer than 3 months, this is noted in the judge's personal statistics spreadsheets; such a long delay can be considered seriously by the Judicial Council and can be a reason for refused promotion etc.;

- **solving cases by turns**: due to massive backlogs it is very important to solve cases by turns (older ones first, the only exceptions are priority cases); it's also an obligation of the judge due to the Courts Act and the Court rules. The head of the department is checking this important aspect while inspecting monthly reports of work; when inspecting cases, returning from the higher court ; with occasional checking of computer databases of cases, and hearings scheduled on the court's web page. Occasionally, usually once a year, the president of the court orders a detailed review of this matter: it includes printing from computer databases a list of all the cases solved in a chosen period (usually three random months of the year), and all the unsolved cases, separately for every judge (done by IT staff); the head of the department determines for every judge an approximate »vintage«

³⁰¹ Gar Yen G., Velicogna M. e Dallara C. (2007), *Monitoring and evaluation of court system: A comparative study*. European Commission for the Efficiency of Justice (CEPEJ) – Council of Europe (http://www.coe.int/t/dg1/legalcooperation/cepej/series/Etudes6Suivi_en.pdf).

³⁰² The judge also said "As long as I am a head of civil department (since 2004), I didn't have a case to move disciplinary procedure against a judge of my department, for this or any other reason." (Questionnaire replies).

of cases he/she should be solving by turns (i.e. from the year 2004-5 and older ones), then checks this with the list of solved cases; in cases that should not be solved by turns (yet), it's checked, if there is a statistical data error (they are not uncommon) and/or there is a specific reason to solve a case contrary to the queue (i.e. a priority case); if no such a reason is found, a judge is ordered to write an explanation why he/she solved the case that was not by turns yet;

- **solving oldest cases:** there are still several unsolved cases, older than 10 years at our department; in monthly statistics, there is a special note about the number of such cases solved and unsolved by individual judges, and the head of the department keeps a spreadsheet of solved >10 years cases by judges; the more cases like these a judge solves, the better; a note about that is included in evaluation of judges, promotion opinions etc.;

- **presenting the appeals** to the higher court in time: the Ministry of justice pointed out this as a problem in some cases, so it was determined by the president of the court that appeals in civil cases should be presented to the higher court within 15 days (for extraordinary remedies to the supreme court the period is 30 days). If this time-schedule is exceeded, a judge is supposed to write an explanation; however, in most cases it was found that the delay was due to sufficient reasons (i.e. problems with service of process, lacking or incomplete letters of attorneys etc.);

- **even distribution of cases** among judges: the distribution of cases among judges is highly regulated (from the Constitution through the Courts Act to the Court rules and additional instructions by the president of the court) in the Slovenian legal system to assure the case will be solved by a randomly chosen judge (so-called »natural judge«). On the other side, due to the problem of backlogs, the cases should be distributed more or less evenly among the judges, so the parties won't wait too long for the first hearing. This is the responsibility of the head of the department, who occasionally checks the amount and age of cases in work at individual judges; these checks can be done monthly while inspecting the monthly statistical report of the department (prepared by the civil office). When significant differences occur between judges, a redistribution of cases is performed: on a mathematical basis, the number of »excess« and »missing« cases for every judge is determined; the decision is made which cases will be taken from overloaded judges (usually NOT the oldest ones, not priority cases etc.), then the necessary amount of randomly chosen cases are taken from overloaded judges and, again randomly, distributed to judges lacking cases.

The third part of monitoring the quality of judicial work are different kinds of **evaluations of judges**. Although judges are independent and their function is not a subject of re-election (but functions of court presidents and vice-presidents are), there are several mechanisms of controlling and evaluation of work of every individual judge. The legislative provision for this topic is included in the Judicial Service Act.³⁰³ The Judicial Service Act covers the following questions:

- election to judicial office and appointment to judicial service;
- judges' duties and incompatibility of judicial office;
- judge's rights (judge's wages and allowances, leave, education for judges);
- termination of judicial office and dismissal of judges;
- official supervision of judges' work;
- disciplinary proceedings and suspension from judicial service.

The criteria for selecting and promoting judges and the procedure for assessing judicial work are set in Chapter 4 of the Judicial Service Act. Every three years, for every judge has to be made the **evaluation of judicial service** (for beginner judges – first three years of their judicial service, this evaluation has to be made every year).

For this evaluation, a statistical spreadsheet about his/her work is prepared, that includes: number of solved cases – in exact number and as percentage according to lowest expected amount of work; rate of affirmed decisions at the court of appeal; number of cases where decision was written longer than 3 months; number of absent days.

The head of the department or (at smaller courts) the president of the court then writes a descriptive evaluation of work of the considered judge. The structure of this evaluation is determined in Article 29 of the Judicial Service Act and it is based on the following items:

- specialist knowledge (general description, post-graduate studies etc.);

³⁰³ Reply to our questionnaire by a local court judge.

- working abilities (number of solved cases, structure of solved cases, number of solved old cases, respecting time schedules, solving cases by turns, judge's ability to bring parties to the settlement; comments about statistical results – i.e., longer absences, some very difficult cases that required additional time etc.);
- ability of solving legal questions (the success rate at the court of appeal – percentage of appeals dismissed, granted etc.);
- work accomplished on the field of judicial backlogs (this point was added recently due to the backlog problem; the description of judge's activities about solving backlogs, i.e. amount of backlogs in the number of solved cases, solving cases by turns, etc.);
- maintaining the reputation of the judge and the court (judge's behaviour in the courtroom, communication with parties and other participants in the trial, maintaining the independence, impartiality, dignity of the court etc.);
- ability of spoken and written communication (legal, logical and grammatical integrity and correctness of his/her written decisions);
- additional accomplished work (i.e. tutorship to trainees and younger judges, participation in educational process inside and outside of judiciary, published papers in professional journals etc.);
- relationship with co-workers;
- leadership abilities (only for judges who also hold certain leading positions – heads of departments and their deputies, presidents etc.).

On the basis of these statistical spreadsheets and written evaluation, the personnel council (Personalni svet) of the immediately higher court brings the actual evaluation of the judge; it can be: the judge is unsuitable for judicial service (that means a loss of judicial position); the judge doesn't meet the criteria for promotion (he/she won't be promoted until a better evaluation will follow); the judge meets the criteria for promotion (he/she will be promoted on regular basis); the judge meets the criteria for faster promotion (higher promotion in salaries); the judge meets the criteria for exceptional promotion to higher judicial title.

According to this evaluation, the judge is entitled to be promoted (or is stopped in promotion) in salary classes every three years; even if he/she meets the criteria for »faster« promotion, this actually won't happen faster, but he/she will be promoted two classes at once and not only one.

Article 24 that covers **judge's promotion** has been amended so that it now states the following:

- (2) Promotion in wage classes and to the position of councillor shall be ruled by the president of the court upon proposal of the judge, at which the criteria from the first paragraph of article 28 of this act have to be followed.
- (3) Promotion to a superior judicial title and accelerated promotion to a higher wage class, to the position of councillor or to a superior judicial position and the extraordinary promotion to a superior judicial title shall be ruled by the Judicial Council upon proposal of the judge or the president of the court.
- (4) Ruling on promotion is effected after having carried out the procedure for determining the judge's expertise and performance.

The same criteria are used when a judge applies for promotion to higher position (i.e. from local court to district court etc.) or for some leadership function (i.e. president or vice-president of the court), and these mechanisms are used to motivate judges for better work (both in quality and quantity). Roughly the same criteria are also used for evaluation and promotion of other employees, according to the matter of their work.³⁰⁴

6. Measurement of results? How?

“The monthly judges' reports, reviewed and approved by the civil office, are then again inspected by the head of department, and then sent to the Office of the president of the court. The president makes a brief inspection of these reports, and copies of them are kept in president's office as well as in the secretariat of the department. While inspecting the reports, the head of the department can review not only quantity, but also some quality aspects of particular judge's work: the structure of solved cases (easy-difficult etc.), whether he/she is solving also older cases or just new ones (important at the Local court of Ljubljana due to significant backlogs), if there are particularly urgent and therefore difficult cases (i.e. temporary injunctions, public press cases) etc.

The control of quality of work of other staff (non-judges) is more or less similar, although less formalized and thorough, according to the importance and difficulty of their tasks.

As already underlined, Art. 67 of the Courts Act prescribes that “the performance of matters of court management in courts of first instance shall be monitored by the president of the court of higher instance, and in courts of all instances by the president of the Supreme Court of the Republic of Slovenia and the minister competent for justice. In exercising supervision over the court management, presidents of courts of higher instance may demand written clarifications and reports on the implementation of specific tasks and review court

³⁰⁴ Reply to our questionnaire by a local court judge.

files. The Minister competent for justice may exercise supervision over the work of courts through the presidents of courts of higher instance by demanding:

- submission of data on operation of the court and the work of the president of the court in matters of court management;
- submission of written clarifications and reports on organisation and supervision of the work of the court and on implementation of particular tasks of court management.

These provisions shall not refer to the supervision of the performance of matters of court management at the Supreme Court of the Republic of Slovenia.

The control of quality, different evaluations, etc. are an integral part of the tasks of the president, vice-president, heads of departments, secretary etc., and it's hard to determine how much time, money or personnel is used specifically for these tasks; you have to know that all these (except the secretary of the court) are judges who also work on their own cases, but due to managerial tasks they are obliged to solve less cases than »ordinary« judges (e.g. our president has to solve only 25 % of cases comparing to other judges, so 75 % of her work should be all kinds of court management; these numbers are defined by the Judicial council); at the Local court of Ljubljana we have several employees tasked only with court management: the secretary of the court and her deputy; a co-worker for invitations to tenders; a co-worker for IT, statistics and records; the head of president's office; a secretary of the office.³⁰⁵

What results?

According to one of our contacts, the system described starts to give some results, at least introducing a new way to monitor and communicate problems in solving the cases: "A few years back, a distribution of cases among judges was a problem with several failures, misinterpretations and also abuses; after the evaluation of the problem, we developed a (somewhat complicated) system of even and random distribution, which fits with legal acts, and it was well accepted among judges, what improved their work and also relationships in the collective; when we encountered problems with solving cases by turns (some judges were »picking-up« easy cases, leaving difficult ones unsolved), we started periodical check-ups; the judges who (without an acceptable reason) didn't solve cases by turns, had to write reports for the president, and the problem improved a lot after that."³⁰⁶

7. What is the attitude of the judges towards the quality system? And of the court staff?

We quote an extract of the replies to our questionnaire that, in our opinion, are particularly telling about the attitude of judges towards a quality system: "The **term »quality management«** is in my opinion in Slovenia considered mostly as an economical one, and since the courts and judiciary don't sell products or services on free market for the purpose of making profit, we rarely use this term (its Slovenian translation) in court management matters. Nevertheless, we have certain mechanisms and standards that deal roughly with the same subject, but they are usually called »evaluation of work, »monitoring/control of work/procedure« etc. It is also important to talk about the subject of **judicial independence** in connection with quality management. Judicial independence is guaranteed by the Slovenian Constitution. That means, no one (including the Minister of Justice, court presidents etc.) can order or guide a judge how and what he/she has to decide in a certain legal case. It also means that no one can hold a judge responsible for his/her decision (considering a decision is made within the limits of basic substantive and procedural law principles) and any too detailed control or management of judicial work in a certain case can be considered as challenging to their independence. This is even more delicate in recent times, when there is a major disagreement between judiciary and executive branch of state powers (government, ministry) about judicial salaries. Introducing methods of quality management similar to those in free trade enterprises would be probably considered as an assault on judicial independence (and that I can say in the name of the majority of Slovenian judges)."³⁰⁷

8. Latest Developments and quality management related issues³⁰⁸

Of special interest concerning quality court management - similarly to the aforementioned amendment to the Courts Act - through strengthening the role of the presidents of the court in court administration has to be the new *Protection of the Right to Trial Without Undue Delay Act*, which guarantees parties special judicial protection and regulates issues relating to just satisfaction in the event of a protracted trial. The law has been adopted on 26th of April 2006 (published in the Official Gazette of the Republic of Slovenia, No. 49/2006, of 12th of May 2006) and took effect on 1st of January 2007. This law provides the two types remedies against excessive length of proceedings: accelerative and compensatory remedies. The role of court management is especially important with the two types of accelerative remedies: the supervisory complaint (Article 5) and the

³⁰⁵ Reply to our questionnaire by a local court judge.

³⁰⁶ Reply to our questionnaire by a local court judge.

³⁰⁷ Reply to our questionnaire by a local court judge.

³⁰⁸ Data and information provided by a Ministry of Justice advisor replying to our questionnaire.

motion for a deadline (Article 8). The supervisory complaint in writing may be filed before the court hearing the case when a party considers that the court unduly protracts with the decision-making. The decision thereon is taken by the president of the court hearing the case. The complaint should contain the personal name or company name or any other name of the party, its address of permanent or temporary residence or registered office; personal name or company name or any other name of the representative or legal representative and its permanent or temporary residence or registered office; indication of the court hearing the case; reference number of the case or date of filing the case in the court; indication of circumstances or other data concerning the case, which demonstrate that the court unduly protracts with the decision-making and a hand-written signature of the party, legal representative or attorney. If the complaint is substantiated, the president of the court may order to the judge in charge of the case to perform certain procedural acts within a specified time-limit and/or to treat the case with priority. The second accelerative remedy is a motion for a deadline for the purpose of specifying a time-limit: it may be filed with the president of the higher court if a supervisory complaint has been rejected or has not been examined, or if the procedural acts ordered by the president of the court have not been performed. If this motion is substantiated, the president of the higher court may order to the judge in charge of the case to perform certain procedural acts within a specified time-limit and/or to treat the case with priority. The Ministry has also put a great deal of effort into securing new premises for judicial authorities, particularly through the internal real estate market and by buying real estate. In accordance with the Lukenda Project, 277 judicial positions were opened in 2006. Seventy additional judges were employed and 250 judicial staff. In 2007, 90 new positions for judges and 250 for judicial staff; in 2008 18 new judges, are set to be employed. With all these measures, court backlogs should be eliminated by 2010, which is also supported by the statistics of the courts, which show that backlogs are decreasing. By the end of 2005 the number of unresolved cases had decreased by 42,572 or 7.5 per cent in comparison with the beginning of 2005. In 2006 the number of unresolved cases decreased further by 20,876 or 4.0 per cent, in 2007 by 11,383 or 2.3 per cent and in the first half of 2008 by a further 40,585 or 8.3 per cent. In the period from the 1st of January 2005 to the 30th of June 2008 the cumulative number of unresolved cases in the Slovenian courts has dropped by 20,4 per cent on a national level.

Training of judges

In the Ministry strategies the additional training of judges and prosecutors as well as other court staff is also an important component enabling and ensuring quality management in courts and other judicial institutions. The Ministry of justice has therefore established The Judicial Training Centre (JTC) as a special institution, responsible for initial and continuous training of judges, state prosecutors, state attorneys as well as for training and for other court personnel. The training is performed mainly in the form of lectures, seminars and workshops. JTC also implements bar examinations, examinations for court interpreters, court experts, appraisers and others whose work is closely related to the judicial system. Slovene JTC is a full member of European Judicial Training Network.

Access to information

Access to information of public character in the Republic of Slovenia is regulated by the *Access to Public Information Act*, which has since 2003 introduced the principle of openness and transparency to all three branches of power: executive, legislative and judiciary. It represents a uniform regulation of access to public information in the Republic of Slovenia, specifically exposing to public scrutiny the judiciary as a whole and not just its administration or so-called court management. On the other hand, the openness and transparency of court proceedings that is assured through access to public information also guarantees better and a more efficient court management as it inevitably provides feedback information by the public to the Ministry of justice as well as the Supreme Court to examine and possibly adopt appropriate measures, primarily concerning (better) management of the courts.

Exceptions to the rule of free access are regulated exhaustively listed in the first section of Article 6 of the aforementioned Act. Such exceptions are for example information acquired or drawn up for the purposes of criminal prosecution or in relation to criminal prosecution, or misdemeanours procedure, and the disclosure of which would prejudice the implementation of such procedure or information acquired or drawn up for the purposes of civil, non-litigious civil procedure or other court proceedings, and the disclosure of which would prejudice the implementation of such procedures. Equally exempt is information acquired or drawn up for the purposes of administrative procedure, and the disclosure of which would prejudice the implementation of such procedure.

9. Conclusion: towards a comprehensive accountability of the judicial system?

The report evidences that, although in Slovenia there is not a specific regulation on court management, there are partial methods of judges and court work evaluation that could be connected with court management.

The quality management of the court system is mainly based on the evaluation of judges and on the court monthly reports. Rule and criteria used to evaluate judges are also at the basis of court work monitoring.

If we analyse these methods of evaluation and the latest legislative development about court system administration, we could finally notice that the architecture of the quality management system is quite developed although it is not yet specifically structured and devoted to this specific aim. We mean that, on the whole, the different and partial methods of evaluation and monitoring contribute to create a quite developed system of court management.

Analysing the different methods described in the report, we could try to link each of them with different type of accountability - this exercise could be useful to trace the rationale at the basis of the interventions in the Slovenian judicial system.

From a general point of view, in the judicial field, accountability is linked to the liaison "control versus sanction" and could be conceptualized starting from the Simon *et al* (1961) definition as suggested by Contini and Mohr (2007): "accountability is the combination of methods, procedures and forces determining which values are to be reflected in administrative decisions" (p.153).

Accountability is achieved throughout mechanisms by which one can assess and evaluate whether the organization, and the individuals forming the organization, respect the values and interests of the appropriate stakeholders. That in case of public organizations (such as the judicial system) would be the interests of a democratic regime, such as legality, equality, independence, impartiality, efficiency and productivity.

As Contini and Mohr (2007) underline, the traditional form of accountability related to judicial system is the *legal accountability*, developed to protect the respect of formal rules. In the last ten years, this traditional form of accountability was gradually overlaid by new methods developed to protect and promote efficiency, cost control and resources allocation. This is the *managerial accountability*.

According to some scholars working on accountability within judicial systems (Bovens 2006, Piana 2008), we could find out at least three other forms of accountability: *political accountability* (referring to appointment, selection, promotion and disciplinary control); *social accountability* (referring to the control exercised by civil society organizations and by citizens in general) and *professional accountability* (referring to the control exercised by peers on the basis of knowledge and expertise (Piana 2008).

Given these theoretical distinctions, we could affirm that the provisions in place within the Slovenian judicial system are primarily linked to the *managerial accountability* and to *legal accountability*. As confirmed by the judges replying to our questionnaire, the two major factors considered to evaluate courts and judges work are the **quantity** of work (amount of solved cases) and the **quality** of the decision (correctness of the decisions and respect of the time schedule).

