HANDLE WITH CARE
Assessing and designing methods for evaluation and development of the quality of justice

FRANCESCO CONTINI (Ed.)

PROJECT PARTNERS
- Research Institute on Judicial System of the National Research Council of Italy
- Lappeenranta University of Technology
- University of Debrecen
- University of Limoges
- Utrecht University

The project is co-funded by the Civil Justice Program of the European Commission. Actions grants to support transnational projects on promoting the quality of the national justice systems - JUST/2015/JACC/AG/QUAL/8547
Handle with Care
Assessing and designing methods for evaluation and development of the quality of justice

Project partners
The Research Institute on Judicial System of the National Research Council of Italy (IRSIG-CNR)
Lappeenranta University of Technology
University of Debrecen
University of Limoges
Utrecht University

Website: www.lut.fi/hwc

The research project “Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice” is co-financed by the Justice Program of the European Commission (Actions grants to support transnational projects on promoting the quality of the national justice systems - JUST/2015/JACC/AG/QUAL/8547).
## Contents

### Introduction
Francesco Contini

The common research methodology for the analysis of the quality of justice at national level
Francesco Contini, Alina Ontanu, Davide Carnevali

- **0. Background** .......................................................................................................................... 15
- **1. The institutional context** ........................................................................................................ 16
  - 1.1. Judicial structure overview .................................................................................................. 16
  - 1.2. Key functions in the administration of justice ...................................................................... 16
  - 1.3. Current issues in the administration of justice ...................................................................... 16
- **2. Classical judicial evaluation arrangements** ............................................................................ 16
  - 2.1. Introduction ......................................................................................................................... 16
  - 2.2. The evaluation of judges ...................................................................................................... 17
  - 2.3. The evaluation of courts activities ....................................................................................... 19
  - 2.4. Resources allocation to courts ............................................................................................. 20
- **3. Innovative practices in quality evaluation and quality development** ................................. 22

The evaluation and development of the quality of justice in Finland
Petra Pekkanen, Tiina Puolakka, Timo Pirttilä

- **1. The institutional context** ........................................................................................................ 23
  - 1.1. Judicial structure overview .................................................................................................. 23
  - 1.2. Key functions in the administration of justice ...................................................................... 26
  - 1.3. Current issues in the administration of justice ...................................................................... 28
- **2. Classical judicial evaluation arrangements** ............................................................................ 29
  - 2.1. Introduction ......................................................................................................................... 29
  - 2.2. Recruitment and initial evaluation of Judges ........................................................................ 29
  - 2.3. Continuous evaluation of Judges ......................................................................................... 35
  - 2.4. The evaluation of courts activities ....................................................................................... 39
  - 2.5. Resource allocation to courts ............................................................................................... 43
  - 2.6. Assessment of existing evaluation methods ......................................................................... 45
- **3. Innovative practices in quality evaluation and quality development** ................................. 49
  - 3.1. Quality project in the jurisdiction of the Court of Appeal of Rovaniemi ............................ 50
  - 3.2. Delay reduction projects – combining external expertise and internal participation .......... 58
  - 3.3 Weighted caseload system ...................................................................................................... 63

References ........................................................................................................................................... 65

The evaluation and development of the quality of justice in France
Hélène Pauliat, Caroline Foulquier-Expert, Laurent Berthier, Caroline Boyer-Capelle, Pauline Lagarde, Ludovic Pailler, Nadine Poulet, Agnès Sauviat

- **0. Background** .......................................................................................................................... 70
- **1. The institutional context** ........................................................................................................ 71
  - 1.1. Judicial structure overview .................................................................................................. 71
  - 1.2. Key functions in the administration of justice ...................................................................... 74
  - 1.3. Current issues in the administration of justice ...................................................................... 77
- **2. Classical judicial evaluation arrangements** ............................................................................ 78
  - 2.1. Introduction ......................................................................................................................... 78
2.2. Recruitment and initial evaluation of judges .................................................. 78
2.3. Continuous evaluation of judges .................................................................. 88
2.4. Evaluation of court activities ......................................................................... 94
2.5. Resources allocation to courts ........................................................................ 99
3. Innovative methods for quality assessment and development.......................... 105
  3.1. The renewal of the administration of justice ................................................. 105
  3.2. The revaluation of the role of litigants ......................................................... 115
  3.3. The opening of justice to the society ............................................................ 123

The evaluation and development of the quality of justice in Hungary ............... 129
Mátyás Bencze, Ágnes Kovács, Zsolt Ződi

1. The institutional context .................................................................................... 129
  1.1. Judicial structure overview .......................................................... 129
  1.2. Key functions in the administration of justice ......................................... 134
  1.3. Current issues in the administration of justice ......................................... 137
2. Classical judicial evaluation arrangements ....................................................... 138
  2.1. Introduction ................................................................. 138
  2.2. Recruitment and initial evaluation of judges ............................................. 139
  2.3. Continuous evaluation of judges .............................................................. 145
  2.4. The evaluation of courts activities ............................................................ 152
  2.5. Resources allocation to courts ................................................................. 167
  2.6. Assessment of existing evaluation methods .............................................. 172
3. Innovative practices in quality evaluation and quality development ................ 173
  3.1. System of mentor judges ......................................................................... 173
  3.2. EU law consultant network ....................................................................... 173
  3.3. The principles of drafting: the ‘Stylebook’ ............................................... 173
  3.4. Best practices: The “Debrecen Model” – a bottom-up initiative to promote timeliness ..... 174

The evaluation and development of the quality of justice in Italy ....................... 177
Francesco Contini, Davide Carnevali, Marco Fabri, Nadia Carboni

