



**EUROPEAN COMMISSION FOR THE EFFICIENCY
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**Monitoring and Evaluation of Court System:
A Comparative Study**

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and discussed by the CEPEJ-GT-EVAL at their 8th meeting

Contents

Executive Summary	3
1. Introduction	4
2. Methodology.....	8
3. Cases	11
3.1. Monitoring and evaluation in France, Italy and The Netherlands	11
3.1.1. France.....	12
Who monitors and evaluates?	12
What is monitored and evaluated?	15
How it is monitored and evaluated?	16
Trends and problematic issues.....	16
3.1.2. Italy	17
Who monitors and evaluates?	17
What is monitored and evaluated?	19
How it is monitored and evaluated?	21
Trends and problematic issues.....	22
3.1.3. The Netherlands	22
Who monitors and evaluates?	22
What is evaluated and monitored?	25
How it is monitored and evaluated?	26
Trends and problematic issues.....	27
3.2. Evaluation and monitoring in Croatia, Serbia and Slovenia	27
3.2.1. Croatia	29
Judicial structure and main reforms.....	29
Who evaluates and monitors and what is evaluated and monitored?	31
How it is monitored and evaluated?	32
Trends and problematic issues.....	33
3.2.2. Serbia.....	34
Judicial structure and main reforms.....	34
Who evaluates and monitors and what is evaluated and monitored?	36
How it is monitored and evaluated?	39
Trends and problematic issues.....	41
3.2.3 Slovenia	41
Judicial structure and main reforms.....	41
Who evaluates and monitors and what is evaluated and monitored?	42
How it is monitored and evaluated?	44
Trends and problematic issues.....	45
4. Conclusions.....	46
References.....	51
Appendix 1: Monitoring and Evaluation Model	55
Appendix 2: Text of the questions from the CEPEJ evaluation Scheme mentioned in the study.....	56

Monitoring and Evaluation of Court System: A Comparative Study*

Executive Summary

The research project studied the court monitoring and evaluation systems of six different countries, all of which are members of the Council of Europe. The main focus is on case management systems. The study is mainly based on the 2006 CEPEJ report, which concerns 2004 data, alongside data collected for two PhD theses, and data collected for other studies. The choice of countries was based on the expertise of the three researchers.

Even though this phenomenon is attracting growing attention both from policy makers and judicial administrations, limited information on the subject is available concerning such experiences within this field. The limited available data concerning the functioning of judicial systems, however, shows a fragmented implementation of monitoring and evaluation policies. As the 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.

“The approaches to be found range from traditional statistical surveys of workload, largely lacking in any consequences, to performance based remuneration systems that define the salary of individual judges based on the number of cases they decide”. The aim here is to provide an empirically derived model that describes the evolution of the courts’ evaluation and monitoring systems. As path dependency, institutional and political characteristics play an important role in defining the monitoring and evaluation needs of each judicial administration, our model should not be thought as a system suitable to compare countries positions but to help each system to find its own way. From the data provided, the researchers have derived a 5 step model on such an evolution: data collection; creating a normative framework; institution building; monitoring and evaluation; and accountability and action.

* The study is mainly based on the 2006 CEPEJ report, which concerns 2004 data. The study has been finalised as regards its content on December 2007

1. Introduction¹

Western constitutional theory of the judiciary has been engineered so that judiciaries operate within the rule of law, independently from other state powers with a view to protecting the human rights of the citizens. It is expected that within this framework judges act in an impartial and independent way. When one thinks of the judiciary in a democratic country, instantly the constitutional principles that will spring to lawyers' and legal academic minds will be judicial independence. Judicial independence is the central theme in constitutional law, in international treaties relating to human rights and a fair trial, and is also a focus of international organisations in developing judiciaries in member countries. It is a key concern for all parties and lawyers coming before the bench to argue their case: will this judge decide my case without bias? In constitutional courses at university relating to the separation of powers, judicial independence is also a central issue. A second, increasingly relevant issue concerns accountability. Traditional forms of accountability are mainly to protect the human right of fair trial (found also in article 6 of the European Convention on Human Rights) and until recently were thought to be sufficient to guarantee fair dispute resolution within the rule of law, be it in civil, criminal or public area.²

Starting from the late 1980s though, the increase role of judiciaries in democratic countries social life³ and the increasing demand, from taxpayers and voters, that the state be operated more efficiently and less at the expense (both emotional and financial) of the people started to affect the traditional way of thinking of the judicial administration, its organisation and its founding values. Until then, European democracies had not given much thought as to how access to justice was organized because it was taken for granted that if judicial independence were guaranteed, then access to justice would also be guaranteed. Bureaucracies in general, and judicial administrations in particular, were increasingly seen as an old and monstrous machine, with much red tape, and in need of much repair.⁴ Furthermore, it was often impossible for people to know who was responsible for what, which made having to go to the state with their issues time-consuming and frustrating.

¹ The authors wish to thank Philip Langbroek for his supervision and valuable comments.

This work benefits from several research projects coordinated by the Research Institute on Judicial Systems of the Italian National Research Council (IRSIG-CNR) with financial support from the AGIS Programme of the European Commission and from the FIRB programme of the Italian Ministry of University and Research.

² See: M. J. C. Vile, *'Constitutionalism and the separation of powers'*, Liberty Fund, Indianapolis 1998, p.95

³ C. Guarnieri and P. Pederzoli, *'The Power of Judges'*, Oxford University Press, Oxford 2001

⁴ H. R. v. Gunsteren, 'The Ethical Context of Bureaucracy and Performance analysis', in *Guidance, control, and evaluation in the public sector : the Bielefeld interdisciplinary project*, F.-X. Kaufmann, G. Majone, V. Ostrom and W. Wirth (eds), De Gruyter, Berlin 1986, p. 267

Bureaucratic organisations were more interested in the compliance with formal procedures than to the achievement of concrete results. This is because forms of accountability were linked to keeping track of relevant procedural events, through the use of registers and paper forms. These were the typical systems used to certify the respect of the procedure prescribed within the norm. These tools did not consider elements such as efficiency or quality of the service, but allowed only the possibility of inspection and control over the respect of formal procedures. The distance between complex formal procedures and practical needs of the people also put a distance between people and the state and made it non-transparent.⁵ Things were destined to change, though, as the media exposure and public dissatisfaction grew stronger.

Judiciaries, even if somewhat insulated from the outside world, were nevertheless affected by these events. It is not a case that since the late 1980s achieving “reasonable time” expectations of parties and the European Convention on Human Rights became a serious concern for many western European countries. Several investigations were carried out to better understand the mysteries of the judiciary that previously had been considered well known. When the Woolf Report came out in England and Wales in 1996 it highlighted organisational barriers to justice and the inequalities faced by many parties who had no recourse to justice because of the costs of lengthy and inefficient litigation. Looking at the Leemhuis Committee report in the Netherlands, the issue of organisational barriers through failures of the judicial organisation to limit backlogs growing in the courts and inefficient organisation was highlighted. Next to these reports was also the growing caseload of the European Court of Human Rights dealing with cases against member states for unreasonable delays in the courts based on Article 6(1) of the European Convention on Human Rights.

An answer to the problem ingrained in the nature of traditional bureaucracies and in the traditional approach to judicial administration seemed to come first from new liberal-economic theories from the Chicago school of economics and, later, from new public management. In particular, new public management stemmed from ideas about quality organisations, learning organisations and quality indicators from organisation theories.⁶ Theories about quality in organisations have as their impetus the idea that not only should an organisation be able to fulfill its tasks in an efficient and effective manner, but it should also be customer or client-oriented.⁷ The organisation should adapt to the needs of the client, in terms of the quality of the service or product.

⁵ Ibid., p.266

⁶ J.-E. Lane, *'New Public Management'*, Routledge, London 2000, A. Hondeghem (eds), *'Ethics and accountability in a context of governance and new public management'*, IOS Press OHMSHA, 1998; P. Senge, *'The fifth discipline: the art and practice of the learning organisation'*, Doubleday currency, New York 1990; S. Murgatroyd and C. Morgan, *'Total quality management and the school'*, Open University Press, Buckingham, Philadelphia 1994; W. A. Lindsay and J. A. Petrick, *'Total Quality and organisation development'*, St. Lucie Press Boca Ration, Florida 1997

⁷ J. B. J. M. ten Berge, 'Contouren van een kwaliteitsbeleid voor de rechtspraak', in *Kwaliteit van rechtspraak op de weegschaal*, P. M. Langbroek, K. Lahuis and J. B. J. M. ten Berge (eds), W.E.J. Tjeenk Willink (G.J. Wiarda Instituut), Deventer 1998, p.29

Additionally, it should be available to account for the quality of the service or product.

In order to enable the organisation to innovate, respond to the customer demands and increase quality, monitoring and evaluation became of paramount importance. New public management is however, an ongoing development. The process not only assists public services in adapting to the needs of the customer/client/citizen, but also re-orientes the public services to reorganize their technologies towards such an adaptation. This is especially through the use of information technology, different management methods, and by creating a working environment conducive to productivity. The general idea behind this movement is that quality in services and products will lead to satisfaction of the clients/customers/citizens.⁸ It has been suggested that such satisfaction could in turn lead to public trust⁹ and to legitimacy of government.¹⁰

Another important element is the growing attention towards accountability. Mechanisms of accountability are pivotal to a good working democracy. These are in order to ensure that no one body, be it a state institution, a private organisation or person, has power to dictate the lives of the communities they serve without justification based on the rule of law.¹¹ Furthermore, as already mentioned, they are a powerful tool to drive a traditionally insulated organisation like the judiciary to take into account its customer needs. There are two ways to hold an organisation to account for its actions.¹² One is where the citizens are passive, whereby the organisation must take steps to ensure the transparency of decision-making and service provision. The other requires action by citizens in their capacity as clients of public services, where they have the right to demand answers for actions taken and to demand the stopping or redesign of such actions.¹³ In both cases, data concerning the activities of the public organisation is required to be collected and made available.

As a consequence, nowadays, the traditional Western constitutional framework is expanding to include requirements of organisational quality and efficiency to meet the demands on justice in Europe (article 6 European Convention on Human Rights). Legislation in various countries has been directed towards efficiency of justice. Monitoring and evaluation are achieving an ever increasing position as tools that allows the measuring of situations, assess policy implementation outcomes and allocate increasingly shrinking resources.

⁸ EFQM, 'Mission' available at <http://www.efqm.org/Default.aspx?tabid=60> 2006

⁹ G. Bouckaert and S. van de Walle, *Government and trust in government*, at EGPA Conference Finland 2001

¹⁰ Ibid.

¹¹ M. J. C. Vile, *'Constitutionalism and the separation of powers'*, Liberty Fund, Indianapolis 1998 p3; P. Selznick, *'The moral commonwealth: Social theory and the promise of community'*, University of California Press, Berkley, California 1992 ch. 9, U. Rosenthal, 'Macht en controle op de macht: de dringende behoefte aan publieke controle', *Nederlands Juristen Blad* 2000, 34 vol., 1703 p., p.1703

¹² M. A. P. Bovens, *'The quest for responsibility, accountability and citizenship in complex organisations'*, Cambridge University Press, 1998 ch. 3

¹³ For more on the concept of participation see: P. Selznick, *'The moral commonwealth: Social theory and the promise of community'*, University of California Press, Berkley, California 1992 p.314-318

Even if this phenomenon is attracting growing attention both from policy makers and within the judicial administrations, limited information on the subject is available concerning such experiences within this field. The limited available data concerning the functioning of judicial systems, however, shows a fragmented implementation of monitoring and evaluation policies. As the CEPEJ report states,¹⁴ 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.

The aim of this study is to analyse the systems for evaluation (used for the collection and analysis of information in relation to specific norms) and monitoring (used for supervision and control of the courts or the individual units/departments of the courts) in operation in six European countries (France, Italy, The Netherlands, Croatia, Serbia and Slovenia).¹⁵ In addition, the study will try to verify the effects of such systems on the implementation of policies. The criteria behind the case selection were based on two factors. The first one is that between the members of the research team all the countries' judiciaries have been studied in depth. The second is that this selection allows us to confront evaluation and monitoring in two groups of judiciaries: three judiciaries of well established democracies and three judiciaries of recently developed democracies. The selection of these two groups support the Council of Europe aims to "develop throughout Europe common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals".¹⁶ The objective is to develop an empirically derived model that describes the evolution of the courts' evaluation and monitoring systems.

We focus on monitoring and evaluation of courts activities and performance. We will narrow the focus on case management in accordance to the choices made in the CEPEJ Report. In particular, the presence of traditional and new mechanisms for collecting data, the presence and evolution of the normative framework the organisational change and institution building¹⁷ enacted in order to monitor and evaluate will be addressed. The presence of accountability mechanisms linked to these mechanisms will also be addressed. We would like to take the opportunity to highlight that monitoring and evaluation is not limited case management in the courts. Other aspects that can be considered are: equality, fairness, and integrity, customer relations (access to justice, public trust and confidence), quality of the work done by staff other than judges, personnel management and development, independence and accountability.

¹⁴ European Commission for the Efficiency of Justice (CEPEJ) - European judicial systems - Edition 2006 (2004 data) p.70

¹⁵ Further details concerning the case selection is provided in the methodology section

¹⁶ http://www.coe.int/T/e/Com/about_coe/

¹⁷ Institution building is the creation of governance capacities. It entails the dismantling and reformation of old organizations and institutions-- legal, administrative, economic as well as social-- the improvement of efficiency and effectiveness of existing institutions, the restoration of destroyed institutions and the enhancement of authorities' professionalism. <http://www.sais-jhu.edu/cmtoolkit/approaches/statebuilding/institutionbuilding.html>

2. Methodology

CEPEJ data on evaluation and monitoring has been used as a basis to structure our research framework and analysis. This data has been integrated with both qualitative and quantitative information already collected in various research projects, reports and studies conducted by members of the research group and by their research networks in the last years. On top of this, semi structured questionnaires and interviews were conducted with CEPEJ contacts.

In order to create a more robust study and to identify common and divergent patterns, we have selected a multiple case study approach. The case study design is *“the logic that links the data to be collected (and the conclusions to be drawn) to the initial questions of a study”*.¹⁸ Adopting a mainly qualitative approach, the number of cases has been limited to a small number. The depth, openness, and detail of qualitative inquiry, based on a limited number of cases has been thought to be more appropriate to increase the understanding on a complex but still uncharted phenomena such as the monitoring and evaluation in the judicial offices. In fact, the preliminary analysis of the data provided by CEPEJ , even though quite useful in order to orient the research, had shown serious limitations as to the possibility to better grasp the specific characteristics and dynamics of the different monitoring and evaluation initiatives. The use of a small number of cases of this approach, although reducing the chance to generalize the findings if compared to a more quantitative approach based on larger numbers, is capable of producing a wealth of detailed information that a more quantitative approach can not provide.¹⁹

Starting from the public data provided by CEPEJ, a research project was sketched and case studies were identified. The criteria behind the case selection was based on two factors. The first one is that between the members of the research team all the countries' judiciaries have been studied in depth. The second is that this selection allows us to confront evaluation and monitoring in two groups of judiciaries: three judiciaries of well established democracies and three judiciaries of recently developed democracies. The importance to study judicial administration aspects in countries of recent democratisation will be explained in the section 3.2 with reference to the democratisation studies literature. An important aspect that needs to be stressed here is that this grouping is a way to take into account the different historical, institutional and legal experiences. These differences are not and should not be seen as a source of division but as a wealth, which offer important opportunities for mutual learning. This wealth of experiences makes Europe an extraordinary laboratory of innovation and change. The research project was presented to the Working Group on Evaluation of Judicial systems (CEPEJ -GT-EVAL) and discussed. After the presentation, and thanks to both the input of the Working Group and access to CEPEJ full database, the

¹⁸ R. K. Yin, *'Case Study Research: Design and Methods'*, Sage Publishing, Beverly Hills, CA 2003 p.27

¹⁹ M. Q. Patton, *'Qualitative Evaluation & Research Methods'*, Sage Publishing, Newbury Park, CA 1990 p.13

research project was refined.²⁰ Furthermore, we based the definition of monitoring and evaluation on the ones provided by CEPEJ. With monitoring we refer to procedures and practices aimed at assessing the day-to-day activity of the courts, and in particular what the courts produce. With evaluation we refer to procedures and practices directed at assessing the performance of the court systems with prospective concerns, using indicators and targets.