The records assessing the court work cover mainly cases in hand, resolved cases, and cases in progress. Records assessing judges work embrace number of cases in progress, number of solved cases and other data determining effectiveness. As already described, the main mechanism to control the quantity of solved cases is the **lowest expected amount of work**, attributed by Judicial Council of Slovenia. That is how many cases of different types every judge is supposed to solve yearly. Another indicator at the basis of the court and judges evaluation is the respect of the time schedule for rendering a judgement. This is again a quantitative assessment related but it is also related to the quality of the judges work.

In addition to the indicators used for courts and judges evaluation, there are the provisions included and linked to the Lukenda project aiming to address specifically judicial backlog.

These types of methods, based on the quantity measurement or on the time frame respect, are clearly related to the *managerial accountability* that seems to be one of the main objectives of the different provisions introduced in the last years.

Besides, another form of accountability that emerges from the provisions in place is the *legal* one. In fact, as confirmed by the judges replying to the questionnaire, among the aspects related to the quality of court and judicial work there is the correctness of the judicial decisions measured throughout the success of appeals against judge's decisions. This type of measurement is, as in many other countries, related to the *legal accountability*.

Going more in details with the provisions in place in Slovenia, we could notice that other forms of accountability are addressed. First of all, it has to be underlined that many of the standards related to judges evaluation are defined primarily by Judicial Council with the collaboration of the Supreme Court and the Ministry of justice. The evaluation of each judge made by the Court presidents is then used by the personnel councils of the immediately higher courts for the periodical assessment and to define career promotion. Thus, for the local and for the district courts the personnel councils of the appeal courts make the assessment, for the appeal courts the personnel council of the Supreme Court makes the assessment and for the Supreme Court the joint session with all the Supreme Court judges makes the assessment. After a positive assessment, is then the Judicial Council (HJC) that formally promoted the judge to a higher formal rank. The HJC is also the appeal board for

the assessment procedure. Judges have the right also to appeal against the HJC decision at the Administrative Court. In this respect, this system guarantees the political accountability of the judicial system.

Political accountability is also addressed by the training system, as the Ministry of justice has established a Judicial Training Centre as a special institution devoted to judges training. The Ministry is responsible for defining curricula and training programmes. Some judges (within the Judges Association) claimed that the Ministry has to involve more the Judges Association in the system of training.

Concerning *social accountability*, an important step is represented by the newly adopted act on *Protection of the right to trial without undue delay*, which guarantees special protection to the parties in the event of a delayed trial. Throughout this act parties could present accelerative and compensatory remedies (see page 20-21). Another important act related to *social accountability* is that on *Access to Public Information*, that has introduced the principle of openness and transparency also within the judicial system (see page 21).

Fewer evidences could be find about *professional accountability*. At this stage, there are no specific provisions in which the control and the evaluation are exercised by peers. In truth, there is a tentative of the Judges Association of Slovenia to become more incisive both in deciding the curricula for judicial training and in defining standards and methods for the young judges evaluation³⁰⁹.

In conclusion, this brief exercise linking the provisions in place in Slovenia with the different types of accountability shows that although there is not a specific system of court management, the different acts and methods address not only the classical legal accountability, but primarily the managerial one, and, in some aspects, also the political and social accountability. Thus we could hypothesize that the strategy at the basis of the modernization of the Slovenian judicial system is that of addressing the various sides of the accountability throughout incremental step and legislative reforms. This point could be further developed with an in depth research, monitoring the functioning of the provisions described in some selected courts in a quite long span of time.

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- Interview with the Vice-President of the Judicial Council of Slovenia, 2007 April 12th, Ljubljana.

- Interview with the President of the Judges Association of Slovenia, 2007 April 12th, Ljubljana.

³⁰⁹ Interview with the President of the Judges Association of Slovenia, 2007 April 12th, Ljubljana.

Appendix. Chart for monthly evaluation of local court judges

OBRAZEC ZA MESEČNO SPREMLJANJE DELA OKRAJNEGA SODNIKA
PO MERILIH SODNEGA SVETA/

CHART FOR MONTHLY EVALUATION OF LOCAL COURT JUDGE'S WORK, ACCORDING TO
NORMS BY JUDICIAL COUNCIL
(180 tč. Na leto)/(180 points yearly)

Okrajno sodišče v Ljubljani – pravdni oddelek/Local court of Ljubljana – civil department

SODNIK/CA /judge _____

MESEC in LETO / month and year _____



	št. Zadev /NO. OF CASES	št. Točk /NO. OF POINTS
A) 2 tč./POINTS Meritorne odločbe /DECISIONS OF MERITS (odškodnine, dedne, stvarnopravne, tiskovne, gradbene, skupno premoženje) (TORT, LEGACY, LAW OF PROPERTY, PUBLIC PRESS, CONSTRUCTION, COMMUNITY PROPERTY)	_____	_____
B) 1.6 tč. Osnutek sodbe A) izdelal s.s. DRAFT OF THE JUDGEMENT UNDER A) MADE BY LEGAL AIDE	_____	_____
b1) 1.2 tč Osnutek odločbe izdelal s.s. DRAFT OF THE PROCEDURAL DECISION UNDER A) MADE BY LEGAL AIDE	_____	_____
C) 1 tč. Ostale zadeve /OTHER CASES	_____	_____
D) 0.8 tč. Osnutek sodbe C) izdelal s.s. DRAFT OF THE JUDGEMENT UNDER c) MADE BY LEGAL AIDE	_____	_____
d1) 0,6 tč. Osnutek odločbe izdelal s.s. DRAFT OF THE PROCEDURAL DECISION UNDER c) MADE BY LEGAL AIDE	_____	_____
E) 0.5 tč. Zadeve rešene pred 1. narokom procedural decisions without hearing	_____	_____
F) 0.1 tč. Osnutek odločbe E) izdelal s.s. DRAFT OF THE PROCEDURAL DECISION UNDER e) MADE BY LEGAL AIDE	_____	_____
i) M zadeve (mediacije)/ mediation a) _____ b) _____		
	SKUPAJ	/total
G) 0.5 tč. Začasne odredbe, obnove postopka, vrnitev v prejšnje stanje		

temporary injunctions, new trials, reinstatements of a case

H) 0.5 tč. Osnutek odločbe G) izdelal s.s.
DRAFT OF THE DECISION UNDER g) MADE BY LEGAL AIDE

SKUPAJ VSEH TOČK (od a do h)
(from a) to h))

TOTAL ALL POINTS

št. obravnavanih dni /days with hearing

št. obravnav /number of hearings

izobraževanje /education št. Dni / urno. days/hours

ogled / hearings on the spot (outside of court building)

odsotnost (redni dopust) /absence (leave) št. Dni/no. of days

odsotnost (ostalo) /absence (other)

OPRAVILNA ŠTEVILKA /CASE #	PRVI VPIS (datum) / CASE FILED (date)	PREDNOSTNA (da/ne) /PRIORITY CASE (yes/no)	NAČIN REŠEVANJA (a, b, c, ...) /TYPE OF DECISION (a,b,c...)

VII THE REFLECTIVE COURT: DIALOGUE AS KEY FOR “QUALITY WORK” IN THE SWEDISH JUDICIARY

Francesco Contini

1. Introduction

This report is an exploration on the approaches developed by the Swedish judiciary to improve the quality of justice. Even if many of the issues discussed need to be further investigated, the data collected show the originality of the Swedish approaches to quality management in court. First of all the quality projects are, in most cases, courts' initiatives. At central level, the National Court Administration offers its support without steering the projects or forcing courts to take part to such initiative. Second, the focus of such approach is on continuous improvements and on dialogue, rather than on standards and benchmarks. While the aim of continuous improvement is well rooted in Total Quality Management³¹⁰ and in the idea of Kaizen, the focus on dialogue at organisational level is something new in the judicial sector. A similar antecedent is the work done by the judges working in the district courts of the Rovaniemi Court of Appeal (see the Finnish report) even if there are differences that need to be considered by a comparative analysis that cannot be done in this chapter. From an organisational theory perspective, this approach has also many similarities with the organisational learning approach, in particular with the works of Donald Shoen and Chris Argyris, and in the approach of Norgreen as far as concern issues like the emphasis on the involvement of the staff in the quality work³¹¹.

The report has been written for the CEPEJ research project “Quality management in courts” coordinated by Philip Langbroek. The author wishes to thanks all the persons that in different ways contributed to its writing, in particular Barbro Thorblad, Gunnel Wennberg, Erik Sundström, Gunnar Krantz and Dan Tollbörn. Special thanks go to Marie B. Hagsgård for her kind help and support in several stages of the work.

2. A general overview of the Swedish judiciary

The court system

Sweden has two parallel types of courts – “general courts”, which deal with criminal and civil cases, and general administrative courts, which deal with cases relating to public administration. In addition, a number of special courts and hear specific kinds of cases such as the Labour Court, the Market Court and the Court of Patent Appeals (PBR).³¹² This report deals with quality management in “general courts”.

Swedish general courts are organised in a classical three-tier system. The district court is the court of first instance. It handles contentious cases such as demands for money, interpretation of contracts, family law disputes (divorce, custody and maintenance of children) criminal cases and other matters such as adoption, division of marital property, administrators and special representatives.³¹³ There are 56 district courts, and their size varies from about ten up to several hundred employees as in the case of the Stockholm district court³¹⁴

The six courts of appeals hear, as second instance courts, the cases already dealt with by district courts. In certain cases, 'leave to appeal' (permission) is required for filing a case in this court.

The Supreme Court is the court of last resort. It consists of a minimum of 14 Justices. The leave The same Supreme Court grants the leave to appeal only for those cases where it is important to create precedents and so guide the Swedish court systems.³¹⁵

³¹⁰ In the mid of the nineties the National Center for State Courts published a booklet on TQM in courts but as far as we know very few courts made serious attempt in that direction and the Swedish courts is one of the few successful attempts in this field. Aikman, A. B. (1994). *Total Quality Management in the Courts*. Denver, CO: National Center for States Courts.

³¹¹ Argyris, C., and Schön, D. A. (1996). *Organisational Learning II. Theory, Method, and Practice*. Reading, MA.: Addison-Wesley.

Ingelgård, A., and Norrgren, F. (2001). Effects of change strategy and top-management involvement on quality of working life and economic results. *International Journal of Industrial Ergonomics*, 27(2), 93-105.

³¹² http://www.dom.se/templates/DV_InfoPage_2317.aspx

³¹³ For more details see http://www.dom.se/templates/DV_InfoPage_2318.aspx

³¹⁴ Sehlstedt, A., and Grunditz, L. (2001). Assessing the needs of a consistent flow of information: ICT in the Swedish judicial system. In M. Fabri and F. Contini (Eds.), *Justice and Technology in Europe: How ICT is Changing Judicial Business* (pp. 107-120). The Hague: Kluwer Law International.

³¹⁵ http://www.dom.se/templates/DV_InfoPage_2320.aspx

Swedish judges can hold permanent or temporary positions. The Government appoints permanent judges considering the recommendations (proposals) of the Advisory Committee for the Judiciary, an independent body made mainly of judges³¹⁶. In principle, a permanent judge cannot be dismissed other than in cases specifically set out in the so-called "Instrument of Government"³¹⁷. In addition, every court of first and second instance has a number of lay judges appointed by the municipal or county councils for a term of four years. They work within panel of judges in which they have an individual vote. They handle both matters of facts and matters of law.

The governance structure

The governance structure of Swedish courts is twofold. Within the Swedish Government Offices, the Ministry of justice (MJ) has the main responsibility for matters relating to the judicial system, including the budgets and administration of the public agencies with governance tasks operating in this sector (see below)³¹⁸. The MJ is also responsible for core legislation in the fields of civil law, penal law and procedural law. Another key issue for the Ministry is how to prevent and combat crime in order to increase the security of individual citizens³¹⁹. In this framework, the MJ is responsible for matters involving the courts, including their organisation and codes of procedure³²⁰. Different administrations (or agencies) have the tasks of administering specific domains of the justice system. The National Courts Administration (NCA) is the central administrative agency for courts³²¹.

The NCA is an intermediate governance body placed between the Government and the courts also to protect judicial independence and is accountable to the Parliament and to the Government. After a recent organisational change (January 1, 2008), the NCA is managed by a Director-General. An Advisory Council has been set up to supervise operations and advise the Director-General³²². The main task of the NCA is the allocation of the budget to each single court. While allocating the budget, the NCA gives also to the courts targets and general instructions such as the policy to follow in the field of case stock reduction³²³. In addition, the NCA has other functions such as human resource development, service provision, training and information as well as ICT development³²⁴. In this framework, local courts enjoy a large freedom as far as concerns organisational matters and the management of their own organisation³²⁵.

This peculiar institutional setting may give reasons of both the different quality management projects run by individual courts, and the lack of an impetus towards standardisation and mandatory quality policies at central level. Based on the data we have collected, rather than acting as a central authority imposing changes, the NCA plays the role of promoter and facilitator. As noticed, "*the NCA is reluctant to tell courts how to work with quality work because of the independence of courts. The NCA mainly work as*

³¹⁶ Many of those who are appointed as judges have followed a specific career path, beginning after graduation as a law clerk for two years at a district court or county administrative court. After that it is customary to apply to become a reporting clerk at a court of appeal or an administrative court of appeal. After at least one year of service at the court of appeal or administrative court of appeal, the trainee judge returns to a district court or county administrative court for a period of at least two years. Thereafter follows at least one year of service at a court of appeal or administrative court of appeal, during which the trainee is co-opted to the bench. After completing this period of probation, the reporting clerk is appointed as an associate judge. Reporting clerks and associate judges are referred to as non-permanent judges. Voermans, W., and Albers, P. (2003). *Councils for the Judiciary in EU Countries*. Strasbourg: European Commission for the Efficiency of Justice (CEPEJ) pp. 22-23.

³¹⁷ The Instrument of Government is one of Sweden's four fundamental laws and which deals with the way in which Sweden is to be governed. http://www.riksdagen.se/templates/R_Page_6307.aspx

³¹⁸ Ministry of Justice. (2007). Ministry of Justice, Sweden. Stockholm.

³¹⁹ Swedish Ministry of Justice, <http://www.regeringen.se/sb/d/584>

³²⁰ <http://www.regeringen.se/pub/road/Classic/article/113/jsp/Render.jsp?a=17461&m=popup>

³²¹ Other agencies are the National Police Board, the Office of the Prosecutor-General and the Prison and Probation Administration. They monitor that activities within the areas for which they are responsible are carried out in accordance with the instructions given by the Parliament and the Government. They also examine the efficiency of operations and their compliance with the principles of the rule of law. <http://www.regeringen.se/pub/road/Classic/article/113/jsp/Render.jsp?a=17502&m=popup>

³²² Previously the NCA was managed by a Board composed of six judges, two members of the Parliament, two union representatives and a director-general. For more details see http://www.domstol.se/templates/DV_InfoPage_2330.aspx

³²³ For more details about NCA see Voermans, W., and Albers, P. (2003). op.cit.

³²⁴ Nacke, K., and Nilsson, J. (2003). Judicial Electronic Data Interchange in Sweden. In M. Fabri and F. Contini (Eds.), *Judicial Electronic Data Interchange in Europe: Applications Policies and Trends* (pp. 439-464). Bologna: Lo Scarabeo.p. 444

³²⁵ Voermans, W., and Albers, P. (2003). op cit p. 25

facilitators, by providing ideas, offering advice and advisors and sometimes also by providing financial support.³²⁶

In addition, the idea of the general director of the NCA is that while substantive aspects such as the length of cases, or the respect and help to people should be same in every court, *“the ways to reach these goals may differ, because staff differ and the heads of these courts are different”*.³²⁷ So, the emphasis is more on the results and on the treatment of people than on the way to reach such goals. As we will see, this allows the possibility of building different approaches to quality management based on different assumptions and on the resources available in each individual court.

Apart from the MJ and the NCA, Sweden has developed over the years some distinctive mechanism to control public institutions including courts such as the Parliamentary Ombudsman (*Riksdagens ombudsmän – JO*) and the Chancellor of Justice (*Justitiekanslern - JK*). The Parliamentary Ombudsman act on behalf of the Swedish Parliament (*Riksdag*) and is responsible for ensuring that the bodies involved in public administration comply with laws and other provisions and in general fulfil their duties. The Parliamentary Ombudsman responds to complaints from the public, but can also initiate their own investigations³²⁸.

The Chancellor of Justice is the Government’s supreme ombudsman responsible for scrutinising the public administration bodies on behalf of the Government and examines claims for damages directed to the State. In addition, also the public can present complaints to the Chancellor of Justice. Both the JO and the JC can be called to check some areas of courts functioning, such as court delays. So, in case of slow processing times, a Chief Judge can be criticised by the JO or the JK for lack of overall supervision of old unresolved disputes³²⁹. Also individual judges may be criticised for slow processing of cases. Exceedingly slow processing of cases is also considered a reasonable cause for the Chief Judge to reallocate cases to a different judge.³³⁰ In addition to such complaints mechanisms, it is also possible to complain about the performance or the delays of a judge with the president of the court.³³¹

3. Policies for the quality of justice at central level

Budget and goals

The Judiciary overall objective, as set out by the Government, is to secure the legal rights of individuals and the rule of law. In this framework, the Government regulates the courts with an official document on policy objectives and appropriations, issued annually and containing comprehensive rules and guidelines relating to, *inter alia*, the National Courts Administration and the working methods of the courts³³². In this way, appropriations and policy objectives are joined up.

The budgeting process takes place at several levels. In a very simplified way, we can say that the Parliament approves the budget and allocate it to the Government and to the NCA. In a further stage, the NCA allocates the budget to each individual court considering different criteria: the type of court; the size of the court and the caseload. In addition, special circumstances can be taken into account, to check the need of a budget supplement. In passing, we may observe how this *“supplement system” has been criticized: “[it] favours mainly the smaller courts [and] has become so detailed that there is a risk of many courts losing their grip on the criteria used for the distribution. The courts are very critical about this aspect”*³³³.

Basically, objectives set up at central level concern the efficiency in case processing and the adherence to the rule of law. As far as we understand, while managerial objectives can be quite precise, since they can be measured in terms of “time and quantity”, the adherence to the rule of law remains a general statement. However, as will be illustrated (see section 3.2), the NCA carried out training program in the

³²⁶ Hagsgård, M. B. (2009). Quality management in courts and judicial organisations: comments and integration to the first draft.

³²⁷ Thorblad, B. (2009). *Quality management in courts and judicial organisation*. (Telephone interview ed.).

³²⁸ www.jo.se and www.jk.se

³²⁹ However, they have no power to directly order a public authority or a court to conclude proceedings within a certain time-period.

³³⁰ Sundström, E. (2008a). *Quality management in courts and judicial organisations: replies to the written questions*; Sundström, E. (2008b). *Quality management in courts and judicial organisations. Telephone Interview*.

³³¹ http://www.coe.int/t/dg1/legalcooperation/cepej/evaluation/2008/sweden_en.pdf (p. 13 of 54).