1. The institutional context .................................................................................... 177
  1.1. Judicial structure overview .......................................................... 177
  1.2. Key functions in the administration of justice ......................................... 177
  1.3. Current issues in the administration of justice ......................................... 181
2. Classical judicial evaluation arrangements ....................................................... 182
  2.1. Introduction ................................................................. 182
  2.2. Recruitment and initial evaluation of judges ............................................. 183
  2.3. Continuous evaluation of judges .............................................................. 187
  2.4. The evaluation of courts activities ............................................................ 194
  2.5. Resources allocation to courts ................................................................. 202
  2.6. Assessment of existing evaluation methods .............................................. 210
3. Innovative practices in quality evaluation and quality development ............... 212
  3.1. The Best Practices Project and its many offspring ..................................... 213
  3.2. The Civil justice observatories (Common praxis) ...................................... 219
References ........................................................................................................... 224
The evaluation and development of the quality of justice in The Netherlands
Rachel I. Dijkstra, Philip M. Langbroek, Kyana Bozorg Zadeh, Zübeyir Türk

1. Introduction.......................................................................................................................... 227
2. The institutional context..................................................................................................... 227
   2.1. Judicial structure overview ......................................................................................... 227
   2.2. Key functions in the administration of justice ......................................................... 230
   2.3. Current issues in the administration of justice ....................................................... 232
3. Classical judicial evaluation arrangements ..................................................................... 233
   3.1. Introduction ................................................................................................................ 233
   3.2. Recruitment and initial evaluation of judges ............................................................ 233
   3.3. Continuous evaluation of judges ............................................................................. 237
   3.4. The evaluation of activities of the courts ................................................................. 249
   3.5. Resource allocation to courts .................................................................................... 256
   3.6. Assessment of existing evaluation methods ............................................................... 269
4. Innovative practices in quality evaluation and quality development ......................... 269
   4.1. Professional standards .............................................................................................. 270
   4.2. Organization of Knowledge ..................................................................................... 273
   4.3. Mirror meetings ......................................................................................................... 274
   4.4. Digitalization: KEI/QAI legislation .......................................................................... 275
   4.5. Directive role for Judges .......................................................................................... 275

Comparing the evaluation and development of the quality of Justice in Finland, France,
Hungary, Italy and The Netherlands ...................................................................................... 277
Hélène Pauliat, Caroline Foulquier-Expert, Mátyás Bencze, Laurent Berthier,
Caroline Boyer-Capelle, Ágnes Kovács, Pauline Lagarde, Alina Ontanu, Ludovic Pailler,
Hélène Pauliat, Nadine Poulet, Agnès Sauviat

1. Introduction.......................................................................................................................... 278
2. Methodology ....................................................................................................................... 278
3. Methods of evaluation and promotion of judges, courts and judicial system’s quality .... 280
   3.1. Evaluation and promotion of the quality of judges ..................................................... 280
   3.2. Evaluation and promotion of the quality of the courts .............................................. 286
   3.3. Evaluation and promotion of the quality of the judicial system .................................. 289
4. The importance of budgetary aspects in assessing and promoting the quality of justice ... 290
   4.1. Towards Budgetary decentralization? ....................................................................... 291
   4.2. The weak link between the budget and the quality policy ......................................... 291
   4.3. Price per case calculations in planning the courts’ budget ....................................... 292
   4.4. Taking into account the workload per judge ............................................................... 292
5. Developments in governance related to the evaluation and promotion of the quality of
   justice .................................................................................................................................. 292
   5.1. Innovations in Governance for more independence and/or more effectiveness and efficiency ................................................................. 293
   5.2. Lack of coordination between the Ministry and the High Council for Judges/Judiciary .. 294
   5.3. Involvement of local and private actors ..................................................................... 294
6. Conclusions ......................................................................................................................... 295

Performance management of courts and judges: organizational and professional learning
versus political accountabilities ............................................................................................. 297
Philip M. Langbroek, Rachel I. Dijkstra, Kyana Bozorg Zadeh, Zübeyir Türk
1. Introduction .................................................................................................................. 297
d 2. The position of courts and judges in the state and in national court administration .......................................................... 298
d 3. Quality management .................................................................................................. 299
d 3.1. Concept of quality management .............................................................................. 299
d 3.2. Total Quality Management (TQM) ........................................................................ 301
d 3.3. Total Quality Management in Courts ..................................................................... 302
d 4. New Public Management (NPM) .................................................................................. 302
d 5. Performance management .............................................................................................. 304
d 5.1. Performance management and evaluation ................................................................. 304
d 5.2 Performance Measurement and Evaluation Tools for Courts and Judges .................. 306
d 6. Inventory of evaluation subjects, methods and actors in the National Reports ............... 311
d 6.1. Measuring performance with a view to Professional learning ..................................... 312
d 6.2. Registration of judicial performance with a view to upholding judicial values ............ 313
d 6.3. Measuring performance with a view to Human Resources Management (also: employee satisfaction survey) ......................... 314
d 6.4. Measuring performance with a view to Management and organisation development .......................................................... 315
d 6.5. Measuring performance with a view to accounting for public money spent (reporting to politics and to the general public) .................................................. 316
d 6.6. Reflection on performance measurement and management in judiciaries .................... 318
d 7. Performance management and evaluation of courts’ and judicial performances .............. 321
References .......................................................................................................................... 323

Something good? In search of new practices to improve the quality of justice in EU ............. 327
Alina Ontanu, Marco Velicogna, Francesco Contini