Evidence for the case studies has then been collected from multiple sources allowing converging lines of inquiry, and data triangulation to enhance the validity of the research. Several methods have been used to collect data and information for the case studies: literature research, document collection, electronic questionnaire, interview, environment observation and “in action” observation. Different combinations have been used in each case in order to maximise data accuracy and reliability considering the limited resources at our disposal.

In terms of country literature research, both articles and books on constitutional theory, new public management, monitoring and evaluation were gathered, using search engines from the Internet, and university libraries. Material on the national cases was also gathered with similar methods but also with the support of local expert advice. Policy and legislative documents were easily found on the government websites of France, Italy and the Netherlands. In the case of Croatia, Serbia and Slovenia, websites of international organisations such as ABA Celi, Usaid etc. were also searched for additional material to the ones provided by government websites.

Special care was given to the choice of the interview technique/s to be used. It was important to correctly select the tool to deliver the kind of information required to best explore this field of research.²¹ Processes and analysis techniques were also taken into account in this phase.²² Due to the fact that this field of research was an area where relatively little field research has been conducted (at the time this research was conducted), the choice was oriented

²⁰ In this phase, it was decided to substitute Hungary, Romania with Croatia and Slovenia. This was done for several reasons, between which, the possibility of making on site research in the short time frame of the project.

²¹ J. W. Creswell, *Qualitative inquiry and research design: Choosing among five traditions*, Sage Publications, Inc., 1998, chapter 7; I. Maso, 'The interview as a dialogue', in *The Deliberate Dialogue*, I. Maso and F. Wester (eds), VUB University, Brussels 1996 pp.7-14; C. A. B. Warren, 'Qualitative Interviewing', in *Handbook of interview research, context and method*, J. F. Gubrium and J. A. Holstein (eds), Sage, Thousand Oaks, London, New Dehli 2001, pp.83-83; R. W. Shuy, 'In person versus telephone interviewing', in *Handbook of interview research, context and method*, J. F. Gubrium and J. A. Holstein (eds), Sage, Thousand Oaks, London, New Dehli 2001, ch. 26, pp.537-555; C. Sellitz, M. Jahoda, M. Deutsch and S. Cook, *Research methods in social relations*, Hold, Rinehart and Winston, 1966, chapter 7

²² F. Wester, 'The analysis of qualitative interviews', in *The Deliberate Dialogue*, I. Maso and F. Wester (eds), VUB University, Brussels 1996, pp. 63-85; C. Sellitz, M. Jahoda, M. Deutsch and S. Cook, *Research methods in social relations*, Hold, Rinehart and Winston, 1966, chapter 11; J. W. Creswell, *Qualitative inquiry and research design: Choosing among five traditions*, Sage Publications, Inc., 1998chapter 8

to the selection of an exploratory²³ research methodology with semi-structured interviews.²⁴ The use of this approach allows one to be able to cope with new information in a structured way. Although an agenda is set, this method allows the possibility to adapt in order to take advantage of emerging opportunities as interviews progress.²⁵ The method is sufficiently flexible so that one could ask for more information or the expert could recall his/her experiences that would not have been accounted for in the questionnaire. Whenever possible, face to face interviews were adopted. Face-to-face interview allows one to follow facial expressions, body language, and the sense of humour particular to the profession to be a form of information, all of which gives a deeper understanding, which is particularly useful in this context.²⁶ Whenever possible, the questions guideline was provided to the experts in order to allow them to have an idea of the topics to be discussed. In the follow up, interviews were transcribed and the draft document was then submitted to the experts to check the data and whenever needed, to collect further information. In the cases where face to face interviews were not possible due to time and funding constraints, phone interviews were used instead. Also in this case, interviews were transcribed and the draft document was then submitted to the experts to check the data and to collect further information.

The choice of respondents has been guided by the fact that this is an exploratory research, and that a small number of experts in the field would provide better information for an in-depth analysis of the reality than a representative sample. For this reason, in order to select the experts that could better provide the information sought, different selection approaches have been used for each national case. Next to the other advantages, this also allowed the taking into account of organisational and doctrinal differences between the various systems and to benefit fully of the researchers research networks and contacts. Subjects have been selected for their capacity as informants with special knowledge to pass on.²⁷

In the cases of Netherlands and France the study has greatly benefited from the data collected in the context of a PhD research conducted by Gar Yein Ng from 2002 to 2007. Concerning the Italian case much of the data and information were drawn from research and studies conducted by the research Institute on judicial Systems on the subject of quality and evaluation of justice in the period from 2000 to 2007.

²³ C. Sellitz, M. Jahoda, M. Deutsch and S. Cook, *Research methods in social relations*, Hold, Rinehart and Winston, 1966, part on research design

²⁴ C. A. B. Warren, 'Qualitative Interviewing', in *Handbook of interview research, context and method*, J. F. Gubrium and J. A. Holstein (eds), Sage, Thousand Oaks, London, New Dehli 2001, p.86; H. Mazeland and P. ten Have, 'Essential tensions in (semi-) open research interviews', in *The Deliberate Dialogue*, I. Maso and F. Wester (eds), VUB University Press, Brussels 1996

²⁵ C. A. B. Warren, 'Qualitative Interviewing', in *Handbook of interview research, context and method*, J. F. Gubrium and J. A. Holstein (eds), Sage, Thousand Oaks, London, New Dehli 2001 p. 87

²⁶ R. W. Shuy, 'In person versus telephone interviewing', in *Ibid.*(eds), , pp. 541-545

²⁷ J. Platt, 'History of the interview', in *Handbook of Interview research*, J. F. Gubrium and H. J.a. (eds), Sage Publishing, New Dehli, London 2001 p.49

The studies of Croatia Serbia and Slovenia were supported by on-site visits conducted by one of the authors in each country from October 2006 to April 2007. For these three case studies, written electronic questionnaires were also submitted to CEPEJ contacts. This semi-structured questionnaire was specifically built starting from the CEPEJ report questions (and national answers) concerning monitoring and evaluation. Questions were aimed at missing, unclear or interesting data that required further elaboration. Written reply from Croatia and Slovenia were analysed and followed by a second round of questions. For the Serbian case study, reply to the questionnaire wasn't provided in time.²⁸ To overcome this missing source additional documentary evidence was collected. For this purpose, local expert support was used to search and analyse national documentation and to translate relevant references.

From the data collected through literature research, data collection, interviews, and direct observation, case studies were written describing each national experience. A second level analysis was then carried out. At this stage, a pattern-matching technique was used to compare different national experiences. Pattern-matching, comparing elements and patterns that emerge from the concrete dynamics of the individual case studies, offer the opportunity to highlight trends and possibly causal relations between national context characteristics including the different balance between constitutional values and division of powers, legal frameworks, judicial organisation, local organisation, norms, procedures and practices, technological artefact features, adoption process and results.

3. Cases

3.1. Monitoring and evaluation in France, Italy and The Netherlands

Several elements have contributed to the growing importance of monitoring and evaluation in western European Judiciaries. In particular the growing attention to judicial activities and administration have played an important role. The evolution of the criminal phenomena, the expansion of judicial power,²⁹ the increasingly greater role of the administration of justice in "defining 'who gets what, when and how' in the community",³⁰ and "the growing role of international organisations such as the European Court of Human Rights, and the activism of NGOs such as Amnesty International"³¹ have certainly contributed to enhancing the awareness and interest of the public to the justice sector and to the justice systems performance. Furthermore, the diffusions of new public management values and the idea that, "the administration of justice looks very

²⁸ This was due to the transition of government in Serbia at the time the research has been conducted.

²⁹ C. N. Tate and T. Vallinder, *'The global expansion of judicial power'*, New York University Press, New York 1995

³⁰ G. Di Federico, 'Italy: A peculiar case', in *The Global Expansion of Judicial Power*, C. N. Tate and T. Vallinder (eds), New York University Press, New York 1995, pp.233-242

³¹ M. Velicogna and G. Y. Ng, 'Legitimacy and Internet in the judiciary: A Lesson from the Italian Courts' Websites Experience', *International Journal of law and information technology*, Oxford Journals, Oxford University Press 2006, vol., p.371

much like an ordinary public service organisation”,³² has generated an awareness that the actors operating in the justice systems should earn their legitimacy not only by participating in the production of “sound juridical judgments but also by providing adequate services”.³³ Parliaments, Governments and Ministries of justice all around Europe have been confronted with mounting requests for better judicial services, a more efficient organisation of services, better accountability and, more in general, a “modernization” of the justice machine. Within this general frame, monitoring and evaluation systems have been identified not only as powerful tools to ensure accountability but also as powerful tools to introduce changes.

3.1.1. France

Who monitors and evaluates?

Whilst the 1958 constitution of the fifth Republic of France concentrates on the institutional protection of judicial independence and personal freedom very little is said on the organisation of the judiciary per se, or how access to justice should be organised.³⁴ In identifying who monitors and evaluates therefore, one can also identify the structure and hierarchy of the judicial organisation in the ordinary jurisdiction in France.

The Ministry of Justice’s role in the evaluation of justice in France is confirmed by CEPEJ data. The Ministry of Justice has used principles of justice developed in the legal system over the years as a basis for the organisation. These principles include (free) access to justice; independent and impartial judges; a double degree of jurisdiction (i.e. the possibility to appeal); controlled application of the law; publication of the grounds for decisions; and, finally, due process.³⁵ Judges head various departments within the Ministry of Justice, such as the Direction Administration Générale d’Equipement (the department for administration and resources), and the Direction Service Judiciaire (department of judicial services). The latter prepares bills on the organisation of the judiciary, distributes resources to the jurisdictions, and manages personnel. However, there are also a few professional civil servants and managers working at the department.³⁶

There is a mechanism at the Ministry of Justice to hold this advantage in check, and that is the inspectorate general of the judicial services. This body was originally set up to investigate judges at the start of a disciplinary proceeding. It

³² M. Fabri and P. M. Langbroek (eds), *The challenge of change for judicial systems, developing a public administration perspective*, IOS Press OHMSHA, Amsterdam, Washington 2000, p.8

³³ Ibid.(eds), pp.8-9

³⁴ G. Y. Ng, 'Quality of Judicial Organisation and Checks and Balances', Law, Utrecht 2007 chapter 11, introduction

³⁵ <http://www.justice.gouv.fr/justorg/principes.htm>

³⁶ C. Deffigier, S. Gaboriau, D. Marshall, H. Pauliat and J.-M. Plazy, 'Qualité et justice en France', in *The Administration of justice in Europe: Towards the development of quality standards*, M. Fabri, J.-P. Jean, P. M. Langbroek and H. Pauliat (eds), Io Scarabeo, Bologna 2003 p.217

is now also competent to report on thematic issues, such as the report of 2003 on the evaluation of regional administrative services, and the functional reporting of courts' activities. These reports, in general, are available to the public.³⁷

At the courts of appeal administration is the responsibility of the first president, the chief prosecutor and the general assembly of the court. The first president and the chief prosecutor form a diarchy to administer the first instance courts for major cases in their region.³⁸ In 1996, the regional administrative services were created to assist the diarchy at the courts of appeal in their role in managing their regions. The courts of appeal are responsible for the distribution of resources (judges) between the courts in their regions by means of contract management. This contract sets out the aims of local courts in terms of their performance in relation to their resources and performance during the previous year.³⁹ The regional administrative service is responsible for distributing clerks and resources, and the chief of the regional administrative services is responsible for gathering the relevant data and creating an overall budget based on the budgets gathered from all the first instance courts in the region plus that of the court of appeal.⁴⁰ The diarchy is responsible for distributing judges throughout their region and negotiating contract management ("*contrat d'objective*") with the Presidents of the first instance courts for major cases. They are also responsible for signing performance contracts with the Ministry of Justice. The role of the Court of Appeal has also been confirmed by CEPEJ data.

At the local level, the courts (of appeal and of first instance) are managed under a diarchy composed of the first president and the chief prosecutor of the court in question.⁴¹ This diarchy is responsible for the case distribution between judges and prosecutors. Next to these, the chief clerk ("*greffier en chef*") has responsibility for the general administration of the court in terms of human resources and budget management.

Within the courts, administrative tasks are split between the President of the court, who has the responsibility for internal administration, distributing cases between the chambers and managing judges,⁴² and the head of the public

³⁷ Ibid.in (eds), p.218

³⁸ M.-L. Rassat, '*La justice en France*', Presses Universitaires de France, Paris 1991, p.43

³⁹ C. Deffigier, S. Gaboriau, D. Marshall, H. Pauliat and J.-M. Plazy, 'Country studies: France', in *L'administration de la justice en Europe et l'évaluation de sa qualité*, M. Fabri, J.-P. Jean, P. M. Langbroek and H. Pauliat (eds), Montrchrestien, Paris 2005, p.244

⁴⁰ C. Deffigier, S. Gaboriau, D. Marshall, H. Pauliat and J.-M. Plazy, 'Qualité et justice en France', in *The Administration of justice in Europe: Towards the development of quality standards*, M. Fabri, J.-P. Jean, P. M. Langbroek and H. Pauliat (eds), lo Scarabeo, Bologna 2003, p.219

⁴¹ C. Deffigier, S. Gaboriau, D. Marshall, H. Pauliat and J.-M. Plazy, 'Country studies: France', in *L'administration de la justice en Europe et l'évaluation de sa qualité*, M. Fabri, J.-P. Jean, P. M. Langbroek and H. Pauliat (eds), Montrchrestien, Paris 2005, p. 218

⁴² R. Perrot, '*Institutions judiciaires*', Montschrestien, Paris 2004, p. 96

prosecution (the procureur de la République) may have administrative tasks as well, for example to allocate cases in correctional hearings there is a common decision between the President and the procureur de la République, and one talks of “dyarchie” in this case.⁴³ Furthermore, there is general assembly, which is composed of all judges. The general assembly meets at least once a year to discuss organisational issues (especially the schedule order) that affect them, behind closed doors.⁴⁴ Finally, the position of the chief clerk has seen an increase of responsibility within the courts, and is seen as the third ‘leg’ of management, thereby creating an unofficial triumvirate of management at the court. However, his/her task is only to provide good administration within the court and therefore he/she has no judicial tasks.⁴⁵ Chief clerks are accountable for the management of finances to the court of accounts.