³³² Sundström, E. (2008a), op. cit.

³³³ Voermans, W., and Albers, P. (2003), op cit.

area of the quality of judicial decisions that – to some extent – are attempt to work toward the goal of adherence to the rule of law.

In the same process, the government further sets the time frames within which the majority of criminal and civil cases ought to be resolved. According to the objectives established by the Government for 2008, the 75% of all criminal cases should be defined within 5 months and the 75% of civil cases within 7 months³³⁴. Other timeframes, in particular those concerning cases involving minors (Table 1) and suspects in custody are subject to specific regulations and are decided by the Parliament (e.g. not by the government). Within this framework, the task of the NCA is to provide to each court, the resources required to handle the expected cases within the timeframes established by the government and the parliament.

Every year, the detailed targets of each court are established by the court after a discussion between the head of court and the NCA. In this way, targets are based on the peculiar features of the courts, and can be more but also less ambitious than those set up at central level.³³⁵

Table 1: Targets in cases related to criminal cases involving minors

Type of court	Cases	Type of proceedings	Timeframe
District courts	Criminal	Investigation of Prison those who are sentence under the age can exceed of 18 6 months	Charge should be decided within 6 weeks from the completion of the pre-trial investigation Main hearing shall be held within 2 weeks from the moment the charge has been brought

Source:Smolej, (2005). Op. cit.

“Each court is allocated money based, primarily, on how many cases they have to deal with every year.”³³⁶

This allocation is based first of all on an estimate of the time required to handle different kind of cases.

This system is supported by different statistical reports collecting data concerning the duration of different cases, the number of incoming, decided and pending cases, the percentage (rate) of cases older than six and twelve months, and the average cost of each case. In addition, the courts make their own reports in which they give also reasons for the cases that that have been pending for a given length of time.

The NCA and the courts do not use a system of weighted caseload: looking at the statistics all the cases have the same weight (in civil and criminal matters)³³⁷. However, the question can be addressed in the dialogue between courts and NCA. As noticed by a court manager,

“In the dialogue with the Administration you have to point out that you have had some exceptional cases and then it could be adjusted. In that dialogue you can talk and adapt as far as it concerns the budget”³³⁸.

Indeed, as confirmed by the NCA General Director, the budget allocation considers also the specificities of each individual court:

“We also look individually at each court to see if there is any other aspect that means that they should have more money or perhaps less money. And they can receive more money, for instance, if they have a high proportion of difficult and time-consuming cases, but also they should have the possibility to work with quality aspects”³³⁹.

In addition, courts can have resources for quality work in different ways.

³³⁴ Sundström, E. (2009). Quality management in courts and judicial organisations: comments and integrations to the first draft.

³³⁵ Sundström, E. (2008b), op. cit.

³³⁶ Thorblad, B. (2009). op. cit.

³³⁷ Sundström, E. (2008b), op. cit.

³³⁸ Ibid.

³³⁹ Thorblad, B. (2009). op. cit.

“A court might receive additional resources for quality work, and we have done so in a number of cases. But sometimes, we say that a court should be able to finance that kind of activity within the ordinary budget [...] for example if the court cases have not been as many or as complicated as we assumed when we decided the budget, then the court should have some money left and also ... there should be space in every budget for some quality work.”³⁴⁰

As in several other countries,³⁴¹ also in Sweden there is a debate about the goals setting and how these goals have to be considered.

As noticed in an interview by one of the judges, the goals set up by the Government can be understood as the “messages” sent by Government to the courts as far as concern the priorities of their action. As noticed, these messages focus on efficiency and not on other quality areas of courts’ work:

“Judges have to improve productivity and work faster. Nevertheless, the real problem with the central objectives is the lack of consideration of the softer issues. The objectives are focused on statistics, and the main issue that we discuss with our Court Administration is how time devoted to proceedings can be cut down and how to deliver more. The main point in these discussions is the number of cases.”

At the same time issues like

“How are the witnesses and plaintiffs treated, what are their views on the court and its work?”³⁴²

are not discussed.

“That is my view. If asked, the MJ would answer differently, because there are also other objectives. So there is an interest in the softer issues, but it seems that the general focus is on economics and statistics”³⁴³.

In 2008, the Commission for confidence in courts drafted a report that addresses different ways to improve the confidence in Swedish courts³⁴⁴. The report suggests that all the courts, with the support of the NCA, should start working in three areas (previously pointed out by the government) 1) improving the relationships with the media, 2) improving treatment of court users and 3) improving the way sentences are written to make them easier to understand.

“We propose that the Government instruct the National Courts Administration to draft a modified resource-distribution model, in which account may be taken to the quality-enhancement work conducted by the courts. This would mean a clear expression of will on the part of the Government and its agencies that not only quantity – which is currently the most important criterion for distribution of funds among courts – but also quality be counted when funds are distributed. This would also signal a clear link between the funds allocated and quality-enhancement work, which could be a strong incentive for courts to start conducting work on systematic quality-enhancement issues”³⁴⁵.

From a NCA perspective, while there is the acknowledgment that there is some ground for these points of view, it must be added that it is the Government to set standards and the goals for the work of the courts.

In addition to the questions of the selection and the nature of the goals, and to the measurement systems briefly discussed above, another typical problem with MBO in justice systems is the incentive structure: its nature, function and its links with the individual and organisational results in reaching the objectives³⁴⁶. Within judicial systems hard measures, such as financial incentives are not appropriate due to the

³⁴⁰ Ibid.

³⁴¹ Fabri, M., Langbroek, P. M., and Pauliat, H. (Eds.). (2003). *The Administration of Justice in Europe: Towards the Development of Quality Standards*. Bologna: Lo Scarabeo. Contini, F., and Mohr, R. (2008). *Judicial Evaluation*. Saarbrücken: VDM.

³⁴² Sundström, E. (2008b), op cit.

³⁴³ Ibid.

³⁴⁴ Betänkande av Förtroendekommittén. (2008). *Ökat förtroende för domstolarna, strategier och förslag (Increase confidence in the courts, strategies and suggestions)* (No. SOU 2008:106). Stockholm.

³⁴⁵ Ibid, p. 26

³⁴⁶ We have already discussed such issues in the chapters 3 and 4 of the book Contini, F., and Mohr, R. (2008). *Judicial Evaluation*. Saarbrücken: VDM.

peculiar institutional setting. In addition, since the court managers are judges they cannot be removed for a lack of managerial results in Sweden as in many other judiciaries³⁴⁷.

Consistently with the overall design of the MBO, also the consequences to the evaluation of the results reached by a court are soft and based on the discussion between the NCA and the court.

“Primarily, we offer assistance. And it can be assistance in different ways. The court can get more money to have more people working for a limited period of time, but there are also more sophisticated methods. We can send out people to do consulting activities for quality work, both within the court and between the courts.] And we also offer management courses for the leaders and, in general, we supply that kind of advice that would be necessary. Almost in every case such offers are accepted by the courts, and I can’t really remember any cases where it has not been accepted”³⁴⁸.

So, the Swedish approach to MBO for court is certainly soft, but differently from several other European experiences, where there is a substantive lack of consequences, or where the incentive structure is conceived as a classical “sanctions and rewards” mechanism, the NCA seems to act as advisor and facilitator trying to support court to attain the goals.

Other policies for the quality of justice at central level

Considering the data we have been able to collect, we can discuss four policy areas carried out at central level to improve the quality of justice: training with a special attention to the quality of sentences, surveys about the satisfaction of court staff, media relationship and promotion of “quality work” in different ways, including the drafting of a quality manual.

Sentencing training

Among the initiatives promoted at central level to improve the quality of justice, it is worth mentioning the training in the sentencing area. The NCA arranged seminars in which judges, prosecutors and lawyers participated, and which resulted in

“A very good discussion about sentencing. I think it will improve foresee ability of judgements. And that’s a good example of what’s happening in Sweden” commented a judge. “We should discuss this further and we should learn from each other. If there is way to establish a logical structure to follow when sentencing, then this could provide a general model which every judge could use. Of course, there will be individual rulings because there are individual aspects in every case. But it would be good if there could be a general model to work with because foresee ability of judgements would be improved. This is a very interesting question that we have discussed in the national seminars.”³⁴⁹,

Surveys

Swedish courts use systematically surveys to measure the level of satisfaction of court employees³⁵⁰. This initiative, called “national staff surveys”, occurs locally at each individual court in accordance with the model set up by the NCA. The results of these surveys are then analysed, action plans are drafted, activities and measures are taken, and finally follow-up is conducted³⁵¹. As will be pointed out in section 4, their use eased the launch “quality work” in individual courts.

As already notices, the report published in 2008 by “the Commission for confidence in the courts” quoted above³⁵² include also the analysis of a large user’s satisfaction inquiry that measured the confidence of the public and of lawyers and prosecutors in the courts³⁵³.

Consistently with other researches in this field, the survey, identified a number of factors that are particularly important for the trust of the general public, such as the accessibility of the courts and the court staff for parties and people giving evidence, the courts’ reception of parties and people giving evidence, the courts processing times, the transparency of the courts’ decision-making processes, the

³⁴⁷ In Sweden a judge can be removed just in case he/she has committed a crime.

³⁴⁸ Thorblad, B. (2009). op. cit.

³⁴⁹ Sundström, E. (2008b), op. cit.

³⁵⁰ Smolej, M. (2005). *Time management in Nordic courts, review of proposals and policies aimed at reducing delays in courts*. Strasbourg: CEPEJ.

³⁵¹ Sundström, E. (2008a). op. cit.

³⁵² Betänkande av Förtroendekommittén. (2008). op. cit.

³⁵³ The use of surveys about users’ satisfaction (or more broadly users’ views) it is quite recent in the Swedish judiciary, at least as project promoted at central level This marks a difference with the well established use of this evaluation method in Nordic countries. See CEPEJ. (2008). *European Judicial Systems. Edition 2008 (2006 data): Efficiency and quality of justice*. Strasbourg: Council of Europe..

formulation of judgments and decisions, the way in which the activities of the courts are portrayed by the media.

Each of these factors can be addressed with adequate policies. The report strongly support “a *change in the attitudes of staff in the courts so that they understand the demands on, and expectations of, the activities of the courts by the people coming into contact with them*”. To pursue such goal, the report endorses “*the importance of systematic quality-enhancement work conducted at all courts*”, and stresses the key role of the head of the court in these efforts.³⁵⁴

Media

Another area in which we have traced an original development is the relation between judges, court rulings and the media. Here, the most interesting experience is the judges’ choice about the possibility of communicating directly with the media about the cases they have decided. On one side, a division has been established within the NCA to deal with the media, and group of 24 judges has been specifically trained to communicate with the media. This created the conditions for judges to communicate directly with the media.

*“We have done quite a lot in the last few years to improve the situation with the media and we plan to continue that work. We have a special division of this authority that deals with this kind of questions and there is quite a different point of view in the courts themselves now. When I started to work as a judge no judges were willing to explain their judgments to the media. Now a day, it is quite common to be available to the press when you have decided a court cases that you know the media is interested in. And we also have the special media group mentioned above.”*³⁵⁵

It’s important to underline that the judge availability to the media is limited to explanation of cases and decisions, and this should avoid forms of media over-expositions that have affected other jurisdiction. So far, the evaluation of this experience is positive, both for the judges involved in this program³⁵⁶, both for the General Director of the NCA:

*“I think they [the results] are quite positive, because now the court’s points of views are often heard and I think the respect for the courts will grow, when we also try to explain difficult points of law.”*³⁵⁷

The “Manual for quality work”

The manual “*Working with quality in courts*”, (*Att arbeta med Kvalitet i Domstolsväsendet*) published in 2005, is a key initiative carried out at central level to promote quality-work in individual courts. The manual has been developed after the successful experience of quality work programs carried out by single courts and in particular by the Court of Appeal of Goteborg, and can be seen as an attempt to systematize the work already done. The publication is the result of the work carried out by a special “quality group” (*Domstolsväsendets kvalitetsgrupp*) which has been set up by the six courts of appeal presidents with the goal of proposing a conceptual approach and working methods in the area of quality in courts. It was composed of judges coming from the different Swedish courts. The publication proposes methods and strategies to improve the so called “quality work” in courts³⁵⁸. In the same year, all Swedish court managers (i.e. chief judges) agreed to work with quality management in a systematic way. Since then, about 25 (out of 90) courts have started some form of systematic quality management³⁵⁹. The manual for quality work is just available in Swedish, but Smolej and Johansen³⁶⁰ provide a useful description of its contents.

“Quality in courts” has been defined considering the following points:

5. Correct decisions and well-written presentation of reasons.
6. Decisions and summons written in understandable language.
7. Treating parties involved in a respectable manner when approaching the court.
8. Pleasant work environment and atmosphere.

³⁵⁴ Betänkande av Förtroendestyrningen. (2008). op.cit p. 28.

³⁵⁵ Thorblad, B. (2009). op. cit.

³⁵⁶ Informal talks with the senior judge Katarina Pahlsson (8 May, 2009).

³⁵⁷ Thorblad, B. (2009). op. cit.

³⁵⁸ Domstolsväsendets kvalitetsgrupp. (2005). *Att arbeta med kvalitet i Domstolsväsendet*. (Developing quality in the courts. National Courts Administration of Sweden): Domstolsverket.

³⁵⁹ Krantz, G. (2008a). *Quality management in courts and judicial organisations: Replies to the written questions*

³⁶⁰ Smolej, M. (2005). op. cit.

As far as the courts are concerned, the manual recommends the introduction of “suitable measures to increase dialogue between different parties, for example in organising group discussions. Regarding perceptions and experiences of private persons, the use of quantitative surveys has been recommended. The results of these examinations should be compiled and reported to all co-workers in the court. Further lines of actions and measures should be decided together and the measures taken and their consequences should be reported on a regular basis in staff meetings. Moreover, the actions planned, actions in motion and actions that have already been put to practice should be reported in the courts’ annual reports and the information should be communicated to the National Court Administration”³⁶¹.

As far as the central level is concerned, the manual states, “the National Court Administration provides courts with support and assistance in carrying out quality work. The quality groups should be developed so that individual members could serve as contacts and proposers of quality projects. This reference group could also help to develop new practices for the courts. The National Court Administration has been proposed to be responsible for setting up and maintaining a database of quality benchmarks to be used by courts and also for providing models for conducting surveys”.³⁶²

If at a ministerial level systematic quality work is encouraged, each single court, due to its independence, can choose whether to work or not in this area. In this context, several Swedish courts developed projects called “quality work” based on this approach. Many of them began with a dialogue within the court or with lawyers and prosecutors about their views of the functioning of the court³⁶³. The next section will describe three of them, one court that started its quality work in 2003, before the manual was prepared (the court of Appeal of Western Sweden) and two other courts which started after the publication of the manual.

4. Quality work at the court level

Internal and external dialogue as key for “quality work”

The idea of dialogue inspires all the quality work done by the Swedish courts: dialogue represents the key tool to identifying the areas of intervention and to decide the *measures to be taken*. The process has been described in a recent work of Marie B. Hagsgård³⁶⁴ and can be summarised as follows.

Internal dialogue takes place with all judges and other staff of the court and can be conducted in different ways: face-to-face interviews as well as discussions in small or large groups.

Members of the staff specially trained should lead the dialogue. The main goal of the dialogue is to identify areas in which quality work can be developed and practical improvements can be implemented. The approach is based on the involvement of the different actors (internal and external), invited to present their views on the issues at stake and their proposals to improve the quality of the services delivered by the courts. As far as possible, the dialogue should be conducted with the court’s own staff (with a minimum of training) in order to get a natural start for an ongoing dialogue involving the entire staff. In the beginning, it is very important for the head of the court to listen actively but not talk. The reason for this is the hierarchy of a court. If the head of the court is too active at the beginning of the process, there is a risk that the dialogue does not get started³⁶⁵.

One of the different by-products of this approach is a greater involvement and professional motivation of the staff and, to a different extent, of all the parties involved. However, the main result is the identification of a high number of concrete measures and proposals for the improvement of the quality of justice delivered by the court.

The dialogue often starts internally (with judges and staff), taking advantage of their professional knowledge, and then moves on, becoming external with the so-called “interested parties” such as lawyers, prosecutors but also witnesses, defendants and other interested groups³⁶⁶. The *external dialogue*, carried out with the methods discussed in section 5.4, may offer further suggestions as well as new areas for the quality work of the court. In particular, external dialogue proved to be useful to get information, evaluation

³⁶¹ Ibid.

³⁶² Ibid.

³⁶³ Hagsgård, M. B. (2009). op. cit.

³⁶⁴ Hagsgård, M. B. (2008). Internal and External Dialogue: A Method for Quality Court Management. *International Journal For Court Administration*, 1(2), 13-18.

³⁶⁵ Hagsgård, M. B. (2009). op. cit.

³⁶⁶ The sequence first internal then external dialogue is not “mandatory”. As it will be shown in section 7 some courts have begun with external dialogue and then moved to discussion with staff and judges. Different local peculiarities, such as the dimension of the court, can explain these different methodological choices.

and proposals in areas such as information, treatment and service to the users of the court, the way to handle civil cases, as well as to give suggestions for measures to improve these areas.

At this stage, the court manager has to identify the areas for quality work and what measures should be taken to improve the functioning of the court in the different quality areas identified. Once again, the decision about priorities is taken after the internal dialogue.

In selecting the priorities, several factors have to be considered such as the resources that the court and the court staff can dedicate to the implementation, the interdependencies between the different measures, the expected feedbacks, and the commitment of those who have to implement the measures, just to mention few of them. All decisions are taken with the task of the court in focus; that is to make decisions in an efficient way and according to the rule of law. Finally, internal and external dialogues may be used as a method for self assessment and feed-back.

5. The Court of Appeal of western Sweden: five years of “quality work”

The Court of Appeal of Western Sweden (Gothenburg) has been the first court to conduct experiments in this field. For this reason, such “experiments” conducted since 2003 can be considered as those who lead to the foundation of the peculiar quality management approach developed by the Swedish courts and currently supported by the NCA and the by the commission for quality work.

Internal dialogue

The decision of the President of the Court to launch this project has been explained as the consequence of different circumstances. First, the results of the surveys about personnel satisfaction were not as good as expected. Second, an associate judge with a previous professional experience in the NCA went to work at the Court of Appeal. Third, the work of Prof. Norrgren offered a theoretical and practical foundation for the quality work based on the dialogue as a means to improve the quality of the services delivered by organisations.