1. Introduction .................................................................................................................. 327
d 2. Three general principles. .............................................................................................. 328
d 3. Legitimacy: focus on stakeholders and treatment of the parties ..................................... 332
d 3.1. Setting service standards for court users ................................................................. 332
d 3.2. Stakeholders’ involvement ..................................................................................... 333
d 3.3. Joint reflection ....................................................................................................... 335
d 3.4. ICT for a better interaction with court users ............................................................. 337
d 4. Legality: focus on decision making process .................................................................. 338
d 4.1. Remodelling the writing of court decision ............................................................... 338
d 4.2. The rise of new judicial professional standards ....................................................... 342
d 4.3. Knowledge Management ...................................................................................... 343
d 5. Economy: focus on timeliness and productivity ............................................................ 345
d 5.1. Incentives to improve timeliness ............................................................................. 345
d 5.2. Taking advantage of existing statistical data ............................................................ 346
d 5.3. External expertise for delay reduction .................................................................... 346
d 5.4. Weighting cases ..................................................................................................... 347
d 5.5. Empowering the role of judges in judicial proceedings .......................................... 349
d 5.6. ICT for the economy of courts proceedings ............................................................ 349
d 6. Conclusions ................................................................................................................ 350
References .......................................................................................................................... 352

Annexes
The quality of justice in Finland: Executive summary .......................................................... 358
1. Classical judicial evaluation arrangements ................................................................. 358
2. Innovative practices in quality evaluation and quality development ............................ 359
The quality of justice in France: Executive summary .......................................................... 361
“Handle with care: Assessing and designing methods for evaluation and development of the quality of justice” is a research project co-financed by the Justice Program of the European Commission (Actions grants to support transnational projects on promoting the quality of the national justice systems - JUST/2015/JACC/AG/QUAL/8547) carried out between October 2016 and December 2017. The research has been conducted by a partnership composed of the University of Debrecen, the University of Limoges, the Utrecht University and the Lappeenranta University of Technology, and coordinated by The Research Institute on Judicial System of the National Research Council of Italy (IRSIG-CNR). All the findings are available at www.lut.fi/hwc.

The book collects the in-depth investigation of the methods currently used in Finland, France, Hungary, Italy, and the Netherland to evaluate and develop the quality of justice, and the Common research methodology for the national analysis. The analysis considers the "classical" evaluation mechanism in place for assessing the quality of justice as well as the innovative practices emerging in these judiciaries. The classics entail the evaluation and actions undertaken at three levels: individual level (e.g. judge), organisational level (e.g. court), and national level (i.e. the entire justice system). The innovations include bottom-up approaches, such as initiatives promoted by small groups of professionals or at court level, as well as new policies endorsed by the Government or the Judicial Council. The data collection is based on a common research methodology that offers an effective framework for data collection and analysis which includes an in-depth literature review, a documentary analysis but also field work and interviews to judges and policy makers.

A second group of papers starts the assessment of the data collected in the national analysis. “The Comparative analysis of the methods currently used in Finland, France, Hungary, Italy and the Netherlands to evaluate and develop the quality of justice” provides a first comparison of the national case studies. It explores similarities and differences between the five member states and identifies common trends and diverging paths. "Performance management of courts and judges: organisational and professional learning vs. political accountability" assess the various methods identified during the research project against critical functional and institutional requirements: the needs of learning to support change and improvement and the need for judicial accountability at individual and institutional level. “Something good? In search of new practices to improve the quality of justice in EU” maps out how, innovative practices, can improve legality, legitimacy and economy, but also clarifies that the peculiarity of the contexts in which innovations are developed can create difficulties for their dissemination. Various Annexes provides additional documentations and executive summaries of the national reports.

Previous versions of the reports have been discussed with European Commission policy makers in a meeting held in Brussels (28th of September, 2017) and with national experts in a second meeting held in Utrecht (10th of November 2017). Both meetings had the scope to check and validate data and analyses. However, it must be emphasized that this methodological care, does not change the responsibility for the contents of this publication. The information and views set out in this paper are just those of the authors and do not necessarily reflect the official opinion of the European Union of the other institutions involved in the study.
The primal function of courts and justice system is solving disputes. In doing so, “Judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens”. Not surprisingly, with such a critical function to uphold, judiciaries grew up and operate in a highly regulated landscape. Such regulations come not just by formal rules, but also from a deep set of values - as impartiality, independence, fairness and equality - that guide judicial action. Values are so deeply ingrained in judicial behaviour and court organisations that it can be stated that— at its essential level – justice is a matter of facts, laws, and values.

Values are first of all regulative principles establishing the proper conditions for judicial action. At the same time, while performing their functions and deciding cases, courts and judges generates public values. In this perspective, the public value theory provides a relevant framework to understand, evaluate and develop the quality of justice. Its starting point is that while the mission of private companies is to provide values to shareholder, public sector organisations’ mission is to generate values that contribute to the common good, i.e. public values (see below for a definition). The judicial administration is deeply infused with values. It is not a case if academic analysis and policy-making debates on the quality of justice and judicial performance are constantly focused on values as efficiency, timeliness, predictability (of judgements), independence, integrity and fairness just to mention a few. Furthermore, missions’ statements, strategic plans and agenda of courts and judiciaries regularly mention lists of “core values”. Values permeate also international standards.

The Universal Declaration of Human Rights spells out the equality before the law, the presumption of innocence and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, while the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay (timeliness). Article 6 of the European Convention on Human Rights affirms that “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” The Magna Carta of Judges, Article 1, makes clear that the mission of judicial institutions “is to guarantee the very existence of the Rule of Law and, thus, to ensure the proper application of the law in an impartial, just, fair and efficient manner.”

The Bangalore Principles on judicial conduct identifies six core values of the judiciary: Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence. This quick exploration makes clear that the values are an essential component in judicial administration, and that in some ways, courts create public values being “guarantee the rule of law” (Magna Carta) or providing “decisions [on disputes] based on fair and public hearing” (European Convention).