For the administrative jurisdiction each court has one first president, and presidents for each chamber. The management of the court depends solely on the president with the aid of the chief clerk of the court.⁴⁶ The president of the court deals only with the Council of State when signing the performance contract.⁴⁷ The secretary-general of the Council of State is responsible for the judicial organisation and distribution of resources within the administrative jurisdiction. The secretary-general is responsible to, but independent from, the Ministry of Justice for the organisation of the courts in the administrative jurisdiction.⁴⁸ In 1987 a law created the Courts of Appeal for administrative law.⁴⁹ They were created to deal with all appeals, in order to alleviate the delays at the Council of State.⁵⁰ There is a commission of the Council of State to deal with the admissibility of cases to avoid an excess workload or overburdening.⁵¹ At the courts of first instance, the first president has

⁴³ Article L311-15-1 CODE DE L'ORGANISATION JUDICIAIRE (legislative part); see also G. Y. Ng, 'Quality of Judicial Organisation and Checks and Balances', Law, Utrecht 2007, part 11.1.1

⁴⁴ M.-L. Rassat, *'La justice en France'*, Presses Universitaires de France, Paris 1991, p. 39

⁴⁵ T. Deschamps, C. Mouhanna and V. Michel, 'La spécificité de l'administration Française de la justice: première approche' Institut International d'administration publique 2001, p. 44

⁴⁶ *Ibid.* p.220

⁴⁷ C. d'Etat, 'Contrats d'objectifs des cours administratives d'appel de Bordeaux, Douai, Lyon, Marseille, Nancy, Nantes et Paris' Conseil d'Etat 2002

⁴⁸ M.-L. Rassat, *'La justice en France'*, Presses Universitaires de France, Paris 1991; C. Deffigier, S. Gaboriau, D. Marshall, H. Pauliat and J.-M. Plazy, 'Qualité et justice en France', in *The Administration of justice in Europe: Towards the development of quality standards*, M. Fabri, J.-P. Jean, P. M. Langbroek and H. Pauliat (eds), Io Scarabeo, Bologna 2003

⁴⁹ M.-L. Rassat, *'La justice en France'*, Presses Universitaires de France, Paris 1991, pp. 67-68; L. N. Brown and J. Bell, *'French administrative law'*, Clarendon Press, Oxford 1998, p. 53; C. Deffigier, S. Gaboriau, D. Marshall, H. Pauliat and J.-M. Plazy, 'Qualité et justice en France', in *The Administration of justice in Europe: Towards the development of quality standards*, M. Fabri, J.-P. Jean, P. M. Langbroek and H. Pauliat (eds), Io Scarabeo, Bologna 2003, p. 216; C. Debbasch, *'Droit administratif'*, Economica, 2002, ch. 5 p. 713

⁵⁰ L. N. Brown and J. Bell, *'French administrative law'*, Clarendon Press, Oxford 1998 p.

51

⁵¹ *Ibid.* p. 52-53

responsibility for the administration of the court in terms of managing the services, internal disciplinary matters, and organising hearings.⁵² The clerks of the administrative jurisdiction are a part of the civil service of the whole governmental organisation. Their job is different from those of the ordinary jurisdiction in that they work to increase the transparency of the organisation in dealing with cases.⁵³

What is monitored and evaluated?

According to CEPEJ data, evaluation of the quality of the judicial organisation is conducted through performance indicators of productivity, weighing the number of cases, and the length of procedures (amongst other things).⁵⁴ The data further indicates that targets have been created on courts' activities, by the judicial power. Targets are being set to measure performance of the courts, and to analyse queuing times in courts procedures through the use of data produced by management and through the operation of the new financial laws (LOLF-*"Loi Organique sur la loi de finance"*).⁵⁵

Before the new financial laws came into effect, the creation of the regional administration services marked an increase in the objectivity used to examine the activity of courts. The Ministry of Justice and the French judiciary now try and run the organisation according to the techniques of management, especially in the use of information technology, and by adapting rules of procedure. With his objectivity, there also comes the debate on the quality sacrificed by judges in a hurry to finish all the cases during the year.⁵⁶

The new finance law, which came into effect in January 2006, devolves financial responsibility back to the local authorities and to different state bodies. Whilst this law devolves financial responsibility, also demands that those who hold the power to spend are also accountable for it.⁵⁷ It will mean that budgets will be distributed based on productivity within the courts. This act applies to all public services. There has been an ongoing debate within the judiciary itself regarding the responsibility of judges in terms of productivity and reducing delays, whilst at the same time ensuring that their judgments are of high quality.⁵⁸ The Ministry of Justice and the regional administrative services of Paris created standards by which to measure the productivity of the courts in an equitable way. The information section of the new finance law demands that

⁵² R. Perrot, *'Institutions judiciaires'*, Montschrestien, Paris 2004, p. 222

⁵³ Ibid. pp. 93-94

⁵⁴ See answers to questions 57a-c

⁵⁵ See answers to questions 53, 54,

⁵⁶ D. Millet, 'Quarante ans de budget de la justice', in *Justices: ce qui a changé dans la justice depuis 20 ans*, (eds), Dalloz, 1999, p.145-6

⁵⁷ P. Biju-Duval, J.-F. De Montgolfier, A.-M. Desgranges and O. Le Clercq de Lannoy, 'Judicial Electronic Data Interchange In France', in *Judicial Electronic Data Interchange in Europe: Applications, Policies and Trends*, M. Fabri and F. Contini (eds), Editrice Lo Scarabeo, Bologna 2003, p. 220

⁵⁸ A. Garapon, 'Les responsabilité du juges' available at http://www.enm.justice.fr/centre_de_ressources/dossiers_reflexions/responsabilite/annexe3.htm

the budgets be based on the productivity of the previous year.⁵⁹ The criteria for productivity in the courts has been developed by judges working at the regional administration service in Paris, who cooperate with the Council of State as regards creating objective criteria to measure the productivity for their jurisdiction.

There have been other policy initiatives both from the ministry of justice and the courts themselves to improve the quality of justice, and monitoring the progress of these initiatives can also form part of what is being evaluated. Such initiatives from the ministry level include the Orientation law of 2002 created to provide a framework of policy goals for the judicial organisation. This framework was found in the annex of the law itself, and the most pertinent parts of this annex are parts I and IV. Part I deals with improving the efficiency of justice at the service of the citizen; and part IV deals with improving efficient access to the law and justice.

How it is monitored and evaluated?

According to CEPEJ data, the courts of the ordinary jurisdiction are not obliged to provide an annual report. However, the work of the inspectorate general and other statistics gathered by the ministry of justice provides sufficient data for the ministry of justice to make performance evaluations on a trimester basis.⁶⁰

Between the Courts of Appeal and the courts of first instance, there is also planning and control mechanism that focuses on productivity and financing of the courts. Highly specific data are exchanged on productivity of the courts. The chief clerks of the courts of first instance of the ordinary jurisdiction submit a report on performance and the number of judges and resources that they need. The regional administrative services puts together a plan of the region's needs and submits it to the Court of Appeal diarchy for consideration (who base their consideration on what the Ministry of Justice is going to give them).⁶¹

Within the courts themselves, technology in the form of the tableaux de bord (statistics table) is used to generate statistics on productivity for the court. However, there is officially no performance evaluation of individual judges in terms of the number of cases they complete.

Trends and problematic issues

- A normative framework based on NPM and financial laws
- Public service rhetoric drives need for reform
- Growing link between monitoring and evaluation and accountability

⁵⁹ LOLF, title V, p22-27, C. Deffigier C. Deffigier, S. Gaboriau, D. Marshall, H. Pauliat and J.-M. Plazy, 'Qualité et justice en France', in *The Administration of justice in Europe: Towards the development of quality standards*, M. Fabri, J.-P. Jean, P. M. Langbroek and H. Pauliat (eds), Io Scarabeo, Bologna 2003, p. 242-245

⁶⁰ See answers to questions 51

⁶¹ G. Y. Ng, 'Quality of Judicial Organisation and Checks and Balances', Law, Utrecht 2007 part 12.2.2.

- Conservative organisation, change difficult, therefore distance between normative framework and reality
- Important role of judges

3.1.2. Italy

Who monitors and evaluates?

As CEPEJ data shows, there are two main authorities responsible for the evaluation of the performances of the courts. This is due to the fact that the governance structure of the Italian judiciary is entrusted to two organisations: the Judicial Council and Ministry of justice.⁶² According to Art. 104 of the Constitution, “the judiciary constitutes an autonomous and independent organ and is not subject to any other power of the State”. This independence is guaranteed by the Judicial Council. The Council is independent from the executive and the Ministry of justice and it is considered the self-governing body of the Judiciary, including both judges and prosecutors. The Judicial Council is in charge of recruitment, promotion, transfers from judicial positions and disciplinary measures against judges and prosecutors (art.105 Italian Constitution⁶³). Although, formally, the career of judges “should be based on both merit and seniority, in practice, after several reforms that were passed in the 1960s and the 1970s, career advancement in status and salary are based only on seniority”.⁶⁴ Recent amendments to the normative provisions concerning the judicial organization have been introduced to change this situation. In particular, the D.lgs. n. 160/2006 as modified by L. 111/2007 has formally established a new system of evaluation of judges’ professionalism, capabilities, competences and productivity (in relation to both number and quality of cases dealt with). Furthermore, it provides for candidates of management positions to be evaluated on the basis of elements such as previous experiences of leadership and management, with specific attention to the achieved results, attended organization and management courses. Personal organizational and management capabilities and propensity to the use of ICT should also be considered.

The Council has also acquired an increasing role in the formal regulation of court and prosecutor offices’ organisation. In particular, the Judicial Council approves the court organisational plans (table) “which are a quite detailed

⁶² M. Fabri, D. Carnevali, F. Contini, C. Dallara and F. Sibilla, 'Quality and Justice in Italy', in *The administration of Justice in Europe: Towards the development of quality standards*, M. Fabri, P. M. Langbroek and H. Pauliat (eds), Lo Scarabeo, Bologna 2003, p. 262

⁶³ The Judicial Council, in accordance with the regulations of the judiciary, has jurisdiction for employment, assignments and transfers, promotions and disciplinary measures of judges.

⁶⁴ M. Fabri, D. Carnevali, F. Contini, C. Dallara and F. Sibilla, 'Quality and Justice in Italy', in *The administration of Justice in Europe: Towards the development of quality standards*, M. Fabri, P. M. Langbroek and H. Pauliat (eds), Lo Scarabeo, Bologna 2003, p.263

description of the organisation of the office and of the criteria used to assign cases within the courts”⁶⁵

Administrative services that support the exercise of the jurisdiction are governed by the Ministry of Justice. The Ministry “is entrusted with the organisation and functioning of the judicial offices (procurement, information technology, administrative personnel, budgeting etc.)”.⁶⁶ According to Art. 110 of the Constitution: “Without prejudice to the authority of the Judicial Council, it is the Minister of Justice which has responsibility for the organisation and functioning of those services involved with justice.” It is important to notice, though, that even if a “legislation, enacted in 1993 to regulate the selection of managers in the public sector, opens up access to all the managerial posts of the Ministry of Justice also to non-magistrates, breaking the monopoly of the magistrates in these positions”.⁶⁷ The number of magistrates working at the top positions of the Ministry is still predominant.⁶⁸

In the recent process of reform of the judicial organization, important changes have also been introduced with D.lgs. 240/2006 concerning management, allocation of resources, training, and statistics. Between the other elements, the D.lgs. 240/2006 introduces a decentralization of the Ministry in order to increase efficiency and reduce costs. The empirical results of such reform, which is still in its implementation phase, are yet to be seen.

At court level, Court Presidents are in charge of the “administration of the jurisdiction” and of the administration and organisation of the human and material resources of the court.⁶⁹ Courts are organized independently according to three year organisation plans drafted by the Court Presidents and approved by the Judicial Council. Organisational functions and hierarchical powers of the Court Presidents have been progressively weakened through the years to ensure internal judicial independence of judges.⁷⁰ As a consequence, “wide areas of ‘functional independence’”⁷¹ have been created within the courts. “this means that the single judge ... [has] the opportunity to become autonomous in the everyday working life, and to ignore the organisational constraints that normally affect the functioning of public bureaucracy. For example, magistrates can establish his/her working hours, can adapt some organisational procedures to his/her personal needs, can establish personal criteria to archive files”. This clearly affects and makes more problematic the possibility of monitoring and evaluating their activities. There have been

⁶⁵D. Carnevali, F. Contini, M. Fabri and M. Velicogna, ' Information and communication technologies for public prosecutor's offices: Italy' Irsig 2007, p.7

⁶⁶ M. Fabri, D. Carnevali, F. Contini, C. Dallara and F. Sibilla, 'Quality and Justice in Italy', in *The administration of Justice in Europe: Towards the development of quality standards*, M. Fabri, P. M. Langbroek and H. Pauliat (eds), Lo Scarabeo, Bologna 2003p.264-265

⁶⁷ *ibid.* p. 270-272

⁶⁸ *ibid.* p. 273

⁶⁹ *ibid.* p.277-278

⁷⁰ *ibid.* p.278

⁷¹ *ibid.* p.278

complaints from the Court Presidents that the better they are performing, the greater the risk that fewer funds and resources are allocated to their courts.

What is monitored and evaluated?

Traditionally, measurement of the activities of the judiciaries has been carried out by the Ministry of Justice⁷² in collaboration with the Italian National Institute of Statistics (ISTAT). This has been done through the collection of statistical data.

Starting from the nineties though, the increasing pressure on the Italian Public Administration, the growing demand for the reduction of costs, improvement of services and increase of transparency has reflected in the creations of a number of norms concerning the evaluation and monitoring of the activities of the Public Administration. Before the 1990, the only general normative reference⁷³ could be found in art. 97 of the Constitution where it provides that “Public offices are organized according to the provisions of law, so as to ensure efficiency and the impartiality of administration”. In 1990 there was the introduction of a law on administrative proceeding (Law 241/1990, recently modified by the Law 15/2005) that provides a general framework for the Public Administration as far as such topics are concerned. “The administrative activity pursues the objectives established by the law and is run according to cost, efficiency, publicity and transparency criteria, in the modalities foreseen by this law and by the other dispositions that discipline the single procedures, and by the principles of the communitarian regulations.” Furthermore, within the reform of the Civil Service, introduced with the Lgs. D. 29/1993, and drawing on New Public Management (NPM) principles, there has been an attempt to introduce managerial practices in the Public Administration, in particular concerning the development of efficiency rating instruments and related rewarding mechanisms; and the establishment of management control mechanisms (defined in Law 77/1995) “intended to verify the state of completion of programme objectives (focusing on targets, and not on the modalities of their attainment), through the analysis of acquired resources and the comparison between the costs and the quantity/quality of the services.”⁷⁴

The idea was to provide “more responsibility for Public Administration management. This was done by giving the leaders wider powers, greater responsibilities and wages adapted to the responsibilities and to the results.”⁷⁵

Furthermore, in the Lgs. D. 286/1999, concerning “the reorganisation and strengthening of mechanisms and tools for the monitoring and evaluation of costs, performances and results of the activity of the public administration

⁷² In particular, a specific Statistics Directorate General has been created within the Department of judicial organisation, staff and services by D.L 300/1999 and D.P.R. 55/2001

⁷³ I. Sigismondi and M. Velicogna, *La sfida della valutazione nel sistema giudiziario: tra norma e prassi*, at XX Congresso Nazionale della Società Italiana di Scienza Politica (SISP) Bologna, Italy 2006

⁷⁴ <http://unpan1.un.org/intradoc/groups/public/documents/CAIMED/UNPAN019386.pdf>

⁷⁵ <http://unpan1.un.org/intradoc/groups/public/documents/CAIMED/UNPAN019386.pdf>

according to art.11 L. 59/1997", it is provided that the public administration shall equip itself with tools (art.1-1) adequate to: 1) grant the legitimacy, regularity and correctness of the administrative action, 2) verify the efficacy, efficiency and costs of the administrative action 3) evaluate the performance of the personnel with executive qualifications and 4) evaluate the choices made in order to fulfil the plans and programs in terms of congruence between achieved results and predetermined objectives.