The associate judge carried out face-to-face interviews (of about an hour and a half each) to more than the half of the employees (judges, secretaries, administrative people etc.). This inquiry was exploratory:

“We had no idea of what was coming out from it. We just started. And there was quite a big discussion if we should interview people individually or in groups. [...] But [...] we decided we would have had answers that are more honest if we interview people individually. And this has been a great success.”³⁶⁷

The staff was invited to give their view of strengths and weaknesses of the functioning of the court as well as ideas about how to improve it and how to make the court more efficient. Questions concerned the

“efficiency of the present routines and practices, the view of the leadership of the court, the view of how well cooperation worked within the different departments and between them, how well introduction and education of junior judges and other staff worked etc.”³⁶⁸

The wide range of goals, proposals and measures emerged from the interviews was presented to the President and to the entire staff in plenary meetings (one for each department) and then discussed in small and larger groups. In this way, the staff was invited

“to give a recommendation to the President on the areas and measures that they thought should be given priority to improve the functioning of the court.”³⁶⁹

Suggestions emerging from such internal dialogue³⁷⁰ dealt with areas such as cooperation within and between departments, routines for handling cases efficiently, training. As far as we understand, the dialogue went beyond the question of efficiency. It dealt also with issues with a strong legal content such as the writing of sentences.

Implementation

There was a wide range of proposed measures emerging from the internal dialogue that then had to be implemented. The President decided to implement as many of the proposed measures as possible in order to support the change process and encourage the staff to come with further proposals for

³⁶⁷ Wennberg, G., and Hagsgård, M. (2008). *Quality management in courts and judicial organizations*, Telephone interview

³⁶⁸ Hagsgård, M. B. (2008) op. cit.

³⁶⁹ Ibid.

³⁷⁰ External dialogue has been undertaken just in a further stage.

improvements. She also decided that the measures were to be evaluated at the end of the year. The measures suggested³⁷¹ were listed on the intranet and comments were added to each of them such as "it will be implemented directly", "it will not be implemented because of ..." or "it will be implemented during the next year". All the measures to be implemented were presented in an action plan for the court for the following year (2004). In addition, the plan was published in the intranet of the court.

In the process going from the identification of the measures up to their implementation, another important factor is the timing. This entails mainly two things: a short time between the identification of the measures and the decision to implement them, and the quick visibility of the changes:

"as soon as the judges see the results of routine improvements, they are more eager to accept the next proposal for an improvement. And this can be a problem if the chief judge has a certain amount of proposals and has to decide if to accept these proposals or change them in some ways. But this must be quick enough so that you see you can reach the results."

Results evaluation and follow up

All the judges and members of the staff were involved in the evaluation process based on discussions carried out in small groups. This represented the opportunity for both assessing the results of the first year of the project and identifying new measures to be considered for implementation. In addition, the Court used the data regularly collected by the NCA (turn around times and job satisfaction indicators) to have an evaluation of the project. Results were positive: the Court of Appeal decided more cases than in the previous year, and the "staff's sense that it could influence the work of the court, was twice as high as before the dialogue started". This further indicates that the quality work was not an "empty dialogue" and that the court was taking seriously the emerging proposals.³⁷² In addition, the measuring of turnaround times and job satisfaction has continued to improve in 2005-2008.³⁷³

External dialogue

At that stage, after one year from the launch of the project, "the internal dialogue had created an interest among judges and other staff in hearing the views of external interested parties of the court". Following the suggestion of the staff, the President opened the dialogue about the functioning of the Court of Appeal to external interested parties: prosecutors and lawyers. Five staff representatives listened to the external views and suggestions asking open-ended questions to understand "what is working well in the criminal and civil processes at the Court of Appeal and what needs improvement". As for the internal dialogue, evaluations and proposals coming from interested parties were presented to the staff and discussed to identify priorities. After the meeting, the President "in large accordance with the recommendations of the staff" identified the measures to be implemented. The interested parties and the general public were informed by the court also by using the court's website.

Lawyers made proposals to speed up the pace of civil litigation and to change routines to have a more active handling of civil cases. Such proposals were discussed by a group of judges and led to the identification of new working practices. The president agreed with the proposals and promoted their implementation. At the end of the second year, prosecutors and lawyers were invited to provide feedback on the results in a meeting attended also by judges and court staff. The meeting gave the opportunity to collect the positive evaluation of the results achieved and new suggestions about how to improve court functioning. Even more important, interested parties considered the dialogue with the court a helpful means to improve the quality of justice.

The issue of the involvement of the general public has been addressed in a different way. After a discussion on the topic with judges and the entire administrative staff, the President decided to set up a plan for interviewing defendants, plaintiffs and witnesses in criminal cases. The goal was to collect their perceptions about the treatment and service given to them by the court before and during the trial. Two court employees made 67 interviews collecting qualitative data. One of the results was that

*"witnesses and plaintiffs at large needed more information about the court hearing in order to effectively prepare it. By contrast, defendants were very aware of and sensitive to their interactions with the judge during the court hearing."*³⁷⁴

³⁷¹ Just to make an example, a different division of labour between judges and secretaries and a greater autonomy of secretaries in performing some tasks are measures that allowed a reduction of time to disposition.

³⁷² Ibid. p. 17

³⁷³ Hagsgård, M. B. (2009). op. cit.

³⁷⁴ Hagsgård, M. B. (2008) op. cit. p. 15

As in the previous cases, Judges and staff discussed the results, identified and implemented measures, and finally carried out the evaluation.³⁷⁵ In October 2008, a follow up based on 75 new interviews with defendants, plaintiffs and witnesses took place. The measures had proved working well in most cases. Some needed to be improved and new measures were suggested. An important effect of interviewing the users of the court was that the members of the staff who interviewed the users were deeply committed to improving the quality of treatment of the users. This emerged also in other Swedish courts.³⁷⁶

Following the cycle already described, the dialogue with internal and external parties is ongoing in the Court of Appeal of Western Sweden since 2003 and show positive results and positive feedbacks by internal and external users. Also the evaluation of the General Director of NCA is positive.

*"It has been a well running court for quite a long time, and then it became even more efficient, especially with regard to civil cases, while improving the working conditions and the overall situation for staff. They have done a marvellous job. We have also other courts that have improved the relevant figures very much, with other kind of methods. The Goteborg method is a very good method, but I think there are other methods that function very well. And I think it's a bit individual for different courts which method is best suited in a certain time"*³⁷⁷.

The next examples illustrate two different quality methods.

6. The district court of Vänersborg: involvement strategies exploited

Internal dialogue and implementation

The main reason for launching the quality work at the district court of Vänersborg was the need of reorganisation required by the merger with another court. There were problems with different routines and different cultures. Just to make an example, before the "quality work" every judge was entitled to decide for him or herself how to organize the preparation of cases. In this state of affairs, quite common across Europe, the court manager felt the need to get uniform and clear routines for handling cases and a less fragmented organisational culture. Now, after the quality work, all the judges should follow the same working practice to prepare the cases³⁷⁸.

As in the case of the Court of Appeal of western Sweden discussed above, the first step has been the interview of all the members of the staff. This led to the identification of five different areas for improvement:

- 1) clear routines for the handling of criminal cases,
- 2) clear routines for handling of civil cases,
- 3) introduction and training of law clerks and clearer routines for their work,
- 4) cooperation and social activities for the staff,
- 5) improvements of the administrative support.

All the members of the staff were assigned to working groups, set up with the goal of identifying and proposing improvements in each area. A member of the staff (judge, secretary or law clerk) was leading each group. Every month a meeting with all the staff was held. Suggestions for improvements were presented by the groups, and decisions made by the court manager.

Results

Results have been largely above the expectations, and Vänersborg is considered as the district court that has "worked most profoundly" with systematic quality management because every member of the staff is active in one of the groups improving the functioning of the court.

So far, among the results reached by the Vänersborg district court we can mention uniform and clear routines for handling criminal and civil cases, an increased cooperation between the different professional groups within the court and hence an improved administrative support. More specifically,

"The administrative personnel (or the secretaries of the judges) have learned how the work proceeds and what it contains. This has meant on the one hand the administrative personnel have taken some tasks

³⁷⁵ Hagsgård, M. B. (2008) op. cit. p. 15-16

³⁷⁶ Hagsgård, M. B. (2009). op. cit.

³⁷⁷ Thorblad, B. (2009). op. cit.

³⁷⁸ Krantz, G. (2008b). *Quality management in courts and judicial organizations. Telephone interview.*

that were formerly done by secretaries, and on the other hand they have suggested improvements on the work of secretaries that they have been able to see from their point of view.³⁷⁹

So, one of the consequences of the dialogue is a change in the division of labour between the different professional groups within the court. However, the “dialogue” eased the cultivation of a better work environment, where new ideas are constantly tested and evaluated. In this new environment, the staff works more efficiently and with more flexibility. The staff is also more satisfied since they can influence the work and the way it is done, as emerged from the yearly job satisfaction survey.

As far as concerns the pace of litigation when the systematic quality work begun in 2007 turn around times were 6.5 months for criminal cases and 12.1 for civil cases. A year later, the turnaround times for criminal cases had decreased to 5.1 months and for civil cases to 7.2 months. The amount of cases pending for decision had in a year decreased by 126 cases despite of the bigger inflow of cases (plus 5%).³⁸⁰

Strategies to involve judges and court staff

The court of Vänersborg is a useful example to focus on some specific issues related with the development of this kind of quality work in court environment. It is well known that one of the critical issues related with innovation and change in courts and more generally judicial reform is the role and the involvement of judges and to a different extent of other interested parties.

In many countries the (decisional) independence of judges, secured by constitutions to guarantee their impartiality and so the principle of equality, gives room to a high degree of functional autonomy for each single judge. Therefore, each judge tends to develop idiosyncratic working practices and it is difficult to reach any level of procedural standardisation. As pointed out by one of the chief judges interviewed, the problem also affects Swedish courts.

*“We have the problem everywhere ... If the court management [e.g. the President of the Court] says, 'now I want to do in this way' some judges will comply and other will not. It's a classical problem in a court. I think that the reason why it has been solved [in this court] is that everybody is involved in some part of the development of new routines”*³⁸¹.

The argument of the head of court identifies the problem and a possible way to solve it. The method is to involve every judge in improving the routines for handling cases. Having all the judges [and more generally all the staff] participated in quality work means, among other things, that each judge has both changes to propose (as consequence of the work of his/her own working group) and changes to discuss and eventually accept (as a consequence of the proposals of other working groups).

In this game, nobody can just “wait, see and criticise” proposals made by the colleagues because (soon or later) it will be his/her time to make proposals. Therefore, if proposals are discussed in a constructive way and with the goal of finding shared and improved ways of handling cases, it becomes easier to accept the proposals made by other colleagues. As noticed by Marie B. Hagsgård

*“There is a group for improvement the handling of criminal cases, here [in Vänersborg], and they go to judge Krantz and say: 'now we have a number of routine cases that we want to propose'. And what has surprised me is that when they have these propositions, everybody seems to easily agree on their proposals. My guess is that this is much easier because the judges have other areas they work with. And they work with their propositions to be accepted”*³⁸².

So, the work and the effort made by each single judge in identifying measures to improve the handling of civil cases, make it easier for them to accept propositions to improve the handling of criminal cases made by another working group. As noticed, “*involving professionals like judges in the development of better practices makes them more eager to agree than when the propositions come from the manager or from outside such as consultants, the NCA or others*.”³⁸³

Another important reason for the success of the court of Vänersborg was the decision to let five members of the staff³⁸⁴ to conduct the interviews with the entire staff of the court. Everybody was thus heard individually before the court manager decided the areas for improvements. The five members of staff

³⁷⁹ Ibid.

³⁸⁰ Ibid.

³⁸¹ Ibid.

³⁸² Hagsgård in the interview with Krantz, G. (2008). op. cit

³⁸³ Hagsgård, M. B. (2009). op. cit.

³⁸⁴ Two judges, one junior judge and two members of the administrative staff.

conducting the interviews became powerful “engines of change” in the working groups that followed to the interviews³⁸⁵.

A second issue is the role of the court manager (i.e. the head of court). In the cases we are considering, the court manager has always the last say and the final decision. In comparative perspective, this is not always the case. The hierarchical power of the heads of courts and even their authority in organising courts can be very weak³⁸⁶. In Vänersborg as in the other courts taken into account in this report, it was always clear as at the end of the dialogue, the head of court would have taken the decision. This puts the head of court in the best position to stop defensive routines eventually emerged and if necessary to force the process of change. In addition, many court managers think that if they would exercise their power deciding over the heads of the other judges, it is very likely that the judges would not fully apply to such a decision.³⁸⁷

However, this as any other method developed to support the process of change of complex institutions like courts, even if carefully designed, discussed and adopted, does not guarantee the final success. The whole process may be easily hampered if in the internal dialogue some key-players obstruct the process of change with destructive critiques, cynicism, defensive routines etc.³⁸⁸

In these cases, the opinion of the judges interviewed is that the court manager has to be very firm and persuasive, pushing the staff to agree on the proposals. If one judge disagrees, it is important to stress the interest of the public of foresee ability in procedural matters. Last but not least, as any other kind of organisational development exercise, this approach, in the long run risks to lose its innovative power and to become just and additional repetitive working routine³⁸⁹. Therefore, it is important to keep the quality work going on asking to judges and other staff new ideas and proposals³⁹⁰.

Also for these reasons, additional inquiries should be undertaken with both successful courts (especially those who have a long experience in systematic quality work) and with courts which had troubles in developing such approach.

The time for external dialogue

In October 2008, the court of Vänersborg launched the external dialogue. The court invited prosecutors and lawyers to a meeting to give their views about the functioning of the court and suggestions for improvements. After the meeting, the different working groups within the court will take care of the views and suggestions given, discuss them and come up with proposals of improvements³⁹¹.

Their idea is that the opening to external suggestions works better if courts are “unfrozen”. Their argument is that internal dialogue offers the opportunity to reflect on working practices to judges and administrative staff, and time to think about possible improvements. This contributes to unfroze court practices, making the court staff and judges ready to listening the requests and the suggestions of the users.

The conclusion of one of the judges interviewed is that

“The external dialogues in Vänersborg proved to be very fruitful. Lawyers and prosecutors gave both encouragement because they had clearly seen the improvements in routines which had made the case handling much smother and quicker. But they also gave some candid criticism about some routines. The criticism was very well handled by the judges and other staff present. They listened carefully and said they would consider it and come back with a decision on the issue in question. One reason for this outcome can be that they had already discussed precisely the routine criticised internally before the external dialogue and thus was aware of the problem.”³⁹²

Therefore, once the reflection is ongoing, people have the chance to reflect on different possible changes, they become more open to external ideas and ready to receive and manage criticisms. Both the Court of Appeal of Western Sweden and the district court of Vänersborg have been successful following this path, while the district court of Lycksele did the opposite. In the next section, we will briefly consider this approach³⁹³.

³⁸⁵ Ibid.

³⁸⁶ Fabri, M., Langbroek, P. M., and Pauliat, H. (Eds.). (2003). op. cit.

³⁸⁷ Hagsgård, M. B. (2009). op. cit.

³⁸⁸ Argyris, C. (1993). Knowledge for Action: A Guide to Overcoming Barriers to Organizational Change: Jossey-Bass.

³⁸⁹ Cfr. Bradford, D. L., and Burke, W. W. (2005). *Reinventing Organization Development*. San Francisco: Pfeiffer.

³⁹⁰ Hagsgård, M. B. (2009). op. cit.

³⁹¹ Krantz, G. (2008a). *Quality management in courts and judicial organisations: Replies to the written questions*

³⁹² Hagsgård, M. B. (2009). op. cit.

³⁹³ Hagsgård, M. B. (2008) op. cit.

7. Lycksele and the courts of Västerbotten county: the extrospective approach to quality work

The quality work carried out by the district court of Lycksele is interesting for its peculiarities. Differently from the other cases we are considering, Lycksele is a small court in the north of the country, an area (Västerbotten County) with low population density. In this landscape, the administration of justice has to face peculiar problems: the small scale of the courts, the distance among the different courts, and in several cases the distance from the courts and their users. Such problems have affected the development of the quality work in Västerbotten County in different ways.

A first peculiarity to consider is that to face such difficulties the courts of the county have established a strong collaboration on different issues:

*“Instead of working on the same thing in each of the small court, each court has to cooperate. We do this in every aspect you can think of administration personnel. If some court need help we can come and give help, or we can ask our neighbour court some help if you need a judge to come to us. We can borrow a judge from another court”*³⁹⁴.

Consequently, quality work is the result of cooperation between the three courts of the county and not a single court initiative as in the other cases we have considered. Regular meetings between the three chief judges and, few times a year, larger meetings with all the staff of the courts are the bases of this collaboration. No surprise, also the method adopted for quality work is common to all the courts.

The inquiry

Also the starting point is peculiar: not internal issues such as low job satisfaction or more consistent procedures³⁹⁵ but an attempt to open the court to the needs of its users.

*“Alongside ensuring that cases are processed efficiently and in accordance with the rule of law, [i.e. the main quality criteria of the central authorities] there are also other quality criteria to bear in mind. Quality in the court’s work also encompasses making certain that those arriving at the court are treated well, that forms and documents are understandable and that the court’s decisions are not only correct, but also comprehensible for its addressees, i.e. the parties of the case”*³⁹⁶

This emphasis on the role of court users marks a shift in the focus of quality work: from the *“introspective view on quality issues that has previously characterised the courts’ way of thinking”* to a new perspective, they define as the *“extrospective view”*.

Moving from this approach, the collection of views and proposals of court users (or interested parties) about the functioning of courts is the first step to improve the quality of justice. Such views have been collected in different ways: first, through focus groups with lawyers and prosecutors.

*“We have invited lawyers and prosecutors to participate and express their views on quality issues. They give their views on what is good and what could be improved”*³⁹⁷.

Differently from the method adopted in the other cases, members of the court did not attend the meetings. As result of the collaboration between the three courts, judges and staff of the other two courts coordinated the focus groups of each given court.

*“I was present and documented the other courts’ opinions and suggestions. When Lycksele district court was discussed I left the room .The lawyers and prosecutors then discussed quality matters relating to Lycksele district court and a colleague, a judge from another court, was present during this discussion.”*³⁹⁸

The goal of this approach is to get more suggestions for improvements, and less biased answers.

*“In our experience prosecutors and lawyers want to be polite and do not necessarily say what is on their mind. It is easier to speak freely if no-one from the court is present.”*³⁹⁹

³⁹⁴ Sundström, E. (2008a). op cit.

³⁹⁵ Even if this quality work was inspired (as for Vänersborg) by the booklet “Working with quality in the Judiciary” and as in the other cases, not initiated by central authorities.

³⁹⁶ Sundström, E. (2008b). op. cit.

³⁹⁷ Sundström, E. (2008a). op. cit.

³⁹⁸ Ibid.

³⁹⁹ Ibid.

Focus group is an appropriate technique to investigate small groups of people with a professional and institutional interest in functioning of court as prosecutors and lawyers. Concerning other user groups with occasional access to courts, such as witnesses and plaintiffs, the courts preferred to use a survey based on questionnaire. In this case, they get the collaboration of the Umeå University that offered help to prepare the questionnaire, collect and analyse the data received.