A caveat is needed to help the readers get oriented in the “open sea” of judicial values. First the international standards quoted and the debate does not make a distinction between “values” and “public values”, or keep disjoined the values that are expected to guide judicial behaviours, and those that are generated by the judicial actions, i.e. the outcome of the systems in terms of values. For the purposes of this work, a clarification is needed. Therefore, when discussing “public values”,
the paper refers exclusively to the outcome of the judicial system. The term "value", without any specification, is instead used in all the other cases: when considering the value-bases that guide judicial action, or when considering values in general.

While “solving disputes” is the primal function of courts and justice systems, the process of disputes resolution generates multifold public values. Values are placed at the root of the word evaluation. Quality refers to the proprieties and features of a service or a good. Hence, judicial quality evaluation means to assess the proprieties of the service delivered by judicial institutions and the public values that are generated. A reflection on quality evaluation must therefore take into account the values that are embedded and guide the process of service delivery, as well as the public values created by the process itself. This means that the systematic reflection on the quality of justice, entails a reflection on the values that guide courts and judicial behaviours and on the public values created by system.

Access to justice is often considered in the quality of justice debate as one value to be granted by the system. This is certainly true, but access to justice is more and less than a value that must guide judiciaries. Access to justice is simply a pre-requisite of any discourse about justice, and is logically placed before any discussion the quality of justice. Indeed, without access to justice, any discourse about its quality becomes irrelevant. The equation is simple: no access, no justice. Hence, access to justice must be considered as a prerequisite of quality of justice: something that comes before justice making, and public value generation. This must be emphasised since, during the hard times of budget cuts and productive pressures reducing access through increase of court fees, or reduction of the right to appeal become an attractive policy option. So, before making any evaluation about the outcome of the system, it should be advisable to consider the degree of access to justice.

The public values theory\(^6\) offers a relevant framework to discuss and analyse the quality of justice and its improvement. The approach enables an assessment of an organisation by examining the broad range of public values generated and not just considering the economic perspective - as with the tenant of New Public Management\(^7\) - or the legal perspective as customarily done in the judiciary. Hence the Public Value Theory (hereinafter PVT) offers a comprehensive perspective that helps to understand how and to what extent the actions of judges and courts generates public values.

The philosophers of law and public administration scholars have debated at length about the meaning of public values. From a normative viewpoint, public values are the "legal norms and principles that form fundamental underlying precepts for our polity-background norms that contribute to and result from the moral development of our political community. Public values appeal to conceptions of justice and the common good, not to the desires of just one person or group"\(^8\). The Magna Carta of Judges and other international standards on judiciaries mentioned in the previous section identify which public values the judiciary should create and maintain.

At the same time, it is also relevant to look at public values with an empirical approach, investigating and reflecting on what the public considers valuable (or value for the public). It is not negligible if the parties in a case consider the judge independent and impartial (or corrupted and

---


\(^7\) See “Performance Management of courts and Judges”, section 4.

influenced), or if the trust in court is very low as well as its legitimacy. The social (or democratic) legitimacy of judicial institutions, and the community support, is as crucial as the formal normative framework that authorises the judge to adjudicate cases following legal proceedings. From an empirical angle it is then important to distinguish the individual public values, i.e. what each individual deems valuable, and societal (or aggregate) public values.⁹

Both the normative and the social perspectives about public values are essential in any discourse about the quality of justice. The legitimacy of judicial institutions stems from the legal framework and the values identified by international standards but also from the perception of citizens and users about the public values generated by the system. Looking at public values from this perspective does not mean to ask the court to follow the wishes of the users or of the citizens. It means, however, to consider that the legitimacy of judicial institution is affected by the judgement of the citizens about public values. Evaluating the quality of justice from this perspective helps judges, court leaders and judicial policy makers to tune up courts and society, it helps to address the issue of social responsiveness of courts identified by Mauro Cappelletti 40 years ago.¹⁰ Instead of asking how many cases can we decide as with classical managerial approaches, or is the decision lawful, the emphasis on public values helps policy makers to consider all the broader effects of judicial behaviour.

How courts generate public values - If courts generate public values of some sort (their identification is not needed here), it is then needed to explore how such generation occurs. One of the main problems affecting judicial systems is court delay. A complex dispute solved in ten days may appear as an excellent outcome, but what if the judge is corrupted, or not independent and impartial? What if unfair procedures or mistreating case parties are affecting the procedure? On the same token, a case resolved by an independent and impartial judge, through fair procedures, and well-treating case parties appear as a desirable outcome. However, what if decision arrives five years after the filing? Legitimacy, legality and economy (or timeliness, fairness, impartiality, proper treatment of the users, integrity - just to mention a few) are all essential components of justice delivery.

Several observations can be made moving from these examples. First of all a plurality of values (impartiality, integrity, fairness, timeliness, treatment of the parties etc.) has to guide the judicial process. Second, the outcome of the system and the public values it generates are a function of the values embedded in the process itself. If one of the values tends to get null, this affects the other public values as well and the public value generated by the system tends to zero. A decision taken by a corrupted judge or by a judge mistreating the parties in a case, or a judgment that arrived after five years are examples of this zeroing effect. Here, a third assumption emerges: all the key values guiding the judicial behaviour have to be upheld simultaneously, or the public value delivered tends to get null. As a consequence, an assessment of the quality of justice requires an inclusive conceptual framework capable of dealing with the plurality of values.

We can now distil the most important argument behind the approach and the structure of the research carried out by the Handle with Care project. The examples made above highlight that the public values delivered by judiciaries reflect the principles (and values) infused in judicial governance arrangements and in judicial proceedings. The judicial process delivers legality (equality, fairness, etc.) or economy (efficient and timely dispute resolution) or legitimacy (well treatment of the parties, trustworthy judges and courts) if, and only if, the proceedings and judicial governance arrangements embed such values and principles. Once more, a corrupted judge delivering justice in very timely manner might generate economy (efficient dispute resolution) but

neither legality nor legitimacy. Analogously, undue influences, lack of independence and impartiality will zero the quality of any decision. Hence, if the quality of justice delivered by a court (or the public values it generates) is a function of the values infused in the system and ingrained in judicial operations, the question of quality of justice is a matter of allocation of values.