As a result of such normative changes, a number of institutional and organisational changes have been taking place. In 2002, for example, within the Ministry of Justice instituted the Internal Control Service -Secin- (d.P.R. n. 315/2001), with the in order to "verify, through comparative evaluations of costs and performances, the achievement of the results, the correct and cost efficient management of the resources and the impartiality and good performance of the administrative action".⁷⁶

As data collection within the courts is concerned, as CEPEJ data highlights that, every year, Court Presidents are required to submit very detailed reports concerning the case workload (incoming cases, case typologies, decisions, duration etc.) following the indications given by the Direzione Generale di Statistica. As already mentioned, Italian Courts are characterized by strong internal and external autonomy. As a consequence, the organisation of each Court varies significantly on the basis of local choices. Organisational heterogeneity of the 165 first instance courts spread all over the country is increased by the different sizes of the offices (e.g. the Court of first instance of Bassano del Grappa officially has 9 judges and 8 honorary judges, whilst the Court of first instance of Naples officially has 348 judges and 232 honorary

⁷⁶ The Internal Control Service carries out the following activities:

The assessment of the quality of the decisions made in the context of implementation of plans, programmes and other strategic instruments used in policy-making activities. The assessment is concerned with the correspondence between results achieved and targets set (see Article 1(1)(d) of Legislative Decree no. 286 of 30th July 1999);

The activities of strategic assessment and control seek to verify, in relation to the exercise of policy-making powers by the competent bodies, the actual implementation of the indications contained in instructions and other documents of a policy nature.

The actual activities involved consist in both the prior and subsequent analysis of the correspondence between pre-set operational objectives and the operational decisions carried out (and/or their departures from such objectives). The Service also examines the human, financial and material resources assigned in pursuing such objectives. It will also seek to identify any impeding factors and any responsibility for the failure, in whole or in part, to implement possible remedies.

The internal control services operate in co-ordination with the statistics offices set up pursuant to Legislative Decree no. 322 of 6th September 1989. The latter draw up, at least once a year, a report on the results of the analyses undertaken with proposals for the improvement of the functionality of the various administrations.

The Service carry out analyses, including on request by the Minister, on specific administration policies and programmes and provide indications and proposals on the general systems of control within the administration as a whole (see Article 6 of Legislative Decree no. 286 of 30th July 1999).

http://www.giustizia.it/sito_trad_inglese/uff_coll/en_serv_controllo_interno.htm

judges)⁷⁷ and by the different kind of distribution of disputes and crime typologies to tackle in each territory.

The court managers, directly appointed and specifically trained by the ministry of justice, work with limited autonomy under the supervision and the directives of the Chief judge. Within the new evaluation framework, based on the measurement of results, “Every court manager must define, after an open discussion with the [... Court President], the organisational goals to be reached. In a further step, a board appointed by the Minister of Justice will evaluate court managers on the basis of the results they have been able to reach. The peculiarity is that Court Presidents [...], who are in charge of managing the whole office, are not evaluated by this control system.” At the same time, the possibility of the court manager to achieve organisational objectives is often outside its powers.

The ambitious effort which is being undertaken by the Ministry of Justice and the Judicial Council at the time of this research is aimed at moving from the simple collection of statistical data for institutional reasons toward the evaluation of the activity of the Judicial System in relation with the customer/justice demand. At present, statistical data on customer/justice demand and provision are collected in “autonomy and synergy” by Istat and the Ministry of justice. The Ministry of justice has competence over the collection of data concerning civil and criminal proceedings. Istat, which in the past had competence over the collection of all the data, is “more and more reorienting toward sociological investigations over the nature of trials; typology, family and socio-economic context of the subjects (physical and juridical persons) that resort to the justice system, and on the motivations of resort”.⁷⁸ The first function of the collection, analysis and diffusion of statistical data concerns the transparency of administrative action. According to this, Istat and the Ministry of justice publish together the “report on the status of Italian justice”. The second function, of growing importance, is the use of statistical data to support of the decision making activity of the Ministry, of its departments and of the Judicial Council.

How it is monitored and evaluated?

Although the administrative component of the court keeps formal track of each single procedural event, so that parties and inspection authorities can check the regularity of the activities,⁷⁹ and even though automated case tracking systems have been uniformly distributed over the national territory since the nineties, field research shows a high level of heterogeneity and a poor quality of data. In particular court personnel lament that Re.Ge., the old case tracking system of the penal sector, developed starting from 1989 as a substitute for the

⁷⁷ Data obtained from the Judicial Council official website

⁷⁸ F. De Santis and V. Terra Abrami, 'Misurare la giustizia: una collaborazione Istat-Ministero della giustizia' available at <http://www.istat.it/istat/eventi/settimaconf/interventi/DeSantisTerraAbrami.pdf> 2004 p.2

⁷⁹ F. Contini and R. Mohr, *Riconciliare indipendenza e accountability nei sistemi giudiziari*, at XX Congresso Nazionale della Società Italiana di Scienza Politica (SISP) Bologna, Italy 2006

paper based registers, has not been designed for the extraction of data and performs poorly as far as this task is concerned, but this is just an example. Generally low quality of data and large delays in data-entry result in poor reliability of official data. This, in time, results in low trust and non use of the information derived from such data. Furthermore, data collection is often seen as a futile exercise. These problems are widely recognised both at central and local level. One of the consequences of this is that in many cases, parallel systems have been locally developed in order to help the monitoring and evaluation of the court activities for management purposes. As CEPEJ data shows, a system (called Cruscotto) is being developed by the Ministry of justice at the time of this research in collaboration with the Judicial Council to evaluate the performance of the Courts. The system is based on the collection of statistical data and produces analysis concerning the evaluation of court activity. The purpose of the ICT application is to produce “a deep knowledge of the judicial offices, aimed at a better use and a better distribution of resources in accordance to the real necessities that emerge from a constant monitoring. The final objective is to allow the Ministry to allocate resources on the basis of the indications coming from objective mechanisms of collection and not accordingly to the frequency and strength of the requests more coming from the base”.⁸⁰ Furthermore, the system should provide the Judicial Council with “numerical data concerning quantity and quality of the work of judges”.⁸¹ In time this should allow the evaluation of professional capabilities and productivity of judges. The problem of the quality of the data that is already collected and of the further information that should be collected to allow the system to work is still open.

Trends and problematic issues

- Increasing attention toward Monitoring and Evaluation issues
- Growing influence of European institutions such as CoE and EU in favour of Monitoring and Evaluation
- Creation of new units at central level to support/take care of the monitoring-evaluation process
- Problems in the collection of data concerning both quality and standardization
- Central monitoring and evaluation perceived at court level as imposition and not useful / threat to independence

3.1.3. The Netherlands⁸²

Who monitors and evaluates?

Before the change to the Judicial Organisation Act in 2002, the courts were organisationally in a state of disorder due to poor housing conditions and a dual

⁸⁰ N. I. Cerato, 'Intervento di Nicola Cerrato' available at <http://www.giustizia.it/ministro/uffstampa/15-10-04.htm>

⁸¹ Circolare n. 16103/2003 del Consiglio superiore della magistratura

⁸² This section is a summarised version taken from: G.Y. Ng, 'Quality of Judicial Organisation and Checks and Balances', Antwerp 2007, pp.75-79

structure of staff. Courts and their organisations could not deal with changing circumstances in society (e.g. the increasing number of cases). The organisational structure was formally rigid, with one structure for the judges and their legal staff, and one for the directors and their support staff. The lack of structure for communication in the court meant that judges did not really know what was happening with the support staff (both administration and legal), and the support staff did not know what the judges were doing. There was not even enough room in the court offices to give every judge a proper workplace. Hence there was a lack of coordination to the work in the courts and there was no office-related working ethic for the judges.⁸³

In 1998 the Leemhuis Committee published a report "Rechtspraak bij de Tijd" which outlined an idea for a Council for the Judiciary (Raad voor de Rechtspraak) and outlined a more general process of modernisation within the judicial organisation. The Committee also wanted, first, to form an integrated approach to management, with the director of the court (directeur bedrijfsvoering) who is not a judge, along with the judge-managers, and second, related to the first, to develop the concept of integral management.⁸⁴ In 2001 the laws enacted established a legal basis for the operation of integral management within the courts. The creation of integral management effectively created a separate function for the judges in terms of their judicial and managerial roles, so that the role of president and sector chairman, whilst being managerial positions, do not materially affect their judicial roles.⁸⁵

The director of the court is formally supposed to assist the management board. However, as this position in the governing body is the only one which is, by profession, managerial, it was considered to be practical to make him/her equally responsible for the administration of the court. The director has the dual task of finding a way to give the judges the environment and equipment they need in order to do their work, and to ensure the quality and quantity of personnel support to the judges.⁸⁶ The sector chairs are accountable to the governing board of the court. Whilst the governing board has overall responsibility for the whole court, it works in conjunction with the sector leadership to maintain organisational standards.

The district courts themselves are organised into a maximum of five sectors (by law), but usually they have four sectors.⁸⁷ After January 2002, sectors became

⁸³ P. M. Langbroek, K. Lahuis and J. B. J. M. ten Berge (eds), *'Kwaliteit van rechtspraak op de weegschaal'*, W.E.J. Tjeenk Willink (G.J. Wiarda Instituut), Deventer 1998

⁸⁴ Even though these legislative changes took part in the late 1990s, the process of change actually started in 1989

⁸⁵ P. P. T. Bovend'Eert and C. A. J. M. Kortmann, 'Het Courtpacking plan van het kabinet Kok', *Nederlands Juristenblad* 2000, 36 vol., 1769 p.1770-1771

⁸⁶ C. Slothouber, 'De Organisatie-aspecten van de verhouding tussen rechters en ondersteuning', in *Kwaliteit van rechtspraak op de weegschaal*, P. M. Langbroek, K. Lahuis and J. B. J. M. ten Berge (eds), W.E.J. Tjeenk Willink in samenwerking met G.J. Wiarda Instituut, Deventer 1998 p. 136-7

⁸⁷ All courts have the main sectors: civil, criminal, administrative, and subdistrict (kanton). Some have another sector for youth and family cases, or a military court, for example, see National Regulations (landelijke regelingen: <http://www.rechtspraak.nl/Naar+de+rechter/Landelijke+regelingen/>)

individual, organisational divisions, with formal responsibility to manage their budgets independently. The leadership in the sectors consists of the sector chairman (sectorvoorzitter - a judge) and the sector coordinator (a manager within a sector - a non-judge) (an integrated approach). Each court has a governing body (rechtbankbestuur) consisting of the president of the court, the sector chairs, and the director of the court (directeur bedrijfsvoering). Together the board takes collegiate responsibility for the organisation of the court as a whole and each member is appointed by Royal Decree for six years.⁸⁸

On January 1 2002, the Council for the Judiciary took responsibility for part of the court management and organisation. It was set up especially to act as a buffer between judges and politics, so that, organisationally speaking the courts need only be concerned with the Council rather than with the Minister of Justice. Whilst parliament has constitutional responsibility for the organisation of the courts under article 116 of the Constitution, its work does not lie in the details thereof, but to facilitate, through legislation, the good organisation of the courts.

The Council for the Judiciary is the authority stated to be responsible for the evaluation of the quality of the judiciary.⁸⁹ It was set up through changes to the Judicial Organisation Act 2002 (part 6). Its main tasks under article 91(1) of the Judicial Organisation Act are as follows: the preparation of the budget for the Council and the courts; to distribute the budget between the courts;⁹⁰ to support the management of the courts; supervising the management of the courts;⁹¹ promoting juridical quality and the uniform application of the law; and to conduct national activities in the area of personnel policy. Under article 91(2), in order to conduct its main tasks, the Council is to pay attention to automation and information provision within the courts; housing and security; the quality of the work processes and the organisation of the courts;⁹² personnel matters; and general material resources. In turn, the Ministry of Justice has similar competences to supervise the Council for the Judiciary.

The foundation that gave the Council its initial footing was the Project Versterking Rechterlijke Organisatie- PVRO (The Judicial Organisation Reinforcement Project), a combined ministerial and judicial initiative, which was set up in 1999 to teach the local court organisations how to become more efficient and to provide better services. A model for quality was also created for

⁸⁸ Wet op de rechterlijke organisatie 2002, article 15

⁸⁹ See question 55 of CEPEJ report; Under article 84 of the Judicial Organisation Act 2002, the Council is composed of (a maximum of) five people appointed by Royal Decree for six years. Two of the members are non-judges

⁹⁰ More specifically, it creates the budget for the year for the whole of the judicial organisation, which is used in turn by the ministry in its budgetary proposal to parliament.

⁹¹ It is competent to question court administrators and ask for information, to give general advice and guidance in management affairs, to suspend or annul decisions of court administrators and to terminate the contracts of court administrators for incompetence.

⁹² The Council for the Judiciary takes on the extra responsibilities for creating goal-oriented work processes, the development of policies relating to quality, the division of a court's capacity to handle cases, and the uniform layout of judgments.

this project based on the model of the Netherlands Institute for Quality (Instituut Nederlandse Kwaliteit), an EFQM-inspired⁹³ model.

Although the Council for the Judiciary has responsibility for evaluation of quality of judicial organisation, accountability for the judicial organisation is shared between the courts, the Council for the Judiciary and the Ministry of Justice. Furthermore, accountability is set out not only in primary and secondary legislation, but it is also set out in policy documents such as annual plans and reports.

What is evaluated and monitored?

According to CEPEJ data, evaluation of the quality of the judicial organisation is conducted through performance indicators of productivity, weighing the number of cases, and the length of procedures (amongst other things).⁹⁴ The data further indicates that targets have been created on courts' activities, by the judicial power. Targets have been set to measure backlogs in civil, criminal and administrative sectors of courts, and to analyse queuing times in courts procedures through the use of statistics.⁹⁵

From other research conducted, this can be expanded upon and clarified by adding that there have also been measures taken within the courts themselves to evaluate and monitor working processes within the courts internally.⁹⁶ This follows from the national agenda of 2005-2008,⁹⁷ whereby they will try to provide data on organisation and working methods within the courts (something never done before). The intention was to use this data to lead to a certain uniformity of practice in the courts' organisations. A related target is to develop the utilization of information through modern technology within the organisation, especially for case handling in primary processes of the courts. This target, like that of analysing and describing work processes, aims to deliver more information about primary processes, to adopt technologies and to adapt the organisation by creating a technical infrastructure.⁹⁸

From policy and research conducted within the courts, it is also clear that there is a need to find definitions for differentiating accurately between typologies of cases. This is useful for both case-management within the courts, and for financing the courts. In order to do this, they seek to create norms on timeliness, uniformity of law, and specialisation within the courts. In evaluating

⁹³ EFQM = European Foundation for Quality Management

⁹⁴ See answers to questions 57a-c

⁹⁵ See answers to questions 53, 54,

⁹⁶ G.Y. Ng, 'Quality of Judicial Organisation and Checks and Balances', Antwerp 2007, pp.122-123

⁹⁷ Agenda van de Rechtspraak, [http://www.rechtspraak.nl/NR/rdonlyres/53FC109D-30E3-4AAA-BD35-75DE8955D6FB/0/Agenda Raad.pdf](http://www.rechtspraak.nl/NR/rdonlyres/53FC109D-30E3-4AAA-BD35-75DE8955D6FB/0/Agenda%20Raad.pdf) pp.20-21

⁹⁸ See also G.Y. Ng, 'Quality of Judicial Organisation and Checks and Balances', Antwerp 2007, p.84

these aspects, there is also the goal of increasing transparency and therefore quality of justice.⁹⁹

In terms of monitoring, CEPEJ data indicates that there is regular scrutiny of courts' activities regarding the number of incoming cases, decisions made, and postponed cases, along with the length of procedures. It is also pointed out that there is regular monitoring of performance of the courts in terms of measuring productivity.¹⁰⁰ It has been explained above, that part of the policy goal is to give finer definitions to the different types of cases coming to the courts. Part of this is in order to give a national standard for monitoring and evaluation of these particular activities. At this level it should be mentioned here that the monitoring does not necessarily lead to control. In this instance, information gathered from both the evaluation and monitoring processes are used within the legal framework to support the courts.¹⁰¹

Other research indicates that courts' activities relating to case management are not limited to the numbers only.¹⁰² There is also regular monitoring of activities of all personnel, from administrative staff in the primary process or judges, whether they are working on cases, training to improve certain skills or taking on administrative tasks. At this level, monitoring is done by judge-managers within courts as a means to improve the efficiency of individual courts or sectors. The management (i.e. evaluation and monitoring) of judges and other court personnel remains a court level function.