Results

The “external views” proposed many improvements in each of the three courts in Västerbotten County. The courts have then worked with the suggestions emerging from focus groups and surveys both within each individual court, both with joint training days involving the staff of the three courts. As in the other cases, quality work is set up as a continuous process. The three courts have not experienced particular difficulties in selecting the proposals for implementation.

“Getting suggestions and views of interested parties and involving other chief judges is a very good instrument to work with. If lawyers and prosecutors argue that it would be a good idea if the court could work in a certain way suggested by them, then that would also facilitate the ongoing dialogue occurring within the court.”⁴⁰⁰

In this process, the court made changes that are small but difficult to see from an internal perspective as paper towels to sweep out tears in the criminal cases. Nevertheless, the external dialogue identified also problems very difficult to face. To make an example, one of the courts was criticised for a lack of interest toward the parties, how to improve this?

“We have discussed within the court how we could be seen to show more interest in the court users. No one should leave the court thinking that the judge is not interested in his or her case. And this is one of the most interesting issues that we concern ourselves with and have put a lot of effort into”⁴⁰¹

At the time this research was being conducted, the courts sent a questionnaire to prosecutors and members of the Swedish Bar Association to evaluate the efforts made in this field.

The court scheduling of criminal cases was another source of problems for external users. The prosecutors have to work with different courts that were not scheduling hearings in a coordinated way. The courts analysed the problem and discovered it was easy to change the scheduling procedure to fit the needs of prosecutors as well as other needs of the parties. The evaluation of the interested parties has been positive.

As in the other case studies, the surveys carried out by the NCA about employees’ satisfaction supported quality work as far as concern issues such as comfort, influence, knowledge of objectives. Finally, the results are used to set the targets of each individual court, in the dialogue between the courts and the NCA concerning financial and human resources and in the framework of employee performance reviews.

8. Different views of quality of justice

The approach followed by the court highlight some peculiarities. The point made by the head of court is that “Quality in the judiciary means the extent to which the services of the court satisfy the requirements or needs of interested parties of the court”. With this approach, the “interested parties” of the court have a leading role in assessing the court’s work and in proposing improvements. As a consequence, the method developed by Vänersborg is focused on the dialogue with the interested parties or, to use their words, in the *extrospective way*. Before discussing the difficulties rooted in the development of a dialogue with the parties, we want to stress how there are good reason to argue that this is a promising approach to improve the quality of justice. As we noticed in a work about the practices of judicial evaluation in several European countries, when interested parties (court users) have been able “to express informed views about substantive issues of justice, through practically-oriented surveys or well informed pressure groups” they asked for issues like delay reduction, judicial impartiality and transparency of decisions⁴⁰². Such external views, in some cases, have been able to push courts toward innovation and changes to improve the quality of justice. For this reason, the Swedish experiences are interesting to further understand how the public can help in the difficult job of the evaluation of justice and the improvements of its quality.

⁴⁰⁰ Ibid.

⁴⁰¹ Ibid.

⁴⁰² Contini, F., and Mohr, R. (2008) op. cit. p. 86

9. Concluding remarks

When talking of strategies and policies to improve the quality of justice, standards and benchmarks have usually a key place. In an (over)simplified manner this approach works in the following way:

an authority set up some kind of standard or identifies some goals;
the courts, their organisational units (chambers, departments etc.) and each single member of the staff is engaged in their implementation;

There is an assessment followed by some consequences in order to acknowledge the positive results or "sanctions" the lack of results.

Courts can have an active role in setting up the standards (or the goals) or just work to implement the standards set up by something else (such as parliament, government, judicial council etc.). In the Swedish judiciary, this mechanism is existent just in the case of turn-around times discussed above decided by the Parliament or by the Government. As in many other European judiciaries⁴⁰³, also in Sweden such infusion of standards and of managerial methods in court operations has led to some (moderate) tensions such as judges criticising the government goals and the emphasis on timelines and productivity. However, based on the data we have collected, this MBO run at central level has offered support and resources to develop an innovative quality management approach based on the idea of dialogue. This approach based on dialogue as a means to identify possible improvements, support changes, and evaluate results represents the distinctive feature of the Swedish way to judicial quality. The three cases we have considered (Goteborg, Vänersborg and Lyckesele), rather than working to reach a set of goals, point to regular improvements of different service areas. The quality cycle and the emphasis on improvements make the Swedish approach similar to the Kaizen model or TQM approaches. In addition, the method of dialogue entails the legitimacy of different points of view, and the belief that is through the dialectic between the different positions that new understandings can emerge and new measures identified. This entails a new kind of court. A court that become a learning organisation in the classical terms pointed out by Argyris and Schon⁴⁰⁴: Following their organisational learning approach, such new kind of court succeeded not only in changing working practices, but also in the change of the premises informing and guiding its organisational and institutional action.

Just apparently easy, the dialogue or just the opening of internal and external channels of communications in organizations like courts proved to be very problematic in many European countries. As already noticed, in several European judiciaries, the principle of judicial independence is not just related to judicial decisions, but takes a wider meaning, including also practical and functional aspects of the work of the judge⁴⁰⁵. In several cases, judges used judicial independence as argument to refuse the adoption of information systems, follow standardised procedures, or even to discuss about how to translate in practice a normative provision.

This question has been faced also in Sweden. However, as noticed by the Head of the Court of Appeal of Western Sweden, a narrow and strong definition of judicial independence eased the success of the quality work.

*"We have been thinking a lot of that, and I think we know quite well where the borders are between the independence and the normal cooperation. And it's easier now, when we have been talking about this for the judges to realise that they cannot decide whether they want to use modern equipment or not. That is not part of their independence. [...] We put the line that concerns the independence not so wide. It's just the handling of the cases, where your independence is real. The president, the chief judge has a lot to decide when it comes to routines, in which hours you must go to the court, how your secretary should cooperate, how you should write sentences, I mean in rough term how they should look. Not what you think, not how you make the decision"*⁴⁰⁶.

This idea of judicial independence affected positively the quality work, but there are certainly other factors that should be identified and investigated to understand more in depth the conditions that eased their successful development.

⁴⁰³ Mohr, R., and Contini, F. (2007). Judicial Evaluation in Context: Principles, Practices and Promise in Nine European Countries. *European Journal of Legal Studies*, 1(2), 1-40.

⁴⁰⁴ Argyris, C., and Schön, D. A. (1996). *Organisational Learning II. Theory, Method, and Practice*. Reading, MA.: Addison-Wesley.

⁴⁰⁵ This is particularly visible in technological innovation processes. See for instance Fabri, M., and Contini, F. (Eds.). (2003). *Judicial Electronic Data Interchange in Europe: Applications, Policies and Trends*. Bologna: Lo Scarabeo. pp. 20-1.

⁴⁰⁶ Wennberg, G., and Hagsgard, M. (2008) *op cit*.

Another issue worth to mention is the coexistence of different methods of quality work at court level or at least of “variations” of the method of dialogue. As seen, there are some differences between the courts, in particular the level of involvement of the court staff or the stage in which it is more appropriate to launch the external dialogue. These differences will coexist for a while since NCA is considering such differences an advantage rather than a problem and is not for the time being looking for a best practice in quality management.

“The common goal, the behaviour we offer to parties, the treatment of the users and the standards for quantity aspects and so on, these have to be the same. They must not differ between a court in Goteborg or in Stockholm. [...] But I do thing that the ways to reach the goals may differ, because staff differ and the heads of these courts are different”⁴⁰⁷.

Therefore, in the search of substantive and common outcomes, it is possible, and even advisable to leave to courts the possibility to use different methods of quality work.

“What you have to do is to find the ways to motivate people that are suitable in each case. If you have a court that reach the goals set by the government and which is an happy place to work in and is appreciated by the different parties and lawyers that are in contact with the court , then I think that also they believe that even such a court has to work continually on how to develop even better understandings, even better methods But the ways to do it may differ from these to be used by a court that is in the opposite position as regard goals, working conditions and so on. Such a court that must start it's work at a entirely different level and will probably has to use quite different methods.”⁴⁰⁸.

Such observation indicates an approach to quality management which takes advantage of local peculiarities and resources available in each given court to reach common goals and pursue shared values. Therefore we can consider it as a “resource based view” to quality management. While this choice seems to be taken for granted in Sweden, several European countries are still looking for their own one best way to quality management. In Italy, just to take one of the examples not discussed in this CEPEJ research project, the success of a local initiative carried out in a small prosecutor office in the far north⁴⁰⁹, led to a nation-wide program to replicate the very same method in many other courts and prosecutor offices around the country without leaving room to local adaptations.

As seen, there are differences between the approaches to quality work developed by Swedish courts. However such differences are just minor variations, and they tend to disappear when such approaches are compared with other European experiences. This makes the Swedish approach to quality work (together with the Finnish projects considered in another chapter of this work) very original. It proved to be able to build “quality” starting with the resources and the capacities available in each single court. Based on the data we have collected, judicial independence has neither been challenged, nor it represented an obstacle to the implementation of the quality works; there is a large consensus about the use of these methods. Finally, the results have been very positive also in terms of “quantities” such as turn around times. Further researches would help to better identify the conditions that made such approach successful and check its transferability to other judiciaries.

⁴⁰⁷ Thorblad, B. (2009). op. cit

⁴⁰⁸ Ibid.

⁴⁰⁹ Staes, P., and Thijs, N. (2008). *Quality Development in the Field of Justice*. Luxemburg City: EIPA.

VIII QUALITY MANAGEMENT IN THE COURT SYSTEM OF UKRAINE

Dmytro Tupchiienko

1. Introduction⁴¹⁰

Before embarking on quality management and policies in Ukrainian courts, let me first explain how the Ukrainian court system is composed and how it is administered.

The court administration in Ukraine refers only to the courts of general jurisdiction (i.e. courts of first instance) and to the courts of appeal, just leaving aside, for the sake of brevity, the Constitutional Court of Ukraine, the Supreme Court of Ukraine, and the two specialized courts – Higher Commercial Court and Higher Administrative Court, as they all have their own separate management system and are not subject to Ukrainian State Court Administration's Quality Management programme.

Also, as the author discovered during his interviews with representatives of the above courts, the introduction of Quality Management therein is at very early stage. To date, for example, only a handful of seminars on introduction of Quality Management in Higher Administrative Court of Ukraine have been organized by the EU's Twinning Project.

2. The structure of Ukrainian court system

The structure of the Ukrainian court system is not based on known uniform principles for either jurisdiction – civil, criminal, commercial or administrative. Rather, each of these jurisdictions in Ukraine uses its own traditions and principles for building its hierarchy. Although proclaimed in Ukrainian constitution, none of these principles corresponds with either territorial hierarchy or logical structure, mostly for historical reasons, and is deeply rooted in the Soviet legacy of "People's courts" and 'communist' doctrine of justice, where the courts were seen as protectors of the State's interest.

This problem is directly connected with the existing chart of Soviet-style administrative-territorial division of Ukraine which itself has four-level hierarchical structure (country, oblast, *rayon* (county), and village), with significant inaccuracies and contradictions.

The hierarchy of local (1st instance) courts follows the line of Soviet tradition of '*rayons*' which theoretically should be the third level in administrative structure. '*Rayons*' were the smallest administrative units on the territory of USSR. They were created by the Plenum of the Central Committee of the Communist party of Soviet Union in November 1964, based upon the number of Communist Party organizations in each *rayon*⁴¹¹.

The so-called '*people's rayon courts*' were acting as courts of first instance for civil and criminal matters (there were no commercial or administrative courts in USSR, as theoretically there should be no disputes between socialist enterprises; if there were any inaccuracies in *Gosplan*-directed supply of goods produced under planned economy, these were settled by so-called *State Arbitrages* set up and controlled by the Government of USSR), and thus Ukraine when becoming independent in December 1991, simply inherited this system.

Therefore, although such division nowadays has nothing to do with either demographic, political-administrative or geographic logic, the number of such courts theoretically should correspond to the number of *rayons* in Ukraine, which are 490 in number⁴¹². However, there are a number of cities in Ukraine which administrative status is equal to *rayons*, 176 in number⁴¹³, making the total of courts theoretically 666 in number.

The disagreement of what should be the lowest base level of administrative-territorial division of Ukraine, and variety of administrative-territorial units of the third and fourth levels (e.g. the cities with district ('*rayon*') status and/or village councils) does complicate an administrative-territorial charting on a horizontal level. Thus, the same administrative-territorial units - the cities with a district status, and the village councils, can belong both to the third and fourth level of hierarchy. Another example is that in Ukraine there are 64 cities of '*rayon*' status (apart of capital cities of '*rayons*' themselves) on a territory of which there function yet 202 other administrative-territorial units, and where the organs of local self-government operate.

This has a direct effect on a court system: the third level of an administrative unit (i.e. *rayons*) have its own court, the fourth –not, although in reality some *rayons* in Kiev or Donetsk have up to half a million

⁴¹⁰ The idea of this report has arisen as a result of discussion held by prof. Philip Langbroek during the Justice Administration seminar held at TMC Asser Instituut in The Hague in November 2008. I happily agreed to Philip Langbroek's proposal as this falls not only within the scope of my PhD written at the University of Leicester in the UK, but also within the scope of my research project done for European Commission.

⁴¹¹ <http://history-gatchina.ru/article/komm.htm>

⁴¹² http://uk.wikipedia.org/wiki/Адміністративний_поділ_України (an article about administrative-territorial division of Ukraine (in Ukrainian))

⁴¹³ *ibid.*

inhabitants (and should be further subdivided into smaller administrative units with these 'unit' courts), and some *rayons* in Transcarpathian mountains have only several thousand inhabitants.

3. The structure of the court administration in Ukraine

State Court Administration of Ukraine (hereinafter referred to as the SCA) is vested with functions of the organizational support of courts of the general jurisdiction and appellate courts. This institution has been created according to the following legislative acts:

- Articles 125-128 of the Law of Ukraine "On court system"
- Decree of the President of Ukraine "On State Court Administration of Ukraine"⁴¹⁴
- Decree of the President of Ukraine "On Charter of State Court Administration of Ukraine"⁴¹⁵

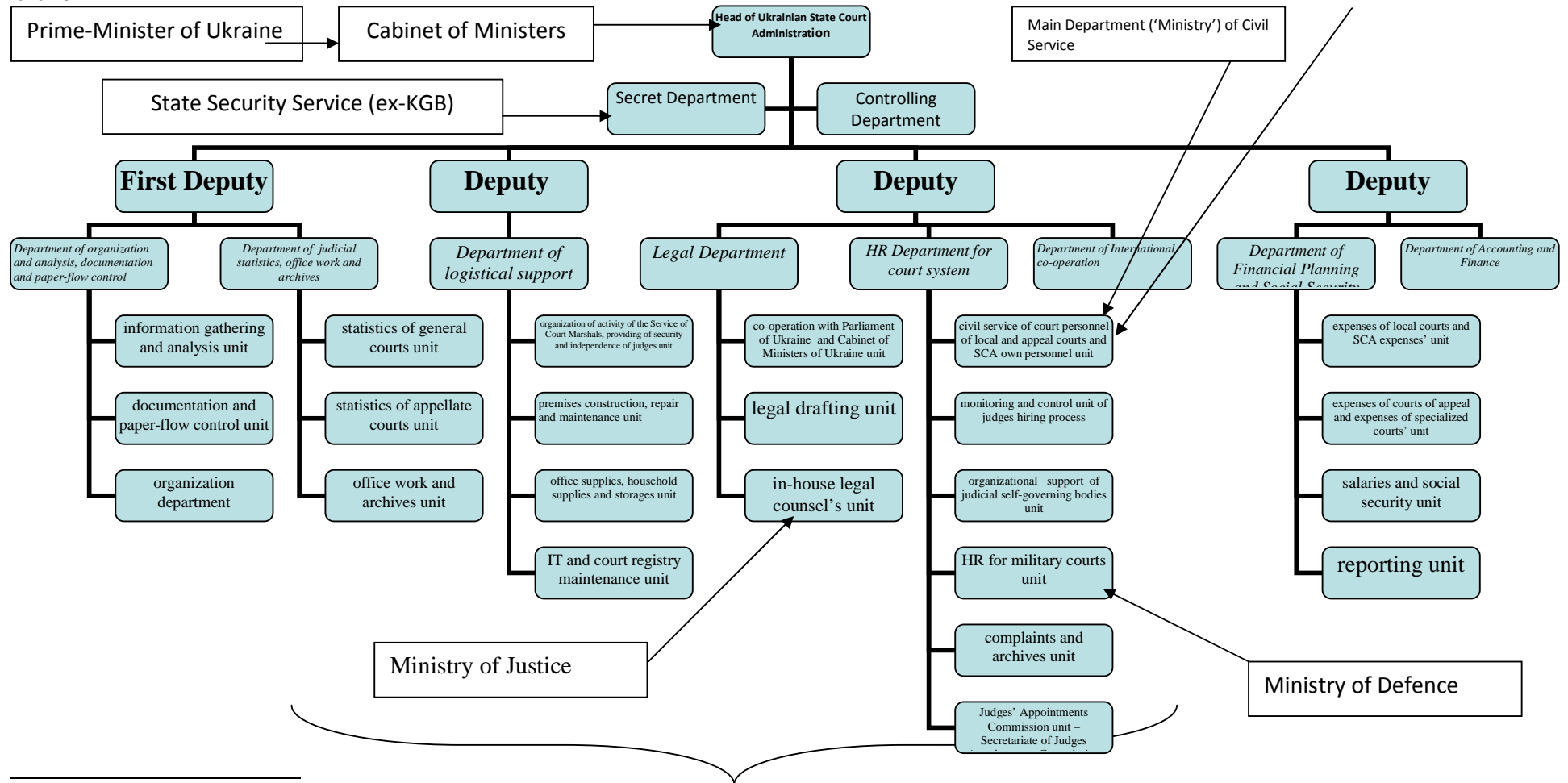
According to these legislative acts, SCA is part of the executive power, not the judicial power, with special status, and its activity is coordinated – akin to a Ministry - by the Cabinet of Ministers of Ukraine⁴¹⁶.

⁴¹⁴ Order of the President of Ukraine "On State Court Administration of Ukraine" (in Ukrainian), <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=780%2F2002>

⁴¹⁵ Order of the President of Ukraine "On the Reglament of State Court Administration of Ukraine" (in Ukrainian), <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=182%2F2003>

⁴¹⁶ This contradicts with the para. "h", item 5 of Montreal Universal Declaration on Independence of Justice (1983) that executive branches cannot control judicial bodies through courts administration. By the para. "b" of Principle I of Recommendation № (94) 12 "Independence, effectiveness and role of judges", accepted by the Committee of Ministers of Council of Europe at October 13th, 1994, it is determined that legislative and executive power should provide judges' independence and nonconformity of measures which can lead to the judges dependence. European Charter about the law "On status of judges", accepted in Lisbon on June 10th, 1998, states that judges through their own representatives or through their own professional organizations can take part in a decision-making process, related to the courts management and determination of their providing measures, and also with the division of the former at national and local level.