Focus of the project - For these reasons the focus of the Handle with care project is on the most important institutional arrangements that, at national level, should assure the infusion of key values in judicial operations. The project looks at the judge, the court, and the justice system as a whole that are the primary receivers of any policy aimed at changing (improving) the way in which the system operates and hence the ways in which it generates public values. The five national reports focus on issues like recruitment, evaluation and career of judges, systems of performance evaluation at court level, and resource allocation and monitoring systems at national level. We think these are the primal institutional arrangements that should guarantee the infusion of legality, legitimacy and economy and hence allows courts to generate public values. At the same time, such mechanisms may be used against the values endorsed by international standards as increasing the political control over judiciaries, undermine impartiality, reduce the time needed for the proper consideration of the cases. This can be done strategically, but can be also the involuntary effects of judicial reforms. The institutional arrangements studied in this work are carriages of values, and this is why they are pivotal in any discourse about quality of justice.

At the same time, the study does not consider two fundamental issues: the access to justice and the capacity of the procedural rules, to guarantee fairness and legality. Both issues are of primary importance, but time and resources did not allow us to look also into these two aspects. They require different theoretical and methodological approaches and are subjects of systematic investigations made by comparative scholars and national specialist. At the same time, the study of the institutional arrangements and organizational mechanisms looked at by Handle with care are much less developed and addressed. The Handle with Care project does not end with this publication that arrives at the formal termination of the European Commission Grant agreement that supported the work. The book provides just a first assessment of the relevant amount of data collected and further analyses and publications will follow.

Acknowledgements - The work has been made possible by the Actions grants to support transnational projects on promoting the quality of the national justice systems - JUST/2015/JACC/AG/QUAL/8547 (Civil Justice Program of the European Commission), but also by the support of the five institutions involved. A comparative analysis of the quality of justice is a complicated endeavour. It requires access to institutions that are famous for being closed and isolated. It requires skilled researcher with the dual capacity of understanding the functioning and the oddities of their national system, and to make them understandable to experts and readers of other countries and with different backgrounds. The tight time constraints have required an intense and focused effort to many of the researchers involved in the project. For such reasons, I want to thank all those who have made this study possible. All those who provided the data used in the study, the national experts and the EC policymakers that attended at the validation meetings, and all the researchers and the staff that contributed to the project. Particular thanks to Marco Fabri, Davide Carnevali and Marco Velicogna for the steady support, and to all those that have been most engaged in the work: Petra Pekkanen (Finland), Caroline Expert-Foulquier (France), Mátýás Bence and Ágnes Kovács (Hungary), Alina Ontanu (Italy), Philip Langbroek and Rachel Dijkstra (The Netherlands).

Bologna, 20 December 2017
Francesco Contini
Project Coordinator
References


Eskridge WNJ, ‘Public Values In Statutory Interpretation’ 137 University of Pensilanya Law Review 1007

Jorgensen TB and Bozeman B, ‘Public Values: An Inventory’ 39 Administration Society 354


Moore MH, ‘Public Value Accounting: Establishing the Philosophical Basis’ 74 Public administration review 465

The common research methodology for the analysis of the quality of justice at national level

Francesco Contini: Senior Researcher, IRSIG-CNR  
Alina Ontanu: Researcher, IRSIG-CNR  
Davide Carnevali: Researcher, IRSIG-CNR

0. Background

This report provides the case study methodology for data collection data and drafting of the national reports. Following the approach described in the “Technical Annex,” the analyses will “assess the qualitative and quantitative methods used by five European Judiciaries to evaluate the quality of justice”. Particular attention will be given to the linkages between evaluation and improvement, and, when relevant, to the gender issue.

The report will look at both qualitative and quantitative evaluation mechanisms. To fulfil this goal, the national analysis will focus on three key institutional venues in which both qualitative and quantitative data are used: evaluation of judges, court evaluation and evaluation arrangements associated with the allocation of resources. The three mechanisms match the three perspectives on the quality of justice identified in the Technical Annex: professional (evaluation of judges), managerial (court evaluation) and governance (resource allocation). Also, each national analysis will explore the rise of innovative practices on quality evaluation and development. A consistent attention is paid to the consequences of the evaluation since too often complex assessment exercises are not followed by appropriate follow-ups.

The quality of justice is understood as based on three pillars. These three pillars are legality (principle of legality), democracy or legitimacy (i.e. treatment of the parties and capacity of the judges and the judiciary to represent citizens in the administration of justice) and efficiency (use of limited/scarce resources). Hence, the evaluation of the quality of justice is not meant to be limited to a consideration of qualitative indicators, but has to be approached from a broader perspective including a mix of quantitative and qualitative indicators, looking at the efficiency of justice as well as its legal quality.

Section 1 provides essential information about the institutional settings of each case study. Section 2, analyses selected “classical” quality evaluation mechanisms: individual judge, court organisation and evaluation venues connected with resource allocation. A special focus is dedicated to the evaluation of judicial writings. Such sections also deal with possible innovation in such areas. Section 3 takes a different approach, investigating innovative practices of evaluation of judicial activities such as the one developed by the Rovaniemi Court of Appeal.

At this stage, the report structure deals with the classics (section 2) in a more detailed fashion that with innovative practices (section 3). This disparity reflects a structural question that cannot be tackled at this stage. Indeed, while the classics are well known, the innovative practices are just partially identified. Their discovery and in-depth analysis is an essential component of the research endeavour. Hence, the questions that are relevant to investigate the innovative practices identified, as well as the structure of the section cannot be anticipated, and will be “context specific”. It must be emphasised that such innovative methods are extremely relevant for the purpose of the project, and the effort placed on classics and innovation should be - ideally - fifty-fifty.