How it is monitored and evaluated?

CEPEJ data indicated that annual activity reports are used to monitor and evaluate the quality of judicial organisation in the Netherlands. At the national level, evaluation and monitoring activities are made transparent to the Ministry of Justice and to the legislature through the official Annual Report (Jaarverslag). In 2005, they reported on the overall productivity, giving data on in coming cases (weighted), completed cases (weighted), productivity in relation to in coming cases (weighted), the costs of justice, and productivity and finances.

However, the Annual Report is an official document of accountability that must be produced according to law and policy. Another such official document is the Agenda discussed above. This is not annual, but rather sets out a sort of manifesto for the judicial power in terms of organisational goals in a 4 year plan. They are held to account for the execution of such a plan through annual reports.

⁹⁹ G.Y. NG, 'Quality of Judicial Organisation and Checks and Balances', Antwerp 2007, pp. 136-137

¹⁰⁰ See answers to questions 52 a-e

¹⁰¹ G.Y. NG, 'Quality of Judicial Organisation and Checks and Balances', Antwerp 2007, pp. 180-182

¹⁰² A. M. Sturm, W. D. ten Have and M. M. E. Donders, 'Eindrapport: Uitkomsten Pilot Project Kwaliteit Rechtbank Roermond' 2002

Between the Council for the Judiciary and the courts, there is also planning and control mechanism that focuses on productivity and financing of the courts. Highly specific data are exchanged on productivity and projects of the courts. Each court must submit an official plan and annual report (control) within a certain time (cycle). Subsequently, there is also much data exchanged between the Ministry of Justice and Council, given the Ministry's role in financing the judiciary as a whole.¹⁰³

Within the courts themselves, technology is used to generate statistics on productivity within each sector and for the court as a whole. However, there is also another tool used in the monitoring and evaluation of courts' activities, and that is the quality system RechtspraakQ. It has developed standards for productivity to calculate timeliness of cases, the percentage of continuances, the participation of judges in various organisation activities, and case movement. For quality (of case management) criteria have been developed on the expertise of judges, speed and timeliness and uniformity of law.¹⁰⁴ This is a national system, and courts are able to compare and contrast their standards, and generate discussions and learning opportunities between them. A software system has been developed to for RechtspraakQ to collect and measure data (stuurhut en meetstelsel).

Trends and problematic issues

- 3 levels of organised monitoring and evaluation
- Imperfect system, treated as work in progress
- Collection of standardised data
- Complete evaluation of both organisation and individual work possible, though inconsistent
- Superficial link between data and accountability
- Deep rooted constitutional and legislative changes
- Large role for judges in implementing changes

3.2. Evaluation and monitoring in Croatia, Serbia and Slovenia

Over the last two decades the breakdown of authoritarian and totalitarian regimes in Eastern Europe and the consequent democratisation of such regimes is, without doubt, one of the most significant political and historical events of the last century. In these contexts, the administration of justice has become increasingly one of the key aspects of the transition process. The establishment of an independent, fair and efficient judicial system is in fact an important instrument for a country breaking with its authoritarian past. Courts became crucial actors in this democratisation process as they contribute to

¹⁰³ G.Y. Ng, 'Quality of Judicial Organisation and Checks and Balances', Antwerp 2007, pp.81-82

¹⁰⁴ G.Y. Ng, 'Quality of Judicial Organisation and Checks and Balances', Antwerp 2007, pp. 136-137

develop new legislations, to adapt old rules to the new context and to prevent the arbitrary use of power.¹⁰⁵

Moreover, according to the literature on democratic transition and consolidation¹⁰⁶ the existence of an independent and functioning judicial system is the core element of the rule of law. As the seminal works on democratization studies underline, the degree to which the rule of law exists in a particular regime reflects the entire democratic quality of that regime.¹⁰⁷ In this context, the goal of legal and judicial reform is to transform the legal systems from their previous existence as mechanisms for autocratic rule and communist economy to the basis for the rule of law and free market economies. In particular, judicial institutions created in non-democratic contexts need to be reformed in order to make them adequate for new democratic contexts and tasks.¹⁰⁸

In the last ten years, the Council of Europe, together with other international actors, organized and implemented several programs and activities aimed at supporting and promoting the reform of the judiciary in Central and Eastern Europe Countries. The introduction of judicial administration tools was one of the main goals of these programs. For these reasons many “agencies” belonging to the old members countries have started to implement, in the context of Council of Europe co-ordination programmes and EU assistance programs, projects and techniques of judicial monitoring and evaluation already in use in the Western European countries. In the Balkans, though, “overcoming the often very difficult resource and infra-structure issues along with frequently

¹⁰⁵ Larkins C. M. Larkins, 'Judicial Independence and Democratization: A Theoretical and Conceptual Analysis', *The American Journal of Comparative Law* 1996, 44 vol., 605-626 p.; M. Krygier, A. Czarota and W. Sadurski (eds), *Rethinking The Rule of law after Communism*, CEU Press, Budapest 2006

¹⁰⁶ The list of significant contributions on democratic transitions studies is broad, here on reminds only some of the seminal works: G. O'Donnell, P. C. Schmitter and L. Whitehead (eds), *Transition from Authoritarian Rule: Comparative Perspective*, Johns Hopkins Press, Baltimore, MD. 1986, G. Pridham, E. Herring and G. Sanford (eds), *Building Democracy? The international Dimension of democratization in Eastern Europe*, Leicester University Press, London 1994, J. J. Linz and A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe*, Johns Hopkins University Press, Baltimore 1996; S. Bartole and P. Grilli di Cortona, 'Transizione e consolidamento democratico nell'Europa centro-orientale: élites, istituzioni e partiti, [Democracy transition and consolidation]', in Cee: *elites, parties and institutions*, (eds), Giappichelli, Torino 1997; L. Morlino, *Democracy Between Consolidation and Crisis. Parties, Groups and Citizens in Southern Europe*, Oxford University Press, Oxford 1998; L. Morlino, *Democrazie e democratizzazioni, [Democracy and democratization]*, Il Mulino, Bologna 2003

¹⁰⁷ J. J. Linz and A. Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America and Post-Communist Europe*, Johns Hopkins University Press, Baltimore 1996; L. Diamond and L. Morlino (eds), *Assessing the Quality of Democracy. Theory and Empirical Analysis*, Johns Hopkins University Press, Baltimore 2005

¹⁰⁸ M. K. Dietrich, 'Legal and judicial reform in Central Europe and the Former Soviet Union' in *World Bank Papers* 2000; R. Gargarella, 'In Search of Democratic Justice: What Courts Should Not Do: Argentina, 1983-2002', in *Democratization and the Judiciary*, S. e. a. Gloppen (eds), Frank Cass, London 2004

outdated legislation the courts are operating under in addition to gaining the support for management changes is a challenging task.”¹⁰⁹ Looking at the results of such activities, it has to be noted that the introduction of judicial administration tools has proven to be more difficult and of longer duration than originally expected. From a general point of view, the experience of the Eastern European countries highlighted that the reform of the judicial system represents a crucial policy field, extremely resilient to changes and particularly threatened by political actors’ influences. Secondly, in some countries, the judicial personnel were not adequately skilled to implement sophisticated projects of courts monitoring and evaluation. Finally, in many countries, monitoring and evaluation practices were introduced only to formally comply with Council of Europe indications and EU accession criteria but only in a few cases these are currently functioning.

The result is that, too often, courts and ministries “lack access to reliable processing and even court decision data making it difficult to substantiate the claims of backlog and inefficiency and rendering it impossible to develop solutions that are based on solid statistical information instead of anecdotes”.¹¹⁰ Accordingly, “even if the ministries and/or the courts recognize the fact that many of the problems that are hampering the courts are due to inefficient processes (rather than the admittedly often significant lack of resources or insufficient legislation), they have a difficult time developing realistic alternatives.”¹¹¹

This section will differ from the above section in that a short description of the political changes and upheavals that have affected the judiciary will be given. This is in order to give a better understanding of judicial modernisation programs and their success (or lack thereof).

3.2.1. Croatia¹¹²

Judicial structure and main reforms

In Croatia, the first post-Yugoslav elections opened the door to nationalistic forces led by the Croatian Democratic Union (HDZ) under the leadership of former Partisan General and political dissident Franjo Tudjman. The HDZ won the 1990 election for its anti-communist expression of Croatian identity.¹¹³ In

¹⁰⁹ H. Gramckow, 'CAN US-TYPE COURT MANAGEMENT APPROACHES WORK IN CIVIL LAW SYSTEMS? EXPERIENCES FROM THE BALKANS AND BEYOND', *European Journal on Criminal Policy and Research* 2005, 2005 p97-120 p. 100

¹¹⁰ Ibid. p.103

¹¹¹ Ibid. p.103

¹¹² Data and information about court monitoring and evaluation in Croatia were mainly drawn by the CEPEJ report 2006. We have deepened this data throughout some interviews conducted by Cristina Dallara in Croatia in April 2007 and with an interview conducted by Gar Yein Ng in Croatia in May 2007 to a Croatian legal expert. The authors wish to thank Professor Uzelac from the Law School at the University of Zagreb for all the information he provided.

¹¹³ M. Baskin and P. Pickering, 'Former Yugoslavia and Its Successors', in *Democracy, the Market and Back to Europe: Post-Communist Europe*, S. L. Wolchik and J. L. Curry (eds), Rowman & Littlefield, Lanham 2007 (forthcoming)

December 1990 the new Constitution was passed which was a mixed presidential parliamentary system with strong presidential powers. He was able to tailor the new Constitution to his own ambitions in a perfect authoritarian style. For the whole decade of the 90s Croatian politics was in fact characterised by an authoritarian style of governance, accompanied by international isolationism and suspect towards any type of supranational organisation like the EU.¹¹⁴

Concerning the judiciary, Uzelac argues that from a formal legal standpoint the 1990 Constitution provided a new regulation and status for judicial power.¹¹⁵ The changes were mainly reflected in the introduction of the division and separation of powers and in the warranties for the autonomy and independence of judicial power. The Constitution included also some vague provisions about the status of judges; judicial office was defined as “permanent” but with some exceptions that made the interpretation of this provision difficult and opaque.¹¹⁶

On this aspect, Cohen reminds us that, less than six months after taking power, Tudjman had already replaced 280 judicial officials.¹¹⁷ The controversial laws adopted following the Constitutional provisions gave the Minister of Justice wide latitude over the appointment and especially over the removal of personnel. Top officials in the Ministry would be able to decide whether judges had the proper human and civil qualities to fulfil their responsibilities. Thus, new provisions appeared to have as its aim the purging of former communist judges and prosecutors, allowing their replacement by new judges supportive of the Tudjman government. This means again a further decreasing of the professional qualifications and skills of judges, undermining the already low level of *autonomy* and *coherence*. Uzelac highlights that judicial reforms during the 90s may be better qualified as the lack of reform, or as an anti-reform.¹¹⁸ The absence of a mid-long range strategy of development was a clear message to the judiciary. Therefore, until the end of the 90s, there was a strong outflow of judges to other legal professions. Most of the judges that left the judiciary were among the best qualified and experienced; this contributed to decrease again the Croatian judiciary professionalization.

At the beginning of the 2000, some important laws supported by Constitutional Court decisions were enacted with the aim of modifying and modernizing the functioning and the organisational structure of the Croatian judiciary. Some of

¹¹⁴ D. Jovic, 'Croatia and the European Union: a long delayed journey', *Journal of Southern Europe and the Balkans* 2006, 8 vol., 85-103 (19) p.

¹¹⁵ A. Uzelac, 'Role and Status of Judges in Croatia', in *Richterbild und Rechtsreform in Mitteleuropa*, P. Oberhammer (eds), MANZ'sche, Wien 2000

¹¹⁶ Article 120: a judge may be relieved of his judicial office only 1. at his own request; 2. if he has become permanently incapacitated to perform his office; 3. if he has been sentenced for a criminal offence which makes him unworthy to hold judicial office; 4. if in conformity with law it is so decided by the High Judiciary Council of the Republic owing to the commission of an act of serious infringement of discipline (Ibid.in (eds),).

¹¹⁷ L. J. Cohen, 'Post-Federalism and Judicial Change in Yugoslavia: The Rise of Ethno-Political Justice', *International Political Science Review* 1992, 13 vol., 301-319 p.

¹¹⁸ A. Uzelac, 'Role and Status of Judges in Croatia', in *Richterbild und Rechtsreform in Mitteleuropa*, P. Oberhammer (eds), MANZ'sche, Wien 2000

these changes were concerned with the Court Presidents' duties and tasks that are primarily entitled to the courts monitoring and evaluation. The Ministry of Justice appoints presidents, although it has been argued that this is not always done in a transparent way. Nevertheless, according to international observers, the situation seems to be improving (for both judges as well as presidents). There is also a judicial inspectorate at a department within the Ministry of Justice. It conducts reviews of activities as well as investigating complaints to the Ministry of Justice. The court president is in charge of monitoring the system of court activities related to court administration. Courts Act, Art. 61 para 2 ("For the tasks of court administration, the Minister of Justice refers to the respective president of the court."). Formally, the Ministry of Justice is entitled to evaluate the performances of the Court management systems.

Today, concerning the evaluation of the judges' performance within the court, the CEPEJ report evidences that "The president of the court and the Judicial Councils in the court evaluate individual performance of the judges and issue periodical evaluation reports. There are very little systematic efforts to make a general evaluation of the performance of the court."

Who evaluates and monitors and what is evaluated and monitored?

According to the CEPEJ report courts are required to prepare annual activity report. The courts in Croatia have always collected statistical data on their activities. Each court has a statistics department, and there is a sub-department of the judicial organisation in the Ministry of Justice. They have data from surveys dating back a couple of decades. The data is provided by the courts. The Court Rule (an ordinance by the Ministry of Justice) provides the normative reference for the collection of data. Collection of statistics is regarded as one of the activities of judicial administration (Art. 4 para 2 p 11 of the Court Rule Book). However, the current annual statistical reports use outdated terms, and the criteria for the collection of statistics are outdated too. They look at mainly the number of cases that have been resolved, that are pending and the difference in backlog.

The Ministry of Justice makes use of this data. Only in the last two years the annual statistical reports have been put on the internet. Only in the context of the EU accession have the statistics become politically and professionally interesting, in the context of the European criticisms regarding the poor functioning of the Croatian justice system. According to our interviews in the past, data used to be collected automatically and impartially precisely because they were regarded as irrelevant (i.e. no one was really looking at them). As to the use of the data, it is mainly used to monitor court activities in order to create policies on work places. It is not used in other contexts.