The functional responsibilities of the Chairman of SCA and his/her deputies are being set up by several legal acts⁴¹⁷. The organization chart of the SCA is as follows:



⁴¹⁷ Order Of Head Of State Court Administration Of Ukraine dated 15.09.2006 N 99 "About the division of duties between Chairman, first deputy and deputies of Head of State judicial administration of Ukraine" (in Ukrainian), <http://yurist-online.com/zakoni/004/11/007055.php>
 Law of Ukraine "On court system of Ukraine", Art. 127 pp.5,6, <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3018-14&p=1222851943035534>

27 territorial (local) bodies (one in every region of Ukraine)



27 territorial departments of SCA

Regulation about State judicial administration of Ukraine, p.9 (introduced by a Decree of a President of Ukraine dated 03.03.2003 N 182)

The main tasks of the State Court Administration

The State Court administration of Ukraine has to provide court management in courts of general jurisdiction and in other courts, e.g. appeal courts, military tribunals (*courts martial*), regional courts (except for Constitutional court, Supreme Court and two higher specialized courts – Administrative and Commercial) and for other institutions of the court system in general. It also acts as a watchdog for performance control of legislative acts related to the court system. Furthermore, it delivers technical support for activities of

- courts of general jurisdiction (as above),
- military tribunals (*courts martial*) (in co-operation with the Ministry of Defense of Ukraine)
- the academy of Judges of Ukraine, and of
- the self-governing bodies of judges in Ukraine: tri-annual Conference of Judges of Ukraine and of the Council of Judges of Ukraine (which acts as a sole self-governing body for Ukrainian judges in-between the conferences).⁴¹⁸

It also facilitates the conferences of judges and councils of judges (e.g. local, city etc.), and it participates in the formation of courts of the general jurisdiction within its scope of activity and authority vested by current Ukrainian legislation. Furthermore, the SCA develops proposals to improve the functioning of courts of general jurisdiction. This involves the:

- analysis of best practices and legislation related to court management;
- legislative drafting and submission of legislative drafts related to court management within the scope of activity of the SCA for consideration by the President of Ukraine and the Cabinet of Ministers of Ukraine
- statistical and personnel analysis of HR policy for court system in Ukraine
- forecast of the need of judges and other professionals for court system in Ukraine;
- recruitment of the appropriate court personnel through Ministry of justice of Ukraine and other institutions;
- provision of technical support to the Judges' Appointment Commission on appointment/dismissal of judges (preparation of personal files, background checks, security clearance etc.);
- Development, maintenance and record-keeping of cadres' reserve for judges
- Development, maintenance and record-keeping of cadres' reserve for Chief Judges/Deputy Chief Judges
- Provision of training for judges and court personnel and coordination of foreign Technical Assistance for training
- Maintenance of court statistics, office work and archives; and its performance control;
- Caseload analysis (jointly with Council of Judges)
- Maintenance of court libraries
- Developing procedures on court management for Chief Judges and court personnel
- Development and performance of budgetary planning and financial planning for courts; making changes once every three years (i.e. between the two consecutive Conferences of Judges)
- Maintenance and performance of court financing in accordance with agreed budget quotas
- Development and maintenance of uniform accounting procedures for the court system in Ukraine
- Submission of budget proposals to the Ministry of Finance
- Act as the main budgetary agent in administering the annual operating budget for state expenditure related to the court system ;
- Budgetary control of expenditure from lower-level budgetary agents (i.e. SCA's territorial departments and courts);
- Analysis of expenditure of the court system of Ukraine
- Provision of social security, pension and household services for active and retired judges and court personnel
- Provision of healthcare services for active and retired judges, and court personnel
- Provision of housing services for active and retired judges, and court personnel

⁴¹⁸ http://uk.wikipedia.org/wiki/З'їзд_суддів_України (an article about the Congress of Judges of Ukraine (in Ukrainian))

Law of Ukraine "On court system", art.112, <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3018-14&p=1222851943035534>

- Provision of funeral and commemoration services for active and retired judges, and court personnel
- personal security and safety for active judges (i.e. from intimidation, violence and threats) in cooperation with Law enforcement agencies;
- Financing (contractual services, supplies and materials) of construction, repair and maintenance of office space, courtrooms, jury rooms and other space needed to support the court's operations (e.g. cages for serious criminal offenders, meeting rooms to support formal court activities);
- Financing (contractual services, supplies and materials) of procurement for technical equipment (incl. one for trial recording), IT and software; and office supplies
- maintaining the Court Marshals Service
- Handling of complaints related to judges' behaviour (jointly with Judges' Appointments Commission)
- Maintaining of confidentiality and state secret keeping policies
- participation in defense procurement and military mobilization in case of war.

The functions of SCA's headquarters are being set up by its own Charter approved by the Chairman of SCA.⁴¹⁹ From its inception in 2002, the SCA to date had two Chairmen. The first, Hon. Volodymyr Karaban, was a professional judge who spent 15 years as a judge of local court in Kyiv, then was a Deputy Minister of Justice and a judge of Higher Commercial Court of Ukraine⁴²⁰. The second (and current one) is Col. Ivan Balaklitsky. Prior to joining SCA he spent 18 years as a senior police officer in Kyiv⁴²¹.

The Chairman of SCA is an equivalent of a ministerial rank and is appointed and dismissed by the President of Ukraine in the same way as other ministers are appointed (i.e. upon submission by the Prime-Minister of Ukraine approved by the Council of Judges of Ukraine⁴²²). He/she can be dismissed upon recommendation of the Conference of Judges of Ukraine⁴²³. His/her main tasks are to:

- manage the State Court Administration, including its territorial departments
- develop the public policy relation to the court management
- appoint and dismiss civil servants of the SCA, to determine salaries, promotion and disciplinary proceedings
- provide for technical assistance in appointment of judges of local courts and appellate courts
- organize the Academy of Judges
- organize the Court Marshals Service
- submit draft proposals to the State budget of Ukraine concerning financing of judiciary

The Chairman of the State Court Administration of Ukraine has a first deputy and three deputies who are appointed and dismissed by the President of Ukraine upon submission of the Prime-Minister of Ukraine, upon approval by the Council of Judges of Ukraine. Their functions are determined by the Chairman of the SCA.

4. Quality Management in Ukrainian Executive bodies

Introduction of QMS in Ukrainian Executive bodies

Because SCA is part of Ukraine's executive, its Quality Management System (hereinafter referred to as QMS) is being developed along the general guidelines set up by Ukraine's government for all Ukrainian Executive bodies.

The introduction of QMS in Ukrainian Executive bodies was ratified by the decision of Cabinet of Ministers of Ukraine N 614 dated May 11, 2006. It is an ambitious plan which should last until 2010. By introducing this programme, the Government of Ukraine was aware of the fact that for moving Ukraine closer to the EU, especially during approximation of Ukraine's legislation to the EU *acquis*,

⁴¹⁹ Reglament of State Court Administration of Ukraine <http://gca.court.gov.ua/court/info/getfile.php?id=17633>

⁴²⁰ *Settling down the Femida. A State Court Administration of Ukraine has been created.* "Khreshchatyk" newspaper, №144 (2155), 27.09.2002 (in Ukrainian). <http://www2.kreschatic.kiev.ua/?id=2155&page=6>

⁴²¹ List of alumni of the Law Faculty, Kyiv Shevchenko University. <http://who-is-who.com.ua/bookmaket/yurfak/1/3.html>

⁴²² p.7 Decree of the President of Ukraine "On Charter of State judicial administration of Ukraine", <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=182%2F2003>

⁴²³ p.2 art.112 Law of Ukraine "On court system"

it is necessary to reform Ukraine's public administration system. An effective instrument for this purpose is the introduction of the QMS into the Ukrainian Executive bodies in accordance with the requirements of ISO 9001-2001. A problem to be addressed by quality management is the absence of unified standards and procedures of activity for all Ukrainian Executive bodies. Another problem concerns the fact that administrative bodies are not customer oriented and deliver bad services. Furthermore, corruption is also an issue to be addressed in the public services.

Introduction of the QMS in the Ukrainian Executive bodies in accordance with ISO 9001-2001 promotes optimizations of planning processes, resource allocation, and determination of additional approaches to the objective evaluation results of their activity. From the outset of introduction of the QMS in Ukrainian administrative bodies, the Government of Ukraine assumed that the basic landmarks of public administration efficiency in the area of services provision should be a user-oriented approach with a leading role of top civil servants, and with personal involvement of office civil servants in achieving results. The administrative process should follow a systemic approach.

Ukrainian Government was aware of the fact that efficiency of Ukrainian administrative bodies is to be determined by the quality of public administration. It took as a basis of organization of public administration in the field of providing services the principles of the rule of law, accountability, transparency, efficiency of decision-making, taking interests of all participants in administrative decision-making into account, and combating corruption.

The first Ukrainian Executive body that successfully implemented QMS in accordance with the requirements of ISO 9001-2001, was Main Department ('Ministry') of Civil Service.

Purpose and task of Ukrainian Executive Quality Management Program

The Programme's purpose is to increase effectiveness and efficiency of activity of Ukrainian Executive bodies. The Programme's task is to introduce QMS in Ukrainian Executive bodies in accordance with the requirements of ISO 9001-2001. For that purpose it wants to coordinate activities to introduce quality management in the administration, it will provide for training of civil servants and it will establish effective control procedures following the introduction of quality management in the administration.

The implementation is to be carried out in two stages. The first stage (2009) focuses on the introduction of QMS in headquarters of Ukrainian public administration. This involves training the responsible civil servants with ISO 9001-2001 methodology, followed by training of other civil servants, and also development of a plan for further action and the development of a list of services to be subjected to quality management. The process and its results should be audited internally and externally. The latter should be part of a certification process. The second stage (as of 2010) plans to introduce and full functioning of QMS in the territorial (local) departments of Ukrainian Executive bodies.

Financing the Program

The financing of the Program is to be carried out within the limits of the budgets for central and local organs of Ukrainian Executive bodies. There may be other sources of funding as well as by other sources in accordance with current Ukrainian legislation (e.g. foreign Technical Assistance such as USAID, EuropAid and the like). Implementation of the Program will :

- Promote effectiveness and efficiency of public administration, in particular as a result of decreasing expenditure and avoiding waste of time by consumers;
- Take into account consumer need in certain services and to provide for its proper quality;
- Provide for clear regulation of activity of civil servants, responsible on implementation of functions of the state;
- Make a clear definition of the list of services which are to be given by Ukrainian Executive bodies;
- Secure transparency of administrative decision making and promote its quality;
- Provide for positive international image of Ukraine.

Timetable for introduction of QMS in Ukrainian Executive bodies

1. To prepare recommendations and methodology for introduction of QMS in Ukrainian Executive bodies in accordance with the requirements of ISO 9001-2001	Main Department ('Ministry') of Civil Service, State Committee on Consumer Standards, Ukrainian Quality Association	July 2006
2. To provide Ukrainian Executive bodies with information materials regarding introduction of QMS, in particular with using world-wide web sources	Main Department ('Ministry') of Civil Service, State Committee on Consumer Standards, Ukrainian Quality Association	August 2006
3. To conduct awareness campaign among senior civil servants regarding introduction of QMS (seminars, round tables).	Main Department ('Ministry') of Civil Service, State Committee on Consumer Standards, Ukrainian Quality Association	July – August 2006
4. To select senior civil servants from Ukrainian Executive bodies who should act as contact points/persons responsible in their respective institutions for introduction of QMS	Ukrainian Executive bodies	October-November 2006
5. To organize training of senior civil servants from Ukrainian Executive bodies who should act as contact points/persons responsible in their respective institutions for introduction of QMS	Main Department ('Ministry') of Civil Service, State Committee on Consumer Standards, Ukrainian Quality Association	December 2006 – March 2007
6. To organize training of civil servants in headquarters of Ukrainian Executive bodies on issues related to QMS	Ukrainian Executive bodies	March-April 2007
7. To conduct self-assessments of activities for Ukrainian Executive bodies	Ukrainian Executive bodies	May-June 2007
8. To develop action plans on introduction of QMS in Ukrainian Executive bodies	Ukrainian Executive bodies	May 2007
9. To develop guidelines in relation to application of ISO 9001-2001 standard «Quality Management System". Requirements" in Ukrainian Executive bodies, describing the lists of services which are given by Ukrainian Executive bodies, as well as typical processes.	Main Department ('Ministry') of Civil Service, State Committee on Consumer Standards, Ukrainian Quality Association, State Enterprize "R&D Institute "Systema"	June 2009
10. To create the list of services which are given by Ukrainian Executive bodies, as well as typical processes, and define persons which are responsible for the observance of these processes.	Ukrainian Executive bodies	Within 6 months after developing the above guidelines
11. To select auditors for results evaluation on introduction of QMS in Ukrainian Executive bodies	Ukrainian Executive bodies	During 2008
12. To organize training of persons mentioned in pp.5,6, 11 on implementation of the above guidelines	Main Department ('Ministry') of Civil Service, State Committee on Consumer Standards, Ukrainian Quality Association, Ukrainian Executive bodies	Permanently
13. To develop necessary paperwork for introduction of QMS in Ukrainian Executive bodies	Ukrainian Executive bodies	According to action plans
14. To implement QMS in Ukrainian Executive bodies	Ukrainian Executive bodies	According to action plans

15. To conduct internal audit in Ukrainian Executive bodies	Ukrainian Executive bodies	According to action plans
16. To conduct certification (if necessary - pre-certification) audit in Ukrainian Executive bodies	Main Department ('Ministry') of Civil Service, State Committee on Consumer Standards, Ukrainian Quality Association, Ukrainian Executive bodies	According to action plans
17. To ensure introduction and full functioning of QMS in the territorial (local) departments of Ukrainian Executive bodies.	Ukrainian Executive bodies	As of 2009
18. To provide consultancy assistance and methodological support on introduction and full functioning of QMS	Main Department ('Ministry') of Civil Service, State Committee on Consumer Standards, Ukrainian Quality Association,	Permanently

5. The Quality Management Programme for the Justice System of Ukraine

The Working group on Quality Management in the Ukrainian State Court Administration

The Ukrainian SCA has created a working group on Quality Management by its executive order No.38 dated 17.05.2007. It consists of the First Deputy Chairperson of the SCA, three Deputy Chairpersons of the SCA, Chairman of the HR department, acting Chairperson of the financial planning department, Chairman of in-house legal department, Chairperson of the department of statistics and archives, Chairman of the procurement department, Chairperson of the analytical department, Chairperson of department for support of judicial self-governing bodies, and two junior civil servants – analysts - who possess QMC certifications (presumably internationally recognized). The latter also act as secretaries of the working group, presumably on a rota basis. The working group has adopted an action plan for introducing QMS in SCA headquarters.

Action plan for introducing QMS in State Court Administration headquarters

1. To select senior civil servants from SCA headquarters who should act as contact points/persons responsible for introduction of QMS in the SCA	First quarter of 2007	First Deputy Chairman of SCA
2. To agree with State Committee on Consumer Standards the list of SCA personnel - civil servants from SCA headquarters who should act as contact points/persons responsible in their respective institutions for introduction of QMS in the SCA, and to include them in training groups	First quarter of 2007	First Deputy Chairman of SCA
3. To organize training on Quality Management of selected civil servants by representatives of State Committee on Consumer Standards and Ukrainian Quality Association	First quarter of 2007	First Deputy Chairman of SCA, Chairperson of the analytical department
4. To develop training programme on Quality Management for selected civil servants, in accordance with recommendations developed by State Committee on Consumer Standards	May-June 2007	First Deputy Chairman of SCA, members of working group
5. To conduct self-assessments of activities of SCA taking account the results of previously conducted functional diagnostics	May-June 2007	members of working group, chairpersons of respective departments of SCA
6. Development of QM implementation action plan in the SCA	May 2007	First Deputy Chairman of SCA, members of working group
7. To create the list of services which are provided by SCA according to the tasks vested into SCA by current Ukrainian legislation, as well as typical processes	June 2007	First Deputy Chairman of SCA, members of working group
8. To define list and structure of processes for services provided by SCA (legislative drafting and submission of	August 2007	First Deputy Chairman of SCA, members of working

legislative drafts related to court management; strategic and operational planning; execution of orders; replying to requests; monitoring and evaluation; analysis and control and the like); and define persons which are responsible for the observance of these processes.		group, chairpersons of respective departments of SCA
9. To select civil servants from departments of SCA headquarters who should act as contact points/persons responsible in their respective departments for introduction of QMS, as well as auditors for results assessment and evaluation	During 2007	First Deputy Chairman of SCA, Deputy Chairman of SCA, members of working group
10. To ensure training of auditors by representatives of State Committee on Consumer Standards and Ukrainian Quality Association	During 2007	First Deputy Chairman of SCA, members of working group
11. Development of QM paperwork in the SCA	During 2007	First Deputy Chairman of SCA, members of working group
12. To ensure conducting of internal audit (periodical assessment) of implementation of QM standards in the SCA	During 2008	contact points/persons responsible, auditors
13. To conduct certification (if necessary - pre-certification) audit in the SCA headquarters	During 2008	contact points/persons responsible, auditors
14. To ensure introduction and full functioning of QMS in the SCA headquarters	During 2008	First Deputy Chairman of SCA, members of working group
15. To prepare data for review on implementation of QMS in the SCA headquarters by the SCA presiding committee ('collegia')	During 2008	First Deputy Chairman of SCA, members of working group
16. To ensure introduction and full functioning of QMS in the territorial (local) departments of the SCA.	During 2009	Chairpersons of the territorial (local) departments of the SCA.

6. Rule of Law Programmes in Ukraine and the introduction of Quality Management in the Court System

As of February 2010, there were five programmes established by various international donors involved in efforts to enhance the functioning of the Ukrainian justice system also within the courts. All projects strive to align their objectives and results to complete or complement significant achievements by others. A specific methodology for donor coordination has been established in a form of Working Groups which meet regularly and coordinate their joint activities to avoid duplication of functions and to cover gaps. Although none of the projects touch directly on the issue of Quality Management in Courts, some of them contribute significantly to the issue, thus forming a good basis for future development. Below is a brief description these projects and their effects and an indication of their successes and failures.

(1) COMBATING CORRUPTION & STRENGTHENING THE RULE OF LAW PROJECT⁴²⁴

This Project is in its second phase and is funded by USAID/Millennium Challenge Corporation. It is the biggest of all donor-funded Rule of Law projects in Ukraine in terms of funding volume and activities. The staffing of the project comprises of over a dozen US- and UK- qualified lawyers, both international as well as Ukrainian, and has already received a positive feedback from Ukrainian authorities and general public, which could be undoubtedly described as a success, at last in terms of fulfilling programme's objectives. There are six designated project activities:

Legal Framework for the Judiciary

This activity assists in building consensus for legal and regulatory reform related to the judiciary. It supports legal drafting initiatives concerning laws, regulations, and codes of conduct, and it provides for expert analysis of draft laws and regulations to ensure compliance with international and European standards.