1 The report is based on the inputs provided by all the researchers involved in the project.
1. **The institutional context**

This section provides a short description of the judicial organisation and the administration of justice in your country. It aims to provide background information useful to put into the right context the classical and innovative mechanisms described in the other sections. This effort is not intended as a full discussion of the institutional features of the national justice system, but of the most relevant ones for the present discourse.

1.1. **Judicial structure overview**
- Types and number of courts, and how they interact.
- Types of jurisdictions (ordinary, administrative as separate or joined jurisdictions, …)
- Number of judges, and clerks, male and female if available
- Annual budget of the judicial system

1.2. **Key functions in the administration of justice**
- Which are the main functions of the Ministry of Justice?
- Which are the main functions of the Judicial Council?
- Which are the main functions of the National Bar Association (ex. Bar exams, disciplinary boards, etc.)
- Are there other institutions somehow related to the administration of justice (Ombudsman, Court of Accounts, Clerks management body other)? Which are their functions?

1.3. **Current issues in the administration of justice**

This sub-section aims at identifying some of the elements of the social and political context that may influence the functioning of the classics and trigger innovations at court or national level. Existing problems, emerging issues, smart trends in place should be addressed. Typical examples can be the lack of resources, delays, and critiques on decision-making regarding the evaluation of judges.

2. **Classical judicial evaluation arrangements**

2.1. **Introduction**

This first subsection provides the inventory of the traditional judicial evaluation systems in place in each judiciary as indicated at p. 9 of the Technical Annex. It will be a short section providing the main features and the goal of the evaluation for each evaluation venue. Indeed, many of such evaluation venues will be dealt with in depth in the following sections while discussing individual evaluation, court evaluation and resources allocation.

The explanation of why we have selected such evaluation arrangements for the in-depth study will be explained in the introductory sections of the methodological report.

- Appeal: brief description specifying if there are limits for the appeal and recourse to the court of cassation
- Judicial Inspectorate: brief description of the functions
- Complaint mechanisms: brief description of how it works
- Statistical monitoring of court activities (discussed in another section)
- Court users survey (discussed in another section)
- Judicial writings: (discussed in another section)
- Evaluation of judges: (discussed in another section)
- Evaluation of courts: (discussed in another section)
- Evaluation associated with resource allocation: (discussed in another section)
2.2. The evaluation of judges
This is the first classic venue of judicial evaluation we want to study in depth. As agreed in the meeting it also includes the initial selection process. We will consider at a later stage if recruitment is something necessary, or if we can focus our efforts in other areas. The main question is if and how the results of the recruitment affect the quality of justice. Hypothesis: the role of judges is changing and changed. The selection based on traditional formalistic mechanism may lead to judges focused on what they know (application of the law to concrete cases), but interpersonal capacity is getting more and more relevant in many areas of judicial activities. If this is the case, it cannot be expected they will automatically have good interpersonal skills in interacting with parties and other users of judicial services. When such skills are not acquired, this may result in an inadequate treatment of the parties, and scant procedural justice. At the same time, the judge is called not just to adjudicate, but also to manage cases. These managerial or interpersonal skills, if not evaluated and present at the recruitment stage, need specific training, or their lack may result in poor case handling.

2.2.1. Recruitment and initial evaluation

Selection bodies
- Who makes the evaluation? Just other judges/magistrates or the evaluation board includes other experts (law professors, lawyers, psychologists etc.)?

Selection process
- Which type of candidates participates in the selection process? (i.e. young professional inexperienced law graduates, mid-career lawyers, persons previously working in the judiciary, etc.)
- Are there various types of selection procedures based on the background of the candidate (i.e. young law graduate or experienced legal professional)?
- Are there special determined groups (i.e. minorities) that have particular facilities in the selection process?
- How is organised the selection process (i.e. written and oral examination, practical tests, psychological tests, etc.)
- How is legal competence evaluated?
- How is the treatment of the parties evaluated?
- How is the capacity to work efficiently evaluated?
- How is the capacity to work in team evaluated (i.e. capacity to work in complex organisations and not as isolated judicial decision makers as in the classical judicial tradition)?

Selected candidates
- Which kinds of persons are selected? (i.e. young professional inexperienced law graduates, mid-career lawyers, etc.).
- Is the selection system capable of providing a good gender balance?
- Is there any mechanism in place to promote gender balance?
- Is there any issue with the capacity of the selection process to represent minorities (for instance German groups in north east Italy, Sami in Finland)?
Training and internship of apprentice judges

- Is there a training process? Is the training process customised by the profile of the selected candidate (i.e. inexperienced law graduate, experienced professional)
- How is the training organised?
- Is it used for evaluating the “apprentice” judges?
- Are there specific activities undertaken in the training process to improve the quality of justice?
- How the professional profile of selected persons affects the quality of justice?

2.2.2. Continuous evaluation

In continental and civil law judiciaries once selected, judges are expected to undergo through different evaluation steps during their career. Unless it is particularly relevant, this section should not deal with the career of judges, but with how evaluation is carried out (methods, data), and with the results of the evaluation process. In this case, the central question is how the continuous evaluation process affects the quality of justice. This may occur in various ways, such as emphasising values like productivity, or consistency of lower court judges with the decision taken by the higher court.

Evaluation bodies

- Who makes the evaluation? Just other judges/magistrates or the evaluation board includes other experts (i.e. law professors, lawyers, psychologists etc.)
- Is the President of the Court involved in the evaluation of the judges working in the office?

Evaluation process

- How is the evaluation organised? Are there objective and/or subjective criteria?
- How is legal competence evaluated?
- How is the treatment to the parties evaluated?
- How is the capacity to work efficiently evaluated?
- How is the capacity to teamwork evaluated?
- Is the judge provided with the results of the evaluation carried out? Is the evaluation discussed with the evaluated professional?