A regular monitoring of court activities is in place concerning the number of incoming cases, the number of decisions, the number of postponed cases and the length of proceedings. This is done through the statistics department within the courts, under the supervision of the court president and according to the general provisions of the Court Rule Book (Arts. 124-130). Judges and the court administration should fill in a sheet when a case has been completed. When the sheet is filled in, it is sent to the statistics department. However, the

time sheets are sometimes inaccurate and their methodology is partly flawed, in particular in regard to the monitoring of the length of proceedings. E.g. while the cases that last two, five or ten years are among the biggest problems, involving the majority of serious litigation, the statistical sheet only distinguishes between cases completed in less than 1 year, and cases that are older than 1 year. There is also no separate indication of the length of dropped cases, so that they influence the average data on duration of cases that were really adjudicated.

How it is monitored and evaluated?

The president of the court is a judge as well as a judicial administrator. The person holding this position must respond to the President of the Supreme Court¹¹⁹ as well as to the Minister for Justice, as the minister for justice is responsible for appointing the president of the court. As to the collection of statistics, in practice the president of the court collects the data and passes it onto the Ministry of Justice. However, some presidents also make their own statistics in order to be able to manage their courts more effectively. This data is not passed onto the Ministry of Justice.

Innovation is quite difficult in the courts as there is a fear of change in the courts system. The main activities in the court administration in larger courts are conducted in civil and criminal sectors (divisions), by the heads of divisions who assist the president in the larger courts. There are 220 courts to 4 million people in Croatia. It is not easy to make universal statements about the practice of court administration in all courts, as their size shows extreme variations. E.g. the number of judges in one court varies from 173 judges to 3 judges.

Concerning the performance evaluation, our interviews show as the evaluation of the individual judges, still made by secret vote of the members of the Judicial Council, has to result in one of the four assessments: “the judge is above average”; “the judge is successful”; the judge is satisfactory” and “the judge does not satisfy”. As to the general performance of the court, there are very few systematic efforts to make reasonable assessments. Usually someone else has the data and evaluates the performance based on that data according to the needs of the moment.

¹¹⁹ The Supreme Court of the Republic of Croatia, accordingly to the Article 22 of the Court Act, ensures the unified application of the law and the equality of citizens. It considers current questions of case law, decides on appeals against decisions by lower courts rendered in the first instance before county courts, and on extraordinary remedies against decisions by county courts, the High Commercial Court and the High Misdemeanor Court; it decides on requests for protection of legality against decisions by the Administrative court, decides on delegations of other courts for proceeding in individual cases, and on conflicts of jurisdiction between courts in the Republic of Croatia, if it is their immediately superior court. It is also responsible for the professional training of judges and performs other work as prescribed by law. The Supreme Court harmonizes case law at sessions of the court's divisions and through its decisions.

As to the development of the court management, there are a lot of ongoing projects (e.g. regarding the introduction of the Integrated Case Management System and the court mediation schemes), however most of the projects are still in the early phases and have not been fully implemented.

The most important trend in the case management seems to be the project of the new President of the Supreme Court Branko Hrvatin (appointed in 2005) for reduction of old files in courts. He started with collection of data and close monitoring of all cases that last more than five years, requiring from all court presidents to regularly report on development of such cases. He also introduced for the first time the idea of integral monitoring of time limits, insisting that the length should be calculated from the initial filing of the claim. On the contrary, the previous method was focused on particular instances, which led e.g. to the fact that for the cases that were remitted the "clock" was reset as this was deemed to be the "new" file. His project has already accomplished some results in reduction of the most critical instances of lengthy cases¹²⁰.

In particular, within the Integrated Court Management System project (ICMS) there is an attempt to develop a statistical system capable of detecting the reasons for the backlog in the courts. Statistical and management reports should be automatically produced. Data collection should take place during all relevant workflow stages of a case. The roll out of the system is expected in 2008/2009. As interim solutions, two statistic tools are in development. The Supreme Court is implementing a web application to collect data to monitor the backlog in all courts. A second web application, E- Statistics, has been developed by the Croatian Ministry of Justice to provide information on whether minimum output standards for judges (passed into Croatian law in July 2007) have been met. At present, both applications require the manual input of data. In the future they should be linked to the ICMS-database in order to produce their standardized reports.

Under way is also a pilot project for electronic files. The problem is that pilot projects are felt to be unnatural and therefore unpopular in Croatia – judges like general solutions, e.g. laws applicable to all courts. However, the electronic files should produce more transparency and indicators, and monitoring will not be conducted solely based on the numbers of cases (resolved, pending, and in backlog) anymore. Indicators will be much more elaborate and would show that something needs to be done (and what).

Trends and problematic issues

- Normative framework to Monitor and Evaluate well developed.
- Weak institutional monitoring
- No Special Department or Office for the Court Management neither within the Ministry, nor within the Supreme Court.
- Political influence still causes some problems of transparency

¹²⁰ Based on an E-mail interview with Professor Uzelac (Law School, University of Zagreb) 22 November 2007.

- Methodology in data collection is improving.

3.2.2. Serbia¹²¹

Judicial structure and main reforms

In Serbia the judicial system that emerged from post-FRY¹²² transition kept working along the same previous pattern of subordination to the political power. It was in fact subordinated to the dominant party that was no longer the Yugoslavian Communist Party, but Milošević's socialist party.¹²³ During this period, about nine hundred out of 2000 active judges in the entire Serbian judiciary system were dismissed and substituted. The judicial system that emerged from the ten-year Milošević government was weak from a professional as well as from a material point of view.

Immediately after Milošević's discharge, the first step made by the *ad interim* Koštunica¹²⁴ government in 2000 was to re-establish the old judicial system legislation and to cancel all those decisions, made by Milošević, that had caused dismissal of those judges that had opposed election fraud and manipulation promoted by the regime (especially the 1996 election). What needs to be underlined here is that a potential purge of the judiciary became an urgent issue after the October Revolution.¹²⁵ However, the transition leaders decided to reform the system without deeply invading the judicial body.¹²⁶

At present, formally, the "independence of the judiciary and individual judges in their decision-making is guaranteed by a variety of constitutional and legislative provisions. Judicial independence, for example, is enshrined in the Constitution art. 96, which clearly states that courts of law are 'autonomous and

¹²¹ Data and information about court monitoring and evaluation in Serbia were mainly drawn by the CEPEJ report 2006, the American Bar Association, 'Report on Judicial Reform Index for Serbia' available at <http://www.abanet.org/ceeli/publications/jri/> 2005; P. S. C. o. Serbia, *Preparatory Questionnaire Addressed to the Presidents of Supreme Courts - Serbia, 8th Conference of Presidents of European Supreme Courts*, at Paris 2005; and the M. o. Justice, 'National Judicial Reform Strategy' Ministry of Justice Serbia 2006 (document provided by the The European Commission's Delegation to the Republic of Serbia).

¹²² Federal Republic of Yugoslavia

¹²³ J. N. Miller, 'A failed transition: the case of Serbia', in *Politics, Power, and the Struggle for Democracy in South-East Europe; Eastern Europe Since 1945*, J. Dawisha and B. Parrott (eds), Cambridge University Press, Cambridge 2000

¹²⁴ On 6 October 2000 Koštunica, during his first official speech, affirmed to be willing to create an *ad interim* government. This lasted until December, when official elections took place and Djindjić was nominated Prime Minister of a majority government in which all the parties of the DOS coalition participated.

¹²⁵ C. Dallara, *When the domestic politics matters: Patterns of judicial reforms in the former Yugoslavia countries*, at Law and Society annual conference Humboldt University, Berlin 2007

¹²⁶ The *ad interim* government actually adopted a 'forced dismissal' policy by inviting judges in relevant positions to leave their office. However, the entity and concreteness of these measures was never such as to be described as a real purge.

independent in their work.”¹²⁷ At the same time though, even if the judiciary seems to “enjoy a higher degree of independence than it did during the Milosevic era, when political influence and so-called ‘telephone justice’ were endemic, vestiges of this period remain and continue to impede its genuine independence.”¹²⁸

The first significant stage of the judicial system reform seemed to have been reached in November 2001 with the launch of an important set of judicial system-related laws. The set was made of five laws: 1) Law on Judges; 2) Law on Public Prosecution; 3) Law on High Judicial Council; 4) Law on courts organisation; 5) Law on Seats and Districts of Courts and Public Prosecutor’s Offices (published in the Official Gazette of Serbia, n° 63/2001). Hiber highlights that the circumstances in which these laws were adopted shows how, already in 2001, the democratic alliance faced obstacles in the reform of the judicial system.¹²⁹ These sets of laws were not in fact proposed by the government or by the Minister of justice, but by a parliamentary group belonging to the Serbian Democratic Party (DSS, Koštunica’s party), which would shortly go over to the opposition. Hiber underlines that such laws were voted by the DOS coalition parties in exchange for a favourable vote to the Work Law approved during the same weeks from Koštunica’s party passed at the opposition. Overall, the five laws in their original drafting should have introduced some fairly relevant changes. In particular, the Law on the Organisation of Courts defines “judicial authority as being independent from that of the legislative and executive branches of government.”¹³⁰ In theory, “The use of public office and the media, as well as ‘any other form of influence on the court,’ are prohibited by law.”¹³¹

According to the Law on the Organisation of Courts, the court system of Serbia is divided into courts of general jurisdiction and specialized courts. Courts of general jurisdiction include the Supreme Court, courts of appeal (which still have not been constituted), and municipal and district courts. Specialized courts include the commercial courts and the yet to be constituted Administrative Court. Special panels for prosecuting war crimes and organized crime have been established within the Belgrade District Court. In addition, a Constitutional Court hears and decides matters that involve the constitutionality of laws, regulations, and official acts. The Supreme Court is the highest court of general jurisdiction in Serbia. As such, it functions to provide for the uniform application of law by the courts. The Supreme Court may hear and decide

¹²⁷ American Bar Association, 'Report on Judicial Reform Index for Serbia' available at <http://www.abanet.org/ceeli/publications/jri/> 2005

¹²⁸ H. Gramckow, 'CAN US-TYPE COURT MANAGEMENT APPROACHES WORK IN CIVIL LAW SYSTEMS? EXPERIENCES FROM THE BALKANS AND BEYOND', *European Journal on Criminal Policy and Research* 2005, 2005 vol., 97-120 p.18

¹²⁹ D. Hiber, 'The reform of the judiciary and the judicial legislation', in *Serbia four year of transition*, B. Begovic and B. Mijatovic (eds), Center for Liberal Democratic Studies, 2005(http://www.clds.org.yu/pdf-e/4_years_of_transition_in_Serbia.pdf).

¹³⁰ H. Gramckow, 'CAN US-TYPE COURT MANAGEMENT APPROACHES WORK IN CIVIL LAW SYSTEMS? EXPERIENCES FROM THE BALKANS AND BEYOND', *European Journal on Criminal Policy and Research* 2005, 2005 vol., 97-120 p.18

¹³¹ *Ibid.*, p.18

cases on appeal from decisions of the High Commercial Court, in addition to the courts of appeal and the Administrative Court once these particular courts are constituted and begin hearing and deciding cases.¹³² Furthermore, the Supreme Court prescribes criteria for evaluation of diligent and successful performance of judge's functions.¹³³

There are 138 municipal courts and 30 district courts located throughout Serbia. The municipal and district courts are courts of general jurisdiction. They hear cases in both civil and criminal matters. Municipal courts are exclusively courts of first instance with jurisdiction over criminal offences punishable with up to 10 years of imprisonment as prescribed by law and civil matters of lesser importance. District courts also exercise first instance jurisdiction but in matters of a more serious nature. Until the new courts of appeal are constituted, district courts will continue to serve as courts of second instance and hear appeals from municipal court decisions. Decisions of municipal and district courts may be appealed to the appellate courts once these courts are constituted¹³⁴. Judicial administration function is mainly in the hands of the Ministry of Justice.

According to the American Bar Association report "The openness of trial proceedings and court operations is generally respected in practice. Some courts have dedicated information stations and bulletin boards where announcements and communications regarding the court and clients services are made available."¹³⁵

Who evaluates and monitors and what is evaluated and monitored?

According to the CEPEJ report courts in Serbia are required to prepare an annual activity report and a regular monitoring of the system of court activities is in place concerning: number of incoming cases, number of decisions, number of decision subject to appeal and number of unsolved cases. "President of the court shall monitor the work of court departments, court secretariat and other departments, by collecting activity reports, reviewing records, or in another proper way."¹³⁶

¹³²C. Dallara, *When the domestic politics matters: Patterns of judicial reforms in the former Yugoslavia countries*, at Law and Society annual conference Humboldt University, Berlin 2007

¹³³Courts, Paris Court de Cassation, 26-27 October 2005 Presidents of the Supreme Courts- Serbia, *Preparatory Questionnaire Addressed to the Presidents of Supreme Courts - Serbia, 8th Conference of Presidents of European Supreme Courts*, at Paris 2005 ([http://www.coe.int/t/e/legal_affairs/legal_cooperation/legal_professionals/judges/presidents_of_european_supreme_courts/2006\(Paris\)Conf-Rep-Serbie.pdf](http://www.coe.int/t/e/legal_affairs/legal_cooperation/legal_professionals/judges/presidents_of_european_supreme_courts/2006(Paris)Conf-Rep-Serbie.pdf))

¹³⁴American Bar Association, 'Report on Judicial Reform Index for Serbia' available at <http://www.abanet.org/ceeli/publications/jri/> 2005 p.43

¹³⁵H. Gramckow, 'Can US-Type Court Management Approaches Work in Civil Law Systems? Experiences from the Balkans and Beyond', *European Journal on Criminal Policy and Research* 2005, 2005 vol., 97-120 p.43

¹³⁶Preparatory Questionnaire Addressed to the Presidents of Supreme Courts – Serbia, 8th Conference of Presidents of European Supreme Courts Paris, Cour de Cassation 26-27 October 2005, (http://www.coe.int/t/e/legal_affairs/legal_co

The normative foundation for this general statement can be found in the Judicial Book of Rules establishing that “all courts are obliged to make three months, six months and annual reports on the work of courts, departments and judges and submit them to the Ministry of Justice, Court of Higher Instance and the Supreme Court of Serbia”.¹³⁷ This should include a measurement of the activities of each judge. “While processing the results from the activity report, for each and every judge it will be taken the real time spent at work (without sick leaves, other absence from work) as well as the scope and the quality of the work in accordance with criteria prescribed by the Supreme Court.” At the same time though, according to Law on Judges arts. 1, 19, “individual judges are considered independent in conducting court proceedings”.¹³⁸

The activity reports of the courts, according to the indications provided by the Supreme Court in the Preparatory Questionnaire for the 8th Conference of Presidents of European Supreme Courts held in Paris in 2005, should include the following data:

operation/legal_professionals/judges/presidents_of_european_supreme_courts/2006(Paris)Conf-Rep-Serbie.pdf) p.1

¹³⁷ Ibid, p.5

¹³⁸ American Bar Association (2005) Judicial Reform Index for Serbia p.38

Quantitative data that should be collected:

- Number of judges that were performing in a certain material and in judicial departments in the reporting period
- Number of unsolved cases at the beginning of the reporting period and number of "old cases" out of total number
- Total number of received files in the reporting period which refers to newly received files, cases that are again taken into work after the court of higher instance sets aside a judgment or for another reason
- Average inflow of cases per judge in a department
- Total number of active cases, which is total number of total unsolved cases at the beginning of reporting period and total number of received cases during the same reporting period
- Total number of solved cases
- Average number of solved cases per judge in a department
- Total number of unsolved cases, which represents the number of unsolved cases at the end of the reporting period
- Average number of cases per judge in a department