This project works with all relevant governmental stakeholders involved in the process of for legal and regulatory reform related to the judiciary, namely Supreme Court, State Judicial Administration, Ministry of Justice and relevant Parliamentary Committees.

⁴²⁴ http://www.ukrainerol.org.ua/index.php?option=com_content&task=view&id=74&Itemid=167

Court Administration and Case Management

For the project focuses on the implementation of an automated random case assignment system in selected pilot courts as part of a national strategy for automating the courts. It also supports development of standardized administrative policies, procedures, and forms for courts and court personnel. Furthermore, it provides for technical assistance training and equipment for the judiciary to improve accessibility of court decisions, and finally it organises public awareness campaigns on how to access and use the database of court decisions.

Implementation of automated case management systems in six pilot courts is currently fully operational in Donetsk, Ivano-Frankivsk and Kharkiv. The project has established training centres at the Territorial Department of the State Judicial Administration (TSJAs) in the three oblasts. The project provided multimedia projectors with screens, multifunction units and 10 laptop computers to equip each training centre. This enables the TSJAs to hold simultaneous hands-on training sessions for up to 10 trainees. The project also developed a training of trainers (TOT) program for TSJA staff. This training will give the SJA staff the necessary skills to train judges and court staff in efficiently using software (Microsoft Word and Excel), and support the implementation of automated court solutions in other courts in Donetsk, Ivano-Frankivsk, and Kharkiv oblasts.

Judicial Selection, Ethics, and Discipline

For Judicial Selection, Ethics, and Discipline, the project supports competitive and merit-based judicial selection and appointments. It assists in designing, developing, and implementing a transparent testing mechanism for prospective candidates for judicial offices. The project also supports enhancement of judicial capacity to monitor and enforce judicial ethics through training and organizational support. Furthermore it aims at strengthening judicial discipline procedures by improving administrative processes related to filing and adjudicating complaints of judicial misconduct.

Public trust in the judiciary and, simultaneously, accountability of judges is vital for judicial independence and providing for just court decisions. The right to fair justice for everyone depends greatly on values adhered to by judges. Thus, ethical aspects of judicial conduct are key from the very beginning of a judge's career. 769 judges and court staff were trained on judicial ethics, administrative law, media relations, court administration and case management in Kyiv, Sevastopol, Dnepropetrovsk, Uzhgorod, Chernivtsi, Lviv, Donetsk, Lutsk, Ivano-Frankivsk, Kharkiv and Yalta.

Judicial Training

For Judicial Training the project aims at development and implementation of training curricula for judges and court personnel, including courses on judicial opinion writing, administrative law, judicial ethics, human rights law, and relations between courts and media. It also organises the publication of resource materials for judges and court personnel, such as legal manuals and benchbooks for judges.

A resource manual for judges "Administrative Justice of Ukraine" has been prepared and published jointly with the High Administrative Court of Ukraine. Also, there are weekly training sessions which are run in pilot areas in cooperation with the Academy of Judges of Ukraine.

Courts and Society

This subproject wants to enhance the capacity of civil society organizations to promote greater judicial transparency and accountability through the design, implementation, and evaluation of court monitoring programs. And the project also wants to conduct advocacy campaigns to promote awareness of the public's right to effective administration of justice and access to courts. Seven civil society organizations have implemented court monitoring programs in 49 courts in Donetsk, Kharkiv, Kyiv, Lviv, Odessa, Rivne, and in the Autonomous Republic of Crimea.

Courts and Media

This subproject will start with doing surveys amongst judges, journalists, and the general public on justice-related issues. The results will be disseminated to the participants and the general public. It will also organize training programs for journalists on the judicial structure, court policies, procedures, and guidelines for journalists and media in the courts. Furthermore, the project will assist in establishing press secretary positions in courts and provide training on media relations. Last but not least public manifestations will be organised and an information policy will be deployed to generate a better understanding of the judiciary and of the aims of judicial reform with the general public.

In effect, 194 journalists were trained on how to accurately cover the courts, resulting in 166 media publications on the judiciary and judicial reform. Baseline surveys of **502** judges, **207** journalists, and **2,000** citizens nationwide were conducted to establish the attitude of the people towards the

judiciary and judicial reform. The Quarterly bulletin of the High Qualifications Commission of Judges was published and disseminated for the first time, with detailed information and statistics on judicial selection and discipline in Ukraine. **185** volunteers – CSO’s activists – trained to work as public court monitors.

In general terms, this project is a success from the point of view of an implementing partner. All the deadlines have been met, training courses are running en masse, brochures and articles and manual are published.

(2) UKRAINIAN JUDICIARY FUNCTIONING PROJECT⁴²⁵

This project is implemented by a consortium led by UK consultancy WYG International and is funded by the European Union. It has started in July 2008 and ends in December 2010. The project team comprises 5 full-time staff members, two international and three local. For specific activities, e.g. lectures, trainings, drafting manuals, there are leading international experts provided by consortium partners. Project’s major scope of activity concentrates on the civil service component of Judiciary in Ukraine. There are five designated project activities:

Improving the Legal Framework for Court Administration

The Project will analyze the legal framework governing court management practices and procedures and will develop recommendations for improving them, drawing on European best practices. EU experts will help carry out the analysis.

Training Court Staff on Management and Professional Skills

The Project will provide training in court management and professional skills to Heads of Court and Court personnel from over 120 courts in the Kyiv, Kharkiv, Odessa and Lviv regions. Training will be provided to over 120 Heads of Courts, 700 Judge Assistants, 120 Court Administrators and 500 Court Administrative Staff. EU experts will provide much of the instruction. Extensive training materials will be produced and disseminated to courts throughout the country in hard copy and electronic formats.

Establishing Ongoing Programmes of Professional Development

Curricula for ongoing professional development programmes for Judge Assistants and State Enforcement Officials will be established with the Academy of Judges and the Centre for Professional Development of the Ministry of Justice. Judge Assistants and State Enforcement Officials will receive training as trainers. A Correspondence School for Court Administrative Staff will be outlined.

Training State Enforcement Officers to Improve Enforcement

The Project will train 90 State Enforcement Officers on important issues surrounding the enforcement of judgments in Ukraine today. EU experts will take part in the instruction.

Publishing Compendia on Best Practices and Procedures

Comprehensive compendia on uniform standards and EU best practices with practical guidelines for improving court management and judicial enforcement practices and procedures will be prepared for each group: Heads of Court, Judge Assistants, Court Administrators, Court Personnel and State Enforcement Officers.

Although no external evaluation of the project has been made at the time of completion of this report (February 2010), their internal evaluation supports the view that in fact they overdid the targeted issues by some 20% in terms of objectives fulfilled. Although at the beginning of the project there was some sort of hostile attitude of the intended project beneficiaries, the project has succeeded to overcome this, thus making over 90% of beneficiaries to be satisfied by project outcomes/results. The project also achieved high participation rate: overall, there were 120 heads of court, 120 court administrators, 300 judge assistants and 200 court personnel trained. Having said that, the project seems to have rather a long-term impact, taking into account that most of project beneficiaries/participants are in their end-20ies-mid-30ies and most of them would plan to stay within the court system ; besides, it is hard to measure quantitatively the impact on the system; it has a lot to do with personal development and change of personal attitude.

⁴²⁵ <http://ujfp.org.ua/>

(3) TRANSPARENCY, INDEPENDENCE AND EFFICIENCY OF THE JUDICIAL SYSTEM AND INCREASED ACCESS TO JUSTICE FOR ALL CITIZENS IN UKRAINE⁴²⁶

This is a sister project of the previous one, organized by the Council of Europe, in the framework of the Joint Programme between the European Commission and the Council of Europe. The Common EU/CoE Program “Transparency and efficiency of the judicial system of Ukraine” is aimed at granting aid in strengthening independent, unbiased, efficient and professional judicial authority in Ukraine and ensuring the transformation of the Ukrainian judicial authority into transparent and fair which will be accessible for all citizens and operate efficiently and transparently.

There are 4 main goals of the Program: creation of a legal basis of transparent, accessible and efficient judicial authority; improvement of the access to judicial system for the public; increase of the judicial efficiency, quality of court decisions complying with the European standards, strengthening of transparency and responsibility of the judicial system.

The Program is jointly financed by the European Commission and the Council of Europe. The project works in collaboration with public institutions and organizations of Ukraine: the Justice Ministry, Supreme Council of Justice, Supreme Court, State Judicial Administration, Supreme Economic and Supreme Administrative Courts, Prosecutor General Office, Committee of the Verkhovna Rada (Parliament) on justice and legal policy and the Council of Judges, Board of Expert Judges, National Commission on strengthening democracy and law supremacy, Judges Academy, National Academy of the Office of Public Prosecutor, Guild of Lawyers, Ukrainian Association of Lawyers and other institutions and organizations.

Overall Objectives

The project seeks to strengthen efficiency and independence of the judicial system, and to enhance access of citizens to and confidence in the justice system. The legal profession will be reinforced. And the project also seeks to have a system of enforcement of judgments operational when the project is completed.

Performance Indicators and project purposes

If the project succeeds, legislation will have been adopted and revised. State institutions will have been reformed. There will be an ongoing training program for judges and prosecutors, and court decisions match European benchmarks, leading to a smaller amount of appeals to the ECtHR. The production of the courts will have grown. This will lead to a greater *Transparency and efficiency of the Judicial System of Ukraine (Project Purpose 1.)*. Furthermore, a strategy for building an effective legal aid system will be defined and will have been implemented. Citizen awareness in justice related matters and especially with regard to their rights and possibilities in the field of free legal aid will be enhanced. Next, a single bar association will be created, and the execution of judgments in civil law cases will be enhanced. This will lead to an *improved public trust in justice and to an improved accessibility of the justice system (Project Purpose 2.)*.

After completion, the execution of judgments delivered by national courts is ensured. A strategy for future of the Execution Service is defined. Guarantees for the independence of state executors from external interference are in place. Bailiffs have been trained and are able to use best European practices in their everyday work. This means that a *system of enforcement of judgments is operational (Project Purpose 2.)*.

(4) ANTI-CORRUPTION RESOURCE CENTER—AMERICAN BAR ASSOCIATION / RULE OF LAW INITIATIVE⁴²⁷

The ABA Rule of Law Initiative started its program in Ukraine in 1992 with the placement of its first Rule of Law legal specialist in Kyiv. Its Criminal Law Reform program began in 1997. The Kyiv office has also been home to the NIS Regional Institution Building Advisor program (RIBA) (1999-2005) and Regional Anti-Corruption Advisor program (RACA) (1999-2006). There are four major components of this project:

1. Anti-Corruption and Public Integrity

Combating corruption is a key priority for many major donors and implementing partners working in Ukraine. With a significant number of international donors, government agencies, national and international organizations working in the area of anti-corruption, it is often difficult to know what is being done, by whom, and where, to avoid duplication of efforts. The ABA Rule of Law Initiative (ABA ROLI) in Ukraine has established a monthly forum for representatives of the donor community, governmental agencies and civil society organizations who work in the area of anti-

⁴²⁶ <http://www.jp.coe.int/CEAD/JP/Default.asp?TransID=146>. Intended project duration: 02/06/2008 - 01/12/2010.

⁴²⁷ http://www.abanet.org/rol/europe_and_eurasia/ukraine.html

corruption to discuss programming, identify needs, form partnerships and coordinate their respective work. network of organizations and agencies, the Anti-Corruption Coordination Initiative (ACCI), has been created to facilitate the sharing of information on corruption-related news, legislative developments and anti-corruption events. In addition, an Anti-Corruption Resource Centre (an electronic database of anti-corruption information and resources) has been developed and will be regularly updated.

ABA ROLI's office serves as a secretariat to help with the organization and administration of this initiative. The services include the provision of a communications structure with weekly anti-corruption news updates, monthly coordination of donor meetings, briefings on legislative, legal, political and organizational developments in the area of anti-corruption. Anti corruption and integrity workshops, trainings and conferences, and of course, an anti-corruption resource website (<http://acrc.org.ua>), which contains and organizes anti-corruption legislation, draft laws, commentary and news updates.

ABA ROLI intends to gradually transfer this coordination initiative and all relevant resources to a government-designated body to ensure long-term sustainability and government ownership of this coordination function.

In an effort to assist the government of Ukraine in drafting and enacting unified legislation that will effectively combat corruption, ABA ROLI works in partnership with the Parliamentary Committee on Combating Organized Crime and Corruption (PCCO CC) to provide legal research, comparable regional models, policy recommendations and legislative gap analysis of Ukraine's current anti-corruption statutes, draft laws and accompanying legislation. In addition, ABA ROLI has partnered with PCCO CC and the Ministry of Justice in preparing guidelines on the United Nations Convention against Corruption (UNCAC), and on providing overviews of other international treaties and conventions to which Ukraine is a signatory. The efforts are meant to familiarize members of parliament, government officials, international and national anti-corruption organizations, and the general public about commitments made by Ukraine to halt corruption.

2. Criminal Law Reform and Anti-Human Trafficking

ABA ROLI's criminal law reform program has operated in Ukraine since 1997. The program assists the Ukrainian legal community in the criminal justice reform process by strengthening the capacities of Ukrainian legal institutions. They provide technical expertise, comparative analysis, coordination and related support to the government, judiciary, and law enforcement agencies and to the defense bar.

Pre-Trial Detention Project

Ukraine is perceived by many international observers as having unduly high rates of pre-trial detention, which are often characterized as human rights violations and torture of criminal suspects while being detained in sub-standard detention facilities. As such, reform of the pre-trial detention system and modernization of the criminal procedure code are essential reform components. In 2006, the pilot pre-trial detention project was endorsed by the Supreme Court of Ukraine and implemented by ABA ROLI. The project instituted specific practices for pre-trial detention and release of criminal suspects or accused persons in the Mykolayiv Oblast region. It focused specifically on bail as a preventive measure, which was a statutorily authorized but rarely used preventive measure. Through various activities, such as educational seminars for judges and defense attorneys, study tours to the United States, public education brochures, procedural guidebooks for judges, prosecutors and defense attorneys, and the experimental use of pre-trial investigation services officers, the pilot project resulted in increased use of bail in Mykolayiv's courts. In 2007, the findings and recommendations of this project, including recommendations on legislative amendments and proposed revisions to the criminal procedure code, were shared for consideration by the government and Parliament of Ukraine.

In 2007–08, ABA ROLI in Ukraine conducted a comprehensive assessment of the financial and societal impact that unwarranted pre-trial detention can have. It was meant to provide further incentive for the government of Ukraine to utilize alternative measures to incarceration during pre-trial stages of the criminal process. In 2009, ABA ROLI will develop standardized criteria for judges to use in determining the appropriate alternative measure. The criteria will complement guidelines developed during the pilot project phase and the accompanying training module for judges, prosecutors and defense advocates.

The Law Enforcement Reform Program

This program supports the country's law enforcement reform to comply with international and European standards and assists Ukraine in meeting its international commitments. These efforts will enhance the competence and effectiveness of the law enforcement agencies, including the

Ministry of Interior, National Security Defense Counsel, Prosecutor General's Office and Customs, Tax, and Border Control. In coordination with the National Expert Commission, ABA ROLI has:

- assisted the Interagency Commission on Law Enforcement Reform in assessing existing law enforcement institutions, as well as the development of institutional mechanisms to combat corruption and determine reform needs
- provided comparative analyses on the most effective and comprehensive mechanisms for collaboration, coordination and exchange of information in various countries
- studied successful models for establishing specialized agencies to combat corruption;
- developed practical recommendations for developing specialized anti-corruption agencies within the law enforcement system
- provided technical assistance and training to the specialized law enforcement agencies.

In 2008, the government of Ukraine adopted the concept and action plan for comprehensive reform of the country's criminal justice and law enforcement systems. ABA ROLI will now focus on bringing individual law enforcement agencies into compliance with the overall plans. ABA ROLI will provide technical assistance and expertise in the reform of the Ministry of Interior bodies and the Pre-Trial Investigative Services.

Anti-Human Trafficking Program

In February 2007, ABA ROLI started the initial phase of a program to develop a *Confiscation Fund* to benefit victims of human trafficking. Funded by the International Organization of Migration (IOM) and the Royal Foreign Ministry of Denmark, this program provided research and analysis of the institutional and legislative framework necessary to support such a fund by identifying comparable criminal forfeiture models in other countries and by adapting them to the Ukrainian context. In working with a commission of national and international experts, the concept for the confiscation fund was developed and shared for consideration by the government and legislature of Ukraine.

In 2007–08, ABA ROLI continued its partnership with IOM and the Royal Foreign Ministry of Denmark in the implementation of programs intended to improve the coordination and communication of mutual legal assistance requests in human trafficking cases. The first phase of the project—Mutual Legal Assistance Treaties I (MLAT I)—involved analyzing the applicable legislation and treaties of Ukraine and various regional destination and transit countries, including Russia, Poland and Turkey, in the use of MLAT processes and procedures. This initial phase was followed up by the development of a training module drafted in cooperation with relevant governmental authorities in both Ukraine and Poland through regional workshops conducted in Kyiv, Ukraine, and Warsaw, Poland. The final phase of the project convened an international conference in Kyiv bringing together relevant governmental authorities and educational institutions from Ukraine, Russia, Moldova and Belarus to discuss common problems and issues being encountered in the preparation and processing of MLAT requests among the participating countries. ABA ROLI country programs in Russia and Moldova were invited to participate and attend the conference. The conference also sought input on the adaptability of the draft training module prepared during the second phase. The training module was adapted into a template to be used on a regional basis and was piloted in training workshops in Kyiv, Ukraine, and Chisinau, Moldova, in December 2008. Copies of the final training module template and all training materials were distributed to all participating governmental agencies and academies throughout Ukraine, Russia, Moldova and Belarus.

In addition, ABA ROLI launched two programs funded by the U.S. Department of State's Bureau of International Narcotics and Law Enforcement Affairs to improve the investigation and prosecution of human trafficking cases in Ukraine. The first program, which began in 2008, involves assessing the Ministry of Interior's human trafficking investigation units. ABA ROLI assists a governmental working group in developing standardized investigation guidelines and an accompanying training module. The assistance, which included a study tour to Turkey a planned tour to Israel, intends to boost coordination and communication mechanisms between regional countries. Currently, ABA ROLI is implementing its second program in partnership with IOM. This program is aimed at improving the prosecution of human trafficking cases through case study review teams, witness protection mechanisms, building judiciary capacity through court monitoring of human trafficking cases and improved mechanisms for cooperation and coordination of law enforcement efforts.