2.2.3. Focus on the evaluation of judgements and legal writings

- Is there a record of each judge on the proportion of her changed or quashed judgements by appellate courts?
- Are the successful compensation claims against judges (based on judicial miscarriages) recorded?
- Do higher courts (including constitutional court) reflect to the reasoning and writing style of lower courts in their appeal decision?
- Is there a special training for prospective and newly appointed judges addressed to develop their skills in judicial writing?
- Does the continuous evaluation of judges reflect on the reasoning and drafting style of the examined judge?
- Are there writing manuals or style-guidelines that define the uniform citing, abbreviations, etc. in place at each levels of the court system?
- How detailed are these manuals? Do they give recommendations aiming at simplifying juridical style, in order to be understandable for laymen?
- If manuals and specific style-guidelines are in place, are they used as benchmark to evaluate the judicial writings?
2.2.4. Consequences of the judicial evaluation on the quality of justice

The evaluation may have different consequences on career, learning, on promotion of specific types of judges. What follows is a first list of areas that may be affected by evaluation.

- Are the results of the evaluation used for further purposes (i.e. career development, training)?
- To what extent is the evaluation connected to judicial career? (We don’t need here a description of the various steps in the career of judges, but just explain if and how the continuous evaluation is related to judicial career).
- To what extent such evaluative mechanisms are addressed to facilitate improvements or learning?
- In which direction are they steering the individual judicial behaviour?
- Which kind of values are they promoting (efficiency, legal conformity, treatment of the parties)?

2.2.5. Consequences of judicial evaluation on the appointment to managerial positions

- What are the criteria considered in appointing judges to managerial positions? Are there standard criteria set for this purpose (transparent/objective/subjective)?
- Is continuous evaluation an element that influences the appointment of judges to managerial positions?
- Is there selection providing a balanced gender appointment to managerial positions? Can you provide quantitative data describing this issue?
- Is there any measure in place to promote gender equality in this area?

2.3. The evaluation of courts activities

This section aims to provide a focused analysis on how court performance and court quality are evaluated. It describes how court performance is measured, which data are used, and if and how actual performance are connected with some consequences such as appointment or reappointment court president, resources allocation of any initiative to improve the current situation. We can assume that quality evaluation can be done following a national policy, or that it is more a matter of local initiatives.

2.3.1. Actors involved

- Which actors are involved in court quality evaluation?
- Are lawyers - or court users in general - involved in quality evaluation? If yes, in which way? If no, is their involvement a debated issue?
- Are the Ministry of Justice and/or the judicial council involved in the evaluation of quality at court level?

2.3.2. Evaluation process

- Is Court evaluation part of a national policy or is it more a matter of local initiatives?
- Can you describe the functioning of the system?
- Which kind of data are collected and used?
- Are such data made available to the general public?
- Are there national quality standards? If yes, which kinds of standard are in place?
- Are there goals to be reached (for instance productivity standard, or a level of satisfaction of court users)? If yes, who establish the goals and are they periodically adjusted/reviewed?
- Is the system evaluating “organisational quality” (i.e. specific features of the courts such as minimum number of training days etc.)?
• Is the system evaluating the outcomes of the courts (i.e. number of decision, level of satisfaction of court users etc.)?
• Which indicators are used for evaluating court performance? Are they well integrated (consistent) with the indicators used do evaluate the performances of individual judges?
• If an official court performance mechanism is not in place, which data are commonly used to evaluate the quality of court activities?

2.3.4. Consequences of the evaluation of quality of justice at court level
Court performances should play a role in resource allocation. For instance, if performances are weak due to inadequate management, additional resources can result in a waste of money. On the contrary, an efficient use of resources should be rewarded. However, it can also be argued that a poor performing court should not suffer for a reduced amount of resources. This because the service delivered to the users will be further impoverished. Preferably, interventions should be focused on other areas, such as court management, but this may pose at risk judicial independence. Therefore in the justice sector, the interplay between resource allocation and court performance is complex. However, some connection between the resources allocated and the evaluation of court performance and quality of justice delivered by the court is a reasonable pre-condition for resource allocation.

• Are the results of the evaluation of the quality of justice at court level used for further purposes (i.e. improvement, resource allocation, court president and court manager appointments)?
• Is the system linked to improvements? If yes, how does it facilitate learning and improvements?
• Are court performance linked to assignment of resources? If yes, how are they included in the resource allocation process?
• Are there automatic consequences such as increase or decrease of court financing based on the results reached by the court? Is this mediated by some process or negotiation?
• Are there mechanisms to improve the quality of justice such as salary based performance or output based resource allocation?

2.4. Resources allocation to courts
Resources and quality of justice are deeply entangled. It is common sense that, limitation of resources can negatively affect the quality of justice, regardless of the different possible meanings of quality of justice. This is particularly clear in years of budget cuts. Also, the last 20 years have witnessed profound changes in the way in which resources are allocated. New managerial practices have changed resource allocation mechanisms in many countries. Such mechanisms are largely addressed to improve the efficiency of the system, and the timeliness of judicial process. The same mechanism, however, can compress key judicial values, such as legal quality, treatment of the parties, and access to justice. Hence, resource allocation mechanisms have numerous consequences on the quality of justice. For this reason, an investigation on quality of justice must encompass the mechanisms of resource allocation. For this purpose we look at the full spectrum of resources needed and employed by courts: judicial officers and clerks, finances, and any other type of resource used by courts in their institutional functions. This subsection is an introduction of the resource allocation mechanisms. It describes the roles of the actors involved, and – if in place – the basic legislative provision aimed at protecting the judicial autonomy in the interface with the other two branches of the State power.