As to the quality of the work of courts, the activity report includes the following data:

- Number of judgments and other decisions reviewed
- Number of judgments and other decisions confirmed in relation to a total number of complaints considered
- Number of judgments altered in relation to a total number of complaints considered
- Number of judgments set aside in relation to a total number of complaints considered

For each judge the following data are included in the activity report:

- Number of unsolved cases in the beginning
- Number of cases received
- Number of active cases
- Number of cases solved
- Number of cases unsolved
- Number of complaints considered

At the same time though, "statistical data or studies on length of proceedings, on costs of justice"¹³⁹ is not collected and no indicators exist concerning such issues.¹⁴⁰

¹³⁹ Preparatory Questionnaire Addressed to the Presidents of Supreme Courts – Serbia, 8th Conference of Presidents of European Supreme Courts Paris, Cour de Cassation 26-27 October 2005 ([http://www.coe.int/t/e/legal_affairs/legal_co-operation/legal_professionals/judges/presidents_of_european_supreme_courts/2006\(Paris\)Conf-Rep-Serbie.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/legal_professionals/judges/presidents_of_european_supreme_courts/2006(Paris)Conf-Rep-Serbie.pdf)) p.12

¹⁴⁰ Ibid

As a system to increase transparency and external accountability, all activity reports are put on the web site of the Supreme Court of Serbia. Furthermore, in theory at least, courts' departments should work in sessions, and consider reports on the work of a department and propose how to improve the work of judges and judicial assistants. The president of the court should monitor the performance of the departments and assess the work of the judge's assistants.¹⁴¹ Unfortunately, even if courts and the Ministry of Justice collect statistics and other data on caseloads and other aspects of the courts activity, such information is "not detailed enough to help analysts determine what changes could or should be made and where in the process to improve court efficiency".¹⁴²

Monitoring and evaluation of courts activities is not only carried out by traditional institutional actors. As several EU and US supported projects "are providing legislative reform assistance, and equipment, software and other technical assistance for the courts",¹⁴³ also monitoring and evaluation activities are taking place. For example, under the USAID Serbia Rule of Law Project (SROL), has been conducted an "assessment of caseloads and backlog situation in Serbia's courts. This involved a review of court registers and a representative sample of case files in courts in different regions on all court levels to determine the backlog status and identify backlog causes".¹⁴⁴

How it is monitored and evaluated?

An important development concerning monitoring and evaluation of the courts system could be found in the Judicial Reform Strategy adopted by the Serbian government in May 2006. According to the Strategy in the current situation "neither the Ministry of Justice nor the courts have the ability to accurately assess judicial productivity and court system performance. Lacking uniform standards and regularly updated statistical information at both the system-wide and the individual court level, the judiciary's leaders are unable to adequately assess the performance of court systems or the judges serving in individual courts. This deficiency impedes effective control over the judiciary's performance."¹⁴⁵

For the reasons above the Serbian government introduced in the Strategy a specific provision addressing monitoring and evaluation. According to this, the "Ministry of Justice and the High Court Council will oversee the redesign of the process, methodology, and standards for the preparation and transmission of

¹⁴¹ Ibid p.13

¹⁴² H. Gramckow, 'Can US-Type Court Management Approaches Work in Civil Law Systems? Experiences from the Balkans and Beyond', *European Journal on Criminal Policy and Research* 2005, 2005 vol., 97-120 p.104

¹⁴³ Ibid. p.108

¹⁴⁴ Ibid. p.107

¹⁴⁵ Republic of Serbia, Ministry of Justice, "National Judicial Reform Strategy", April 2006.(document provided by the The European Commission's Delegation to the Republic of Serbia).

judicial and court efficiency statistics to achieve maximum accuracy and consistency, and conform with the best practices identified by the Council of Europe and other international bodies.” The Strategy envisages the introduction of a system that allows for both system-wide judicial productivity monitoring and monitoring by court presidents of individual judge performance. The table below shows the short-medium and long terms objectives of the reform concerning monitoring and evaluation of court performances.

Short-Term Reforms 2006-2007	Medium Term Reforms 2008-2009	Long-Term Reforms 2010-2011
Criteria for assessing judicial productivity reviewed and new criteria defined by the High Court Council.	High Court Council assumes Supervisory Council's responsibility for reviewing judicial productivity.	All judges held accountable to a revised standard of judicial productivity with regular performance reviews.
New judicial automatic productivity data systems tested in commercial and general jurisdiction courts.	A uniform data collection system is initiated throughout all courts, with training for court staff.	National judicial productivity data system is fully functional.

Source: *National Judicial Reform Strategy*.

According to this strategy, the development of the information technologies will enable daily monitoring of efficiency of judges and courts. Specific uses for computers in court administration and in the administration of justice are outlined in the Court Rules of Procedures (art. 124). These include general word processing tasks, accounting, creating the registry and other court administration records, printing case file folders, and updating regulations and so-called “court practice”. However, in practice, much of this type of work is often performed somewhat inefficiently, using typewriters or by hand. Many courts are still not adequately equipped with information technologies, including computers. Computers can be found in some courts, such as in Bujonvac, Presevo, Valjevo or Vranje, but they are sometimes outdated and of poor quality. In addition, they are often made available only to administrative staff. Even though no statistical data specifically concerning the level of satisfaction of users is collected, some sort of indirect measurement of the quality perceived by users seems to be in place within the courts. For example, at the Supreme Court, “there is a service for citizens’ complaints, where parties and other interested persons in the procedure, may in every moment file a complaint in relation to the procedure managing, or in relation to any other question related to fulfilment of rights of citizens in court.”¹⁴⁶ At the same time, the “non-governmental sector is also very important in providing unofficial researches in relation to the trust of citizens in the work of judiciary”.¹⁴⁷ The

¹⁴⁶ Preparatory Questionnaire Addressed to the Presidents of Supreme Courts – Serbia, 8th Conference of Presidents of European Supreme Courts Paris, Cour de Cassation 26-27 October 2005, ([http://www.coe.int/t/e/legal_affairs/legal_cooperation/legal_professionals/judges/presidents_of_european_supreme_courts/2006\(Paris\)Conf-Rep-Serbie.pdf](http://www.coe.int/t/e/legal_affairs/legal_cooperation/legal_professionals/judges/presidents_of_european_supreme_courts/2006(Paris)Conf-Rep-Serbie.pdf)) p.3

¹⁴⁷Ibid, p.13

concrete use of such data by the courts to monitor and evaluate the user satisfaction is still not clear.

Trends and problematic issues

- Normative framework for Monitoring and Evaluation is at an early stage and still under development
- Presence of limited provisions concerning data collection
- Gap between theory and practice in Monitoring and Evaluation
- Until now, only Ministry of Justice and Supreme Court seem to be involved in Monitoring and Evaluation activities

3.2.3 Slovenia¹⁴⁸

Judicial structure and main reforms

The Republic of Slovenia became an independent and sovereign state on June 1991.¹⁴⁹ Some months after, the Constitution of the Republic of Slovenia was adopted, introducing the principle of the separation of powers and defining the task of the judicial branch. In addition to these basic provisions, the constitution determines that the 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). However, there are no specific provisions mentioning the evaluation and the monitoring of the courts and judges activity.

The most relevant change introduced by the Constitution was the creation of the High Judicial Council. Article 131 defines: "There shall be a Judicial Council composed of eleven members. Five members shall be elected by the vote of the National assembly on the nomination of the President of the Republic from among practicing lawyers, professors of law or lawyers. Six members shall be elected from amongst judges holding permanent judicial office."

During the first years after the independence (1991-1994) there was no comprehensive reform of the judiciary; overall judges hold 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 Act¹⁵⁰, the Judicial Service Act¹⁵¹ and the Courts Act¹⁵². The Courts Rules was enacted in

¹⁴⁸ Data and information about court monitoring and evaluation in Slovenia were mainly drawn by the CEPEJ report 2006, by the EUMAP Report on Judicial Capacity in Slovenia and by the 2005 and 2006 Slovenia Nation in Transit reports. We have deepened these data throughout some interviews conducted by Cristina Dallara in Slovenia in April 2007 and by a semi-structured questionnaire submitted on-line to some CEPEJ contacts within the country.

¹⁴⁹ 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

¹⁵⁰ Official Gazette of the Republic of Slovenia, 2 April 1994.

¹⁵¹ Official Gazette of the Republic of Slovenia, 13 April 1994.

1995. These are the laws that regulate the organisation and the functioning of the Slovenian judicial system, containing also some provisions regarding the evaluation and monitoring of court system.

Who evaluates and monitors and what is evaluated and monitored?

On the whole, it could be noted that the evaluation and monitoring 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 Plenary Session 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.

CEPEJ data shows that "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. Each court monitors the above mentioned data on regular basis, depending on their own decision, but twice a year these data are collected and published on a national level".

In fact, Art. 50 of the Court Rules prescribes *inter alia*: "Statistical reports on the work carried out by courts shall be sent by courts to the ministry responsible for justice by 31 January for the previous year and by 31 July of the current year for the first half of that year. The Supreme Court of the Republic of Slovenia shall send the statistical report on its work in the previous year once a year. The president of the court shall notify the ministry responsible for justice of problems connected to court operation in the previous year in writing, and the judges in person, by 28 February of the current year, at the annual conference of judges." The data are collected and published by the Ministry.

Courts have also 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)

¹⁵² Official Gazette of the Republic of Slovenia, 13 April 1994.

- Explanation of the data in the balance sheet. CEPEJ report shows also that some performance indicators and targets have been set considering in particular the evaluation of each judge's activity: "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 monitor, ascertains and analyses the effectiveness of work of judges and courts, on which it keep annual reports. Supreme Court and Ministry of Justice exercise supervision over the performance of court management in courts. The Supreme Court also coordinates the preparation of financial plans and aggregately provided resources in the budget."

These targets are set by different institutions and are different and also based on different legal provisions: The Judicial Council has to set targets according to the 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 set targets in the Court Rules.

Article 28 of the Court 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 confirmed, amended or annulled decision, data on absences, and other data which assists in determining effectiveness."

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.

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 who exercises official supervision over the work of courts of higher instance or of the President of the Supreme Court of the Republic of Slovenia". 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 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 in the Supreme Court of the Republic of Slovenia.

How it is monitored and evaluated?

In spite of the provisions contained in the laws previously cited, it is difficult to assess how the monitoring and evaluation system works in practice. Looking at the international organisation reports the information is sometimes different and contrasting with the formal legal description.

Freedom House in one of its Nation in Transit reports shows that the main problem facing the Slovenian judiciary continues to be inefficiency and backlog. According to the international observers criteria for measuring the efficiency of judges' work are lacking. In certain cases, there is also a lack of professionalism on the part of court employees, and cross-communication in the legal system is poor.¹⁵³ More information is provided by EUMAP in its report on judicial capacity where a section is dedicated to "evaluating and regulating performance". According to the Slovenian report although judges' performance is subject to regular monitoring and assessment, the criteria and procedures for evaluating judges' performance require further elaboration to reduce certain risks of arbitrariness and the present predominance of quantitative data.

Judges are assessed twice during their first four years in office; then, the personnel councils¹⁵⁴ evaluate the professional performance of judges every three years or upon the request of the Judicial Council, the court president or president of the relevant higher court, or the judge himself. The Judicial Council's decisions on the personnel council assessments affect the career path of judges, such as promotions to higher courts and higher pay brackets. A positive change is that court presidents, personnel councils, the Judicial Council, and judges being evaluated are all now entitled to present relevant

¹⁵³ Freedom House, 'Nation in Transit 2005 Report Slovenia' available at <http://www.freedomhouse.hu/pdfdocs/slovenia2005.pdf> 2005

¹⁵⁴ Concerning the specific procedures for judges evaluation Article 30 of the Court Act specifies that "*The Personnel Council of a high court shall be responsible for forming opinions on the suitability of candidates for judges of high courts, for the assessment of judicial service of judges of county and district courts, for resolving objections to the assessment of judicial service, and for tasks related to personnel and other matters of judges of the high district and county courts. The personnel council of a district court shall be responsible for forming opinions on the suitability of candidates for judges of district and county courts on the territory of the district court, and for other tasks, if so determined by statute.*"

information during the process. However, the procedure and assessment results are still confidential, and outside input into the process is minimal. It is important to mention also that the recent amendment to the Court Rules have introduced relevant changes regarding the formal definition of backlog. Cases that are considered court backlogs are precisely defined in Article 50 in relation to the time from the matter being filed with the courts, depending on individual types of case:

Moreover, it has to be underlined that all the institutions responsible for the efficiency of justice¹⁵⁵ seem to share the same opinion that monitoring and evaluation of the courts' performance is the main path to introduce change and innovation. In particular, in the last two years, the Supreme Court has made consistent efforts to introduce monitoring and evaluation in the courts' practice.

High Courts:

- Criminal cases 6 months after case filing
- Civil cases 6 months after case filing
- Commercial disputes 6 months after case filing

District Courts:

- Criminal cases 18 months after case filing
- Investigations 18 months after case filing
- Criminal investigation activities 6 months after case filing
- Juvenile criminal preparatory proc. 6 months after case filing
- Juvenile criminal proceedings 12 months after case filing
- Litigations 18 months after case filing
- Commercial disputes 18 months after case filing
- Non-contentious commercial cases 18 months after case filing
- Court register cases 1 month after case filing

Local Courts:

- Criminal cases 18 months after case filing
- Criminal investigation activities 6 months after case filing
- Non-contentious commercial cases 18 months after case filing
- Inheritance cases 6 months after case filing
- Enforcement cases 12 months after case filing
- Land register cases 1 month after case filing

Source: semi-structured questionnaire submitted on-line to CEPEJ contacts

Trends and problematic issues

- Normative framework to Monitor and Evaluate well developed
- Management oriented principles
- Few data on Monitor and Evaluation activities
- Few data on the use of Monitoring and Evaluation systems

¹⁵⁵ The Supreme Court of the Republic of Slovenia, Judicial Council and The Ministry of Justice.

4. Conclusions

In the pervious paragraphs we have described monitoring and evaluation systems in operation in six very different countries. We have looked at simple aspects such as who is responsible for monitoring and evaluating, and what and how. These various experiences have given us the opportunity to develop some insights and conclusions. These insights and conclusions vary from issues of data collection and methodology to a more comprehensive conceptual framework for what constitutes monitoring and evaluation of court systems.

In recent years resources have been invested in developing monitoring and evaluation systems in all the countries that have been considered and international organisations such as Council of Europe, EU, World Bank and UN. The programs and investments have always been related to the need to increase the accountability of the justice system toward other institutions, users and people. In the context of Eastern European countries, monitoring and evaluation have been conceived as important tools to ensure transparency and fairness of the functioning of the system. In this sense, developing monitoring and evaluation systems is important to the process of democratisation and legitimating of the judiciary.