ABA ROLI and IOM will jointly work to strengthen the capacity of the criminal justice chain to effectively identify current gaps in the prosecution of human trafficking cases. They will assess the whole range of factors affecting the role of prosecutorial supervision in the investigation of human trafficking cases, preparing and supporting evidence for prosecution of those cases in the court, and monitoring court practices to identify shortcomings and remedies. The joint effort will assess

institutional framework, internal regulations and practices of the General Prosecutors Office, witness protection mechanisms and court prosecutor practices in human trafficking cases.

Professional Bar Development

The existence of a competent and qualified cadre of defence advocates is vital to any developing legal system and, therefore, an important area of focus for ABA ROLI's work in Ukraine. The Defence Advocacy Program contributes to the establishment of a continuing legal education system for defence attorneys, with primary emphasis on criminal law and procedure. The main objective of this program is to provide defence attorneys with the required substantive legal knowledge and necessary technical skills for competent and effective legal representation of their clients in court.

In 2005–2006, ABA ROLI conducted a number of seminars for regional attorneys where, leading representatives of the Ukrainian and international legal community were invited as trainers and experts. These activities were highly supported by the country's Supreme Court. With the goal of establishing a sustainable continuing legal education system, the School of Professional Skills Development for Defense Advocates was created. This initiative was endorsed by the High Qualification Commission of Advocates under the Cabinet of Ministers of Ukraine, allowing ABA ROLI to commence the first schools in late 2006. In 2007–08, scheduled trainings aimed at the professional development of young defence attorneys were conducted throughout Ukraine. Trainings focused on trial advocacy skills, professional ethics and responsibilities, criminal law and procedure, and restorative justice/mediation. Specialized trainings were also developed for more experienced practitioners on more sophisticated issues of criminal law and procedure, and human rights protection and procedures before the European Court of Human Rights.

In 2009, the program focussed on the development of three to four regional training centers as part of a comprehensive system of continuing legal education (CLE) in Ukraine. The training centres utilize established course curriculum and methodologies developed by expert working groups in the areas of ethics, human rights and mediation. ABA ROLI works with the High Qualifications Commission and its regional heads in the strategic planning of the development of a sustainable CLE system that can be transferred to the country's bar association or other designated authority.

However, no obligatory CLE has been imposed on Ukrainian advocates so far.

ABA ROLI has cooperated with the Ministry of Justice, legal organizations and members of parliament in drafting a law on the bar, which will unify the legal profession under a single, independent, self-governing bar association. ABA ROLI organized a series of high-level national conferences and roundtables on key issues among the leading legal organizations and partners in drafting the law. ABA ROLI provided expert analysis, legal research, comparative models and commentary on draft laws submitted by the various stakeholders to help reach consensus on some disputed issues. In late 2008, a draft law on the bar was submitted to the Parliamentary Committee for further consideration and revision. ABA ROLI will continue its work to unite the legal profession behind a single law on the bar and to help create an independent bar association. ABA ROLI will also cooperate with the bar association in the development of internal rules, regulations, disciplinary procedures and related internal structures.

3. Legal Education Reform and Civic Education

The ABA Rule of Law Initiative also focuses on supporting:

- innovative clinical and legal internship programs
- annual client counselling competitions
- improvement of law professors' competence in the areas of teaching methodology and substantive knowledge
- non-governmental organizations and the Ministry of Education in initiating broad legal education reforms

Legal Clinics

ABA ROLI has been committed to supporting clinical legal education initiatives throughout Ukraine. Through operational sub-grants and trainings, ABA ROLI currently supports an expanded network of legal clinics, operated in association with their respective universities. Each year, ABA ROLI provides funding support through sub-grants for the creation of additional legal clinics to foster **pro bono** legal consultations and practical skills education opportunities for law students. ABA ROLI has supported the establishment of a regional clinical training centre at its legal clinic in Lutsk to improve and standardize the quality of teaching clinical courses. The centre systematically offers professional development opportunities to clinical coordinators and mentors new legal clinics established in the region.

In supporting the legal clinics, ABA ROLI strives to foster a specialized course curriculum traditionally unavailable in Ukrainian law schools, to offer skills-based training opportunities and to promote public legal awareness. Under ABA ROLI's sub-grants, clinics in Uzhgorod, Lviv and

Khmel'nyts'ky have created specialized courses in refugee and asylum-seeker rights, medical law and legislative drafting.

Ukrainian Client Counselling Competition

Since 2006, ABA ROLI, in cooperation with the Legal Clinic of Ostroh Academy, has administered annual client counselling competitions. The goal is to teach law students vital lawyering skills, such as client interviewing and counselling, decision-making, fee negotiation, professional ethics and teamwork. The competition also provides law students with a unique opportunity to hold client interviews in front of experienced attorneys and to receive constructive critiques on how to improve their skills.

In 2008, ABA ROLI expanded the competition to a national level for increased participation and moved it from Ostroh to Kyiv. This resulted in greater law school participation. It also allowed a broader participation by government representatives, legal organizations and leading law firms, each of whom served as volunteer judges. ABA ROLI assists the winning Ukrainian teams in preparing for the International Client Counselling Competition.

Law Student Internship Programs

ABA ROLI also supports innovative internships for law students. Throughout summer 2006, ten law students were selected to complete an intensive two-week internship program. They received first-hand experience in first instance and appellate court proceedings, human rights work, law enforcement institutions and advocacy projects. Furthermore, ABA ROLI sponsored the publication of guidelines on running a successful internship program by the Ukrainian Bar Association. The guidelines will be distributed to law schools, legal non-governmental organizations and law firms to promote the importance of these clinical internship programs throughout Ukraine.

Improvement of Law Professors' Competence

ABA ROLI is committed to assisting Ukrainian law schools in enhancing professors' teaching methodology and substantive knowledge. To this end, in 2007, ABA ROLI organized two multi-day trainings for law professors on methodology, human rights and professional ethics. ABA ROLI also provided financial assistance to the Ukrainian European Student Association to administer a two-day international workshop dedicated to teaching European Union law in Ukrainian law schools. In 2008–09, the program was expanded to include regularly-scheduled continuing legal education programs for law professors. In addition, training manuals were developed for professors on ethics, legal writing and teaching methodologies, each of which were submitted to the Ministry of Education for approval. Selected law professors will take part in a training of trainers methodology course to ensure sustainability of courses and the program.

Further, to promote and encourage the requirement for a system of continuing legal education (CLE) for law professors, ABA ROLI is working with the Ministry of Education to prepare a draft decree, which would require a minimum number of CLE hours for law professors in Ukraine.

Supporting Broader Legal Education Reforms

Beginning in March 2007, ABA ROLI began developing a draft concept on legal education reform. It was drafted by a working group comprised of prominent Ukrainian legal experts in the field, including representatives of the Ministry of Education, the Ministry of Justice, leading law universities and scientific academies. The concept was developed in conjunction with a series of roundtable discussions and submitted to the Ministry of Education for further consideration and revision in December 2008. If adopted, it will lay the groundwork for specific governmental actions aimed at improving the Ukrainian system of legal education and to bring it into compliance with international and European legal education standards.

In 2009, ABA ROLI will continue its work with the Ministry of Education on the development of state standards for legal education, including the creation of Bachelor's and Master's degree curricula in law. If adopted, the standards will become a powerful tool in ensuring the quality of legal education in the country. These standards will serve as a guide for law schools in designing their course curricula and for the Ministry of Education in assessing the quality of legal education and accreditation standards for individual law schools.

4. Legal Profession Reform

Legal Profession and Public Advocacy Program

Through tenders and sub-grant competitions, the ABA Rule of Law Initiative (ABA ROLI) provides operational sub-grants to Ukrainian advocacy non-governmental organizations (NGOs) and university legal clinics, which offer *pro bono* legal services to the disadvantaged and underserved populations. Currently, ABA ROLI supports and maintains an expanding network of 32 Legal

Consultation Centres. The centres serve vulnerable groups, such as the disabled, homeless, elderly, incarcerated, HIV-positive and rural poor.

Additionally, through roundtables, workshop trainings and media campaigns, ABA ROLI's partners engage in advocacy and public awareness efforts, including the reform of the communal housing management system, improvement of conditions in detention facilities, elimination of discrimination against people living with HIV/AIDS and the wider application of mediation in criminal cases involving minors. Also, with the goal of promoting public legal awareness, ABA ROLI has supported initiatives of the Ostroh and Donetsk legal clinics to provide trainings for high school teachers on using interactive teaching methodologies to teach the basics of law to high school students.

To ensure quality of legal services rendered by partner NGOs and legal clinics, ABA ROLI continues to provide systematic bi-monthly professional development trainings to its partners' lawyers on the most relevant issues of substantive and procedural law, as well as on practical legal skills.

Institution Building Program

An important component of ABA ROLI's efforts is providing technical assistance for institutional capacity-building to promote long-term stability and sustainability of its legal aid clinics and NGO advocacy partner organizations.

An institution-building advisor (IBA) assists organizations by providing long-range strategic planning and project management techniques, models and materials. The IBA works with an organization both individually and through combined workshops on various elements including organizational assessment, development and evaluation. The IBA may also be used as a neutral facilitator for internal meetings and sessions aimed at planning future activities or solving institutional problems. Services provided through the IBA include organizational assessments, strategic planning, best practices and good governance, project design and implementation, financial planning and management, human resource management, operational and systems management, fundraising, media and public relations, marketing, advocacy and constituency-building, monitoring and evaluation techniques, individual mentorship and training-for-trainers.

Among the methods and approaches utilized by the IBA are trainings, seminars and workshops, facilitation of meetings and/or planning sessions, tailored individual consultations or group work, mentoring, provision of materials and practical examples, and promoting networking and coalitions of specialized topical or regional interests among ABA ROLI partners.

In addition, ABA ROLI disseminates to its partners a bi-monthly newsletter covering pertinent issues of organizational development, upcoming training events, relevant articles, and links to funding opportunities. ABA ROLI also conducts bi-monthly organizational development trainings for managers of its past and present sub-grantee partners. Since November 2006, the institution building program has conducted regular trainings on important topics, such as strategic project management, monitoring and evaluation, financial management, and human resource management for NGOs. The topics for organizational development trainings are selected based on needs assessment through the Sustainability Index, which is periodically conducted and updated by the IBA.

(5) PARLIAMENTARY DEVELOPMENT PROJECT/ (6) LEGISLATIVE POLICY DEVELOPMENT PROGRAM (PDP II)⁴²⁸

This project is implemented by the John Glenn School of Public Affairs at the Ohio State University (OSU) working under subcontract to Indiana University – Funded by USAID

Building on the 14-year long experience of the Parliamentary Development Project of Ukraine (PDP), this three-year project, continues to provide technical assistance to Ukraine's Parliament and extends it to the Presidential Secretariat, the Secretariat of the Cabinet of Ministers of Ukraine and individual ministries. PDP-II focuses on efficient mechanisms of developing legislative policy and institutional capacity building of the legislative and executive branches of power.

From September 2008 through May 2011, it implements the Parliamentary Development Project Legislative Policy Development Program (PDP II) as USAID's primary programmatic vehicle for achieving improved legislative function and process in Ukraine. The project is focused on three activities:

1. Executive and Legislative Branches of Government: will demonstrate more effective and transparent legislative and policy decision-making.
2. The Parliament, Presidential Secretariat, and Cabinet of Ministers: will engage in efforts to institutionalize staff and organizational development capacity.
3. Civil Society: will gain increased and meaningful access to the legislative process.

⁴²⁸ http://www.iupdp.org/index.php?option=com_content&view=article&id=1136&Itemid=99

The success of all of these programs depends, however, on the following assumptions:

- Political stability.
- General readiness of authorities to co-operate.
- Political will by Parliament to review the existing legislation.
- Political will to ensure the independence, efficiency and transparency of the judicial system.
- Appropriate budget dedicated to the judiciary.

At the time of completion of this report (February 18, 2010) it remains unclear, however, how these assumptions will be fulfilled, taking into account the results of current presidential elections in Ukraine and possible forthcoming parliamentary elections. Despite all positive efforts by international donors and legal community in Ukraine, cases of judicial corruption, violation of attorney-client privilege, and tortures by police and GPO are commonplace. None of the intended legislation has been passed so far, as the Parliament was de-facto non-functional for the most of its legislature period, blocked by opposing factions. My outlook remains negative, despite all the efforts being put in by international donors.

7. Analysis

As of February 2010, the introduction of QMS in Ukrainian Justice system has experienced some difficulties. Thus, although a training group has been set up as per p.3 of the above action plan, it consist of only two people – junior civil servants with many other tasks to accomplish. Both of them work for analytical department, whereas in my opinion it would be more beneficial for Ukrainian State Court Administration to select civil servants from an HR department who definitely should possess more cross-departmental experience. Main problems of implementation of QMS in Ukrainian justice system are, in my opinion, as follows:

- It has not been defined, who will be the end-users/beneficiaries of services provided by SCA. Those employees of SCA headquarters (interviewed by me) who are responsible for introduction of QMS, do think that such users should be the citizens, although, in my opinion, the users of services provided by SCA should be the relevant courts instead – those of first jurisdiction and appellate.
- The country-wide standards of services provided by SCA are not being set up. The list of such services is not clearly defined; little is done towards creating effective QMS in territorial departments of SCA, which are directly engaged in providing these services.
- SCA does not possess operating certificates on the QMS systems in accordance with ISO standard.
- The new high-quality benchmarks for provision of administrative services to users are not being set up. The mechanism of information or document receipt is not transparent and expressly prescribed which gives room for abuse and corruption, and decreasing the level of trust of citizens to the justice system in general.
- The purpose of introduction of the QMS system in SCA is allegedly only a receipt of certificate, instead of improvement of management the judicial system on the whole;
- The existent mentality of employees and management of SCA headquarters and territorial bodies of SCA, which do not perceive new decisions, is hostile to any new initiatives;
- There is no personal interest of SCA's top management in introduction of the QMS system;
- The general mood in SCA headquarters towards introduction of everything new is pessimistic
- The existent hierarchy of SCA is cumbersome, and communication between separate structural subdivisions of SCA headquarters is weak;
- The management of SCA headquarters, especially middle rank officers, are busy with their day-to-day tasks, try avoid problems, try to appoint lower-rank civil servants which would be engaged in QMS implementation
- There exist an appalling absence of knowledge and desire to study ISO standards; many of SCA management regard it as «superfluous» work
- There exist an appalling absence of desire to show problems in activity of SCA
- There currently exist several different management systems in the SCA headquarters (labour protection, office work control, documentary control *et al*), which duplicate each other
- There is insufficient knowledge among SCA employees for development of clear, accessible, concrete documents linked with introduction of QMS

- Many Ukrainian legislative acts which regulate the order of activity of central government, are often unclear and contradict each other;
- The terminology of Ukrainian version of ISO 9001:2000 standard is a poor translation from English, often incomprehensible to SCA employees and is very little adapted to the actual terms of activity of the judicial system of Ukraine;
- There is a clear disparity of financial possibilities of the Ukrainian state with regard to the justice system financing to those proclaimed in Ukrainian Constitution and other legislative acts. Absence of proper financial support of SCA (many courts refer for financial assistance to local businessmen, sometimes of dubious reputation, which makes them vulnerable to impartiality principle).
- There is an absence of clear understanding how these services must be financed.

8. Conclusion

After conducting this analysis of the QMS in Ukrainian justice system, I came to a conclusion, that it can not effectively function in isolation from QMS introduction and implementation in all Ukrainian government bodies in general.

It is necessary to point out a substantial lagging behind of Ukraine in the area of QMS introduction and implementation in all Ukrainian government bodies in general.

Ukraine needs that judicial services are not simply provided, but provided with a constant quality, that users are in a position to obtain high-quality services; and also effective Justice management necessary for ensuring effective an functioning of the Ukrainian judicial system.

The ISO norms are of special importance in the context of future agreement about the association of Ukraine and European Union. Obviously, an absence of a certificate of requirements of the standard of ISO 9001:2000 in the near future, can put the judicial system of Ukraine in a difficult position, for example, in obtaining financing from the structural funds of European Commission.

Consequently, introduction of QMS of ISO System 9001:2000 in the judicial system of Ukraine should be of the highest priority and should be performed as quick as possible. It results directly from the requirements established by ISO 9001, forming the whole philosophy of quality of providing services in the judicial system in the EU.

It is obvious that introduction of such system must not take place mechanically. For the judicial system of Ukraine we would recommend to use already existent positive practical experience of other EU accession countries as well as recent EU entrants, to conduct realistic analysis of already performed QMS projects, to limit the volume of procedural requirements of the QM system. As a result of that, a totally new QM system of quality should be created, which should draw on previous experience of SCA headquarters and create possibilities for development and adaptation.

The primary objective of the QMS system in SCA should be to answer the expectation of clients which are the relevant courts – those of general and appellate jurisdictions.

QM certification of the judicial system of Ukraine is a not purpose, it only beginning of way to development and subsequent perfection of the judicial system of Ukraine as a whole.

Such development depends on the Chairman and management of the State Court Administration, as well as on all employees of territorial departments of the SCA. Employees will perceive the aims of the work more adequately and will more associate themselves with high-quality results of SCA activity. The mechanisms of the system can help them but it will not replace professional ethics, professionalism and aspiration to improve. It will be allowed more expressly to settle competences and responsibilities of Employees and management of SCA, and would speed up the introduction of the QM system in the management of justice in Ukraine.

About the Authors

Laurent Berthier is PhD candidate in Public Law at the Observatoire des Mutations Institutionnelles et Juridiques, Limoges University, France. He can be contacted via laurent.berthier@unilim.fr

Dr. Francesco Contini is Senior researcher at the Research Institute on Judicial Systems of the National Research Council, Bologna, Italy. He can be contacted via: francesco.contini@irsig.cnr.it

Dr. Cristina Dallara is Post-doc fellow at the University of Bologna, Department of Political Science (DSP), Bologna, Italy. Her e-mail address is cristina.dallara@cesrog.unibo.it

Dr. Philip M. Langbroek is Professor of Justice Administration and Judicial Organisation, at the Montaigne Centre, Utrecht Law School, Utrecht University, the Netherlands. His e-mail address is: p.m.langbroek@uu.nl

Dr. Gar Yein Ng is assistant professor, Legal Studies Department, Central European University, Budapest, Hungary. She can be contacted via: Gyng@ceu.hu.

Dr. Hélène Pauliat is Professor of Public Law, at the Observatoire des Mutations Institutionnelles et Juridiques, Limoges University, France, et Membre de l'Institut Universitaire de France. Her e-mail address is: helene.pauliat@unilim.fr

Dmytro Tupchiienko, was a Senior Counsel in the Ukrainian Presidential Secretariat where he drafted more than 30 pieces of legislation on judicial reform and is currently a PhD Candidate in the School of Law, University of Westminster, UK. He is also admitted to the Kiev bar. His e-mail address is d.tupchiienko@googlemail.com

Jaša Vrabc is legal advisor to the Supreme Court of the Republic of Slovenia, Ljubljana. He can be contacted via jasa.vrabc@sodisce.si