2.4.1. Actors involved
• Which is the role of the parliament in the allocation of resources to the judiciary? Is there any safeguard in place to avoid the violation of key judicial values? (i.e. automatic criteria to
establish the salary of judges, a standard percentage of the public expenditure to be dedicated to the justice system?)

- Which is the role of the Ministry of Justice?
- Which is the role of the Judicial Council?
- Are there other bodies involved in the allocation of resources to the judiciary?

2.4.2. Resource allocation process

This sub-section goes more in depths and describes how the resource process allocation works in each national case study. If there are different channels of resource allocation, please provide a description of each of them. This can be the case of the assignment of judges and clerks, and allocation of financial resources. Since ICT systems are now largely national platforms (i.e. systems centralized, run at central level), the issue of ICT resources allocation may not be particularly relevant for the project.

- How does the Parliament allocate resources to the Ministry?
- Are there standard criteria used to establish the budget at this level or it is mainly a political process?
- If it is a political process, the Ministry negotiates the budget with the other members of the Government and/or the Parliament? How does this negotiation occur? Which kinds of arguments are used?
- How does the Ministry allocate the resources to the Council?
- How does the Ministry allocate the resources to the Courts?
- Based on what criteria are the resources allocated to the courts?
- Which kinds of data and information are used in the process?
- In which way statistical data are used in the process? Are such data reliable?
- Are the productivity or efficiency or similar criteria used in resource allocation?
- Are criteria other than efficiency/productivity used? For example, are other quality dimensions considered in the allocation process? (It can be the case of providing additional resources – prize – given to a court that has been successful in delivering high quality justice or, on the contrary, extra resources given to a court due to the fact that it is not delivering a good quality of justice).
- To what extent the resource allocation process is transparent? Are the results of the allocation and the criteria used for this allocation published?
- Is the process based on objective criteria?
- Is there room for negotiations between the Ministry (the Council) and the Court? Can you describe how and why negotiation takes place?

2.4.3. Consequences of resource allocation on quality of justice

The mechanism of resource allocation, and the resources actually allocated to each court may trigger various consequences on the quality of justice. This sub-section explores such consequences.

- The resource allocation mechanisms provide balanced resource to each office or there is an uneven distribution among courts?
- If the distribution is not balanced, is there any explanation provided by the funding bodies?
- Is resource allocation providing enough resources to handle all the caseload?
- Is resource allocation allowing some balancing between the key values to be respected in justice administration or is it pushing just towards a greater efficiency?
- Is resource allocation putting at risk some key judicial values like judicial independence, fair trial, or equal treatment? This can happen through various channels: a Court president that has to lobby with the Ministry to get more resources may result in a reduced independence. Resources assigned considering just productivity (outcome) may endanger treatment of the
Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice

parties, or push judges to squeeze the time to dedicate to the study of the case, or to establish invisible priorities in case handling.

3. Innovative practices in quality evaluation and quality development
In the last 15 years, some innovative practices emerged in the field of evaluation and promotion of the quality of justice. Some of these instances appeared spontaneously at local level, others have been promoted by central administrations. This section focuses on such innovative practices. Each national team is invited to explore the innovative practices that emerged at central or local level, and then to select some of them. It is hard to establish the number of innovative practices to be dealt with in each national analysis since concrete situations may differ. Hence, each team once it surveyed the field and considered the resources available, can properly take this decision.
In this section we want to explore also innovative practices based on use of quantitative data such as the use of big data or semantic analysis with the purpose of assessing the quality of justice. (This is requested at p. 9 Technical Annex). In this area, we expect to find more developments in the experimental/research fields than in practices developed and adopted by courts.

For each innovative practice, the ambition is to describe its history, how it works, which kind of results have been reached, why it is innovative, if it is supported, ignored or somehow impeded by Ministry and Judicial Council. Since there may be relevant differences between the innovative practices analysed in each national report, the adoption of a standard structure with heading and sub-heading is not appropriate. The following questions, however, are pertinent in each case.

- When, how and why the innovative practice have been established?
- Is it a local practice (bottom-up) or a practice introduced by the Central authorities (top-down)?
- In which ways the innovative practice evaluates the quality of justice and/or supports its improvement?
- Which actors are involved? Which is their role?
- Which kind of data and information are used? Are quantitative/qualitative information used?
- Which kinds of improvements have been achieved? How are they evaluated?
- For which reason can it be considered to be an innovative practice?
- If it is a local (bottom-up) innovative practice: how did central authorities react to its rise? Are central authorities supporting its development/deployment?
- If it is a central (top-down) innovative practice: how did Courts react to its deployment?
The evaluation and development of the quality of justice in Finland

Petra Pekkanen: Associate Professor, Lappeenranta University of Technology
Tiina Puolakka: Researcher, Lappeenranta University of Technology
Timo Pirttilä: Professor, Lappeenranta University of Technology

1. The institutional context
This section provides a description and overview of the judicial structure, organisation and the judicial administration in Finland.

1.1. Judicial structure overview
Finland is one of the few countries in Europe where the central administration of the courts is a task for the Ministry of Justice. In general, the Ministry of Justice maintains the legal order and legal safeguards and oversees the structures of democracy and the fundamental rights of citizens. The Ministry is responsible for the drafting of legislation, the operation of the judicial system and the enforcement of sentences.¹

The independence of the courts is guaranteed by the Constitution of Finland. The constitutionality of laws is examined in advance. This takes place in the Parliament (Constitutional law committee). The goal of this parliamentary control is to prevent in advance that laws that are in conflict with the constitution are enacted in the ordinary legislative procedure. There is no constitutional court, but the courts and other authorities are under an obligation to interpret legislation in such a way as to adhere to the constitution.²

Finnish jurisdiction consists of general courts for civil and criminal matters, administrative