The implementation of NPM in other public services over the last two decades has particularly highlighted the lack of managerial policies as regards court systems and judicial administration.¹⁵⁶ New public management stems from ideas about quality organisations, learning organisations and quality indicators from organisation theories.¹⁵⁷ The core idea is that not only should an organisation be able to fulfil its tasks in an efficient and effective manner, but it should also be customer or client-oriented.¹⁵⁸ It should be available to account for the quality of the service or product. This, in time, should lead to satisfaction of the clients/customers/citizens¹⁵⁹ and public trust.¹⁶⁰

Both of these theories relate in general to the principle of accountability. As many scholars have pointed out, judicial systems are nowadays subject to two main processes which question their legitimacy as well as their effectiveness:

¹⁵⁶ G. Y. Ng, 'Quality of Judicial Organisation and Checks and Balances', Law, Utrecht 2007p.25

¹⁵⁷ J.-E. Lane, *'New Public Management'*, Routledge, London 2000, A. Hondeghem (eds), *'Ethics and accountability in a context of governance and new public management'*, IOS Press OHMSHA, 1998; P. Senge, *'The fifth discipline: the art and practice of the learning organisation'*, Doubleday currency, New York 1990; S. Murgatroyd and C. Morgan, *'Total quality management and the school'*, Open University Press, Buckingham, Philadelphia 1994; W. A. Lindsay and J. A. Petrick, *'Total Quality and organisation development'*, St. Lucie Press Boca Ration, Florida 1997

¹⁵⁸ J. B. J. M. ten Berge, 'Contouren van een kwaliteitsbeleid voor de rechtspraak', in *Kwaliteit van rechtspraak op de weegschaal*, P. M. Langbroek, K. Lahuis and J. B. J. M. ten Berge (eds), W.E.J. Tjeenk Willink (G.J. Wiarda Instituut), Deventer 1998, p.29

¹⁵⁹ EFQM, 'Mission' available at <http://www.efqm.org/Default.aspx?tabid=60> 2006

¹⁶⁰ G. Bouckaert and S. van de Walle, *Government and trust in government*, at EGPA Conference Finland 2001

the first one is concerned with internal accountability mechanisms (recruitment, appointments, career and discipline) and the second regards external accountability. Monitoring and evaluation systems are tools to put into effect and increase external accountability.

In light of the above theories, there have been a lot of policies aimed at improving the quality of justice and particularly judicial organisation across all democratic countries. To support these efforts, normative frameworks on monitoring and evaluation systems have been developed. However, it is very difficult to collect data about the implementation of these policies.

The purpose of this conclusion is not to make any value judgments on the level of development of monitoring and evaluation systems of each country. Given the impetus toward democratisation and NPM, we noticed a common trend towards the development of such systems. Such attempts have been met by difficulties especially in the empirical implementation and in the capability of the systems to produce the expected results. This can be partially explained by some common factors that affect the measurement of all court activities of all countries such as setting standards for backlogs, reasonable delays and productivity. On the other hand, the different historical development and institutional settings of each country contributes to these difficulties. These differences have been kept in mind when developing our insights and conclusions.

We have identified different stages of development for the operation of monitoring and evaluation systems based on the data from the case studies: bureaucratic data collection, normative framework, institution building, evaluation and monitoring, and accountability and action. We will proceed now to discuss each stage in turn.

Bureaucratic data collection takes place outside of monitoring and evaluation purposes. Examples for courts include the registration of cases in paper and electronic registers, data collected in case tracking systems. These basic forms of data collection are ingrained in traditional court procedures and regulations. Courts in all the six countries collect such data in order to guarantee the respect of due process especially as regard the following of procedures, case handling and scheduling. Such data can be adapted for internal monitoring and evaluation purposes at court level. We conclude this because such data is usually collected according to standards and procedures individual to the court or according to data entry methodologies which are also individual to the court as is the case with Croatia, France, Italy and the Netherlands. Measures have been taken in all countries to standardize this data and adapt it for national monitoring and evaluation, however, as the data shows, such efforts have required normative and institutional developments.

Due to the complex relationship between judicial independence and accountability a normative framework has had to be developed in order to operate monitoring and evaluation systems within the principles of constitutional law. However, in none of the countries described have we found any explicit constitutional basis for monitoring and evaluating court systems. This is because constitutional law mainly focuses on individual accountability

and independence of judges rather than on the accountability of the court as a whole. This element could also be conceived of as part of ordinary political accountability.¹⁶¹

As stated earlier, movement towards democratisation and NPM have been the main impetus for normative changes. Most of these changes have occurred at legislative level, for example Slovenia, Croatia and Serbia have enacted legislation based on democratisation of the judiciary under the EU accession rules. Whereas France, Italy and the Netherlands have had as their impetus from the infusion of NPM values in the reshaping of the expectations of accountability from their populations and the need to increase efficiency and cut costs. Legislation from France and Italy provide clear examples of influences from NPM, e.g. in France, the new financial law requires all public services, including the courts, to account for their spending with objective criteria. In Italy, the legislation on administrative proceeding and on the reform of the Civil Service provided general frameworks within which also the courts had to operate. The Netherlands took a mixed approach and developed a normative framework which on the one hand democratised the judicial system at the same time as implementing NPM within the courts.

Institution building has characterized the first stage of implementation of the normative framework. From the data this has varied widely from the adaptation of already existing offices, to the creation of new units or even institutions such as the Council for the Judiciary in the Netherlands. In some cases, such as Croatia and Slovenia, this event didn't really take place. However, in these countries there is a complex relationship between different actors involved in court management at different levels institutionalised by the law. In Italy for example there has been a transfer of competences from the National Institute of Statistics to a Statistics Directorate General within the Ministry of Justice and the creation of special unit within the Ministry of Justice for the evaluations of costs, performances and management. In France, two approaches have been taken. On the one hand a special court service was set up to assist in court management and on the other hand judges work as policy makers in the Ministry of Justice.

From the histories of these countries, we can see these different institutional developments have taken place as different forms for the executions of the normative framework. This is based on the one hand on the separation of powers for countries like the Netherlands, Croatia and Slovenia and on the other hand on efficiency of organisation as with Italy and France.

Only having established a normative framework and institutional setting can one start looking at operating an effective evaluation and monitoring system. In order to be effective, it must operate transparently and with trustworthy standards. This can be broken down to various factors: trust in the monitoring and evaluating institution, perception of usefulness of the exercise, methodology for data collection.

¹⁶¹ G. Y. Ng, 'Quality of Judicial Organisation and Checks and Balances', Law, Utrecht 2007 pp.17-18

The trust in the monitoring and evaluating institution deals on the one hand with the independence and impartiality of the institution involved, for example, politically appointed members will be viewed with suspicion and prejudice. If court presidents are appointed by the government, in countries where some political influence over the judiciary is still frequent, there could be a large trust gap. On the other hand, in the Netherlands, given the increased autonomy of judges in monitoring and evaluating their system, there is more confidence in the monitoring and evaluation exercise. As to the perception of usefulness of the exercise is concerned, this also varies. In Italy, the low opinion concerning the usefulness of the data collection clearly influences the attitude of the personnel involved in this exercise. On the other hand, the political goals of standardizing practices or improving efficiency have been met with a mixture of scepticism and hostility. Finally, on the issue of methodology for data collection, specific organisation characteristics such as size of the court, case typology, number of cases, court procedures make it difficult to create reliable indicators and standards by which to monitor and evaluate court activities in a generic way. The use of data collected with tools designed for bureaucratic data collection can sometimes lead to a false picture of court activity. Furthermore, the politicisation of data collection can sometimes lead to the manipulation of the methodology and data collected thereby rendering it useless. The manipulation of statistics is an age old tradition: there are lies, damned lies and there are statistics!

This requires that data be read with a certain pinch of salt. What is also possible is that the mechanisms built into the system try to ensure more objective, accurate and reliable results. This is something that they are attempting to do in the Netherlands, Italy, France and Croatia through ICT and constant development of criteria for indicators and standards.

The final stage for creating an effective monitoring and evaluation system is in the mechanisms for actions and accountability based on the use of the data collected. This research has shown three main uses of the data. On the one hand some countries collect data but do nothing with it, as was the case for Croatia for a long time. On the other hand, countries like France, the Netherlands and Italy use it in differing degrees to hold courts to account for spending or to allocate resources as well as to make the organisation more transparent. Finally, countries like Slovenia use it to mark progress in the judicial organisation and to adapt policies accordingly.

Problems may arise at this stage in the trustworthiness of the institution using the data, as it may not be the same as the one collecting the data. This may be a problem because of coordination between these institutions and also because of judicial independence issues. It is not the scope of this paper to demarcate the boundaries of judicial independence but, as discussed above, many actors have argued judicial independence to block organisational development.

From these five stages we can observe a scale by which to assess the development of the countries' monitoring and evaluation systems. However, in the use of this scale, and indeed during our conceiving of it, we urge caution. This scale is not to be used in a comparative way and if it is used at all, the

historical background of the countries should be borne in mind. We have observed during our research that the further down the scale the country tries to go, the harder it is to observe results from the monitoring and evaluation system development attempts. For example, bureaucratic data collection is already institutionalised and is usually foundation of further attempts to adopt monitoring and evaluation systems. All of the countries we have observed were in the process of developing norms or having developed norms were in the process of refining norms. Definition of norms for creating monitoring and evaluation of court systems is somewhat tricky because of the autonomous nature of the professionals and the institutions being monitored and evaluated. Institution building, like building the road to Rome, is a process that will take more than one day. It is not simply a matter of setting up units and tasking them with the job of monitoring and evaluating courts. There is a matter of training personnel, having a strong normative basis, building trust within the respect of balance of powers. This is especially sensitive for countries democratising their public institutions, and who are being observed by the Council of Europe and other international organisations.

This leads then to the idea that monitoring and evaluation is not limited to an exercise of data collection, but also depends on the type and quality of data collected and to the use that is made of this data. This is a very sensitive and problematic issue in all the countries that have been studied. It is at this point that it becomes harder to observe meaningful results of the adoption processes. We noticed that CEPEJ data had a similar experience. The data that we obtained from CEPEJ and CEPEJ contacts indicate that an adoption process has taken place at normative and institutional stage. There is some indication as to what is formally monitored and evaluated but not necessarily what is done in practice, how the data is collected and what use is made of it.

Something that should be taken into account when conducting such research is the apparent lack in most of the countries of mechanisms to assess monitoring and evaluation systems and their development and successes. The Dutch example provides an exception to this experience in that they are constantly assessing the monitoring and evaluation systems internally at the courts and externally at the Council for the Judiciary. The experience in the Netherlands shows that such an assessment is part of an overall incremental process that is needed to develop such systems. The difficulty with CEPEJ data is that none of this is indicated. All of the countries appear to be doing equally well in the development of their monitoring and evaluation systems. Whilst we are not here to make a value judgment on how well the systems are developed, we cannot come to the same conclusions that CEPEJ Data has. What our research indicates is that each country is at a different stage of development for whatever historical reasons and that energy and resources should instead be invested into helping each country develop its mechanisms further. Especially toward the latter stages, standard institution building and normative frameworks are insufficient. Realistic programs of execution should be in place as well as accountability for those programs. This includes taking into account local characteristics, tuning the system to the specific needs and balance issues that characterizes each country.

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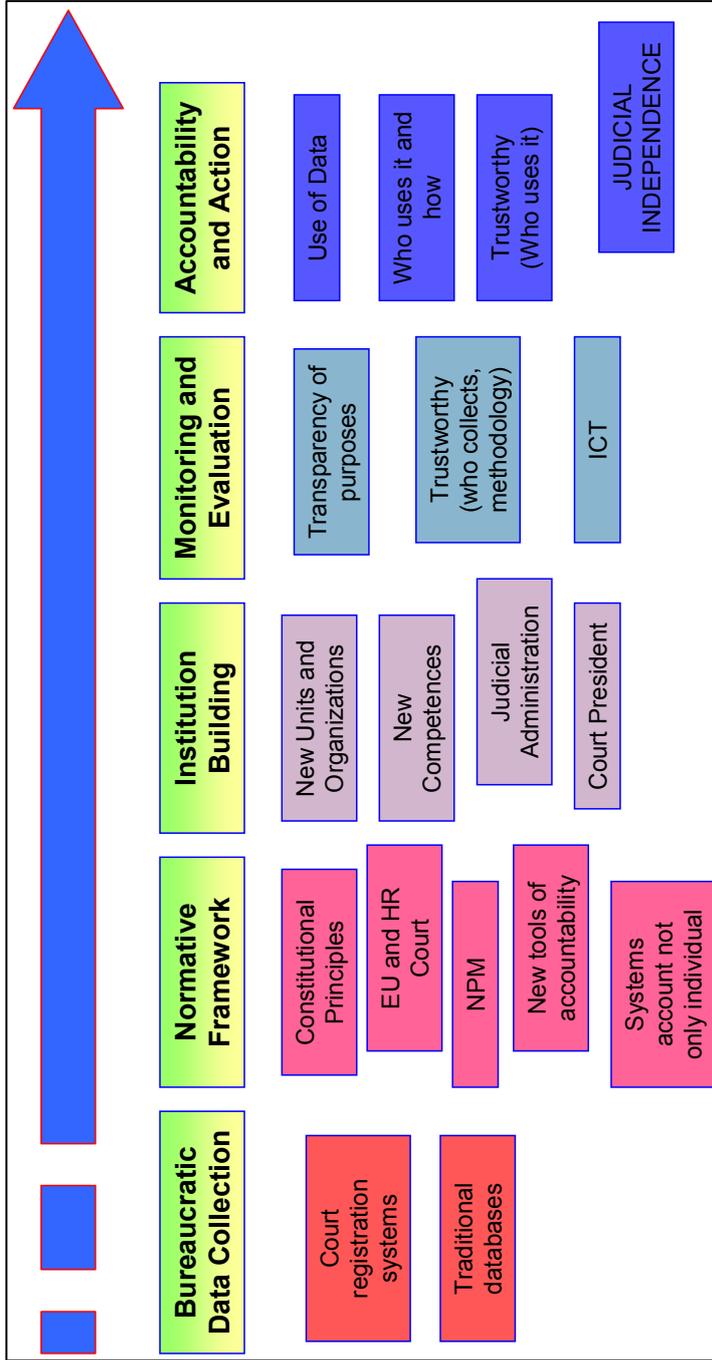
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Appendix 1: Monitoring and Evaluation Model



Appendix 2: Text of the questions from the CEPEJ evaluation Scheme mentioned in the study

50. Is there a centralised institution which is responsible for collecting statistical data regarding the functioning of the courts and judiciary?

No

Yes

Please specify the name and the address of this institution:

institution:

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your judicial system

III. B. Monitoring and evaluation

51. Are the courts required to prepare an annual activity report?

Yes

No

52. Do you have a regular monitoring system of court activities concerning the:

- number of incoming cases?
- number of decisions?
- number of postponed cases?
- length of proceedings?
- other?

Yes

No

Please specify:

53. Do you have a regular evaluation system of the performance of the court?

No
Yes

Please specify:

54. Concerning court activities, have you defined:

▪ performance indicators? Yes No

Please specify the 4 main indicators for a proper functioning of justice:

▪ targets? Yes No

Please specify who is responsible for setting the targets:

- executive power?
- legislative power?
- judicial power?
- other?

Please specify:

Please specify the main objectives applied:

Source

55. Which authority is responsible for the evaluation of the

performances of the courts:

- the High Council of judiciary?
 - the Ministry of justice?
 - an Inspection body?
 - the Supreme Court?
 - an external audit body?
 - other?
- Yes  Please

specify:

56. Does the evaluation system include quality standards concerning judicial decisions?

No 
Yes  Please specify:

Source 

57. Is there a system enabling to measure the backlogs and to detect the cases which are not processed within an acceptable timeframe for:

- civil cases? Yes  No 
- criminal cases?
- administrative cases?

58. Do you have a way of analysing queuing time during court procedures?

No 
Yes  Please specify:

59. Do you monitor and evaluate the performance of the prosecution services?

No 
Yes  Please specify:

You can indicate below:

- ***any useful comments for interpreting the data mentioned above***
- ***the characteristics of your court monitoring and evaluation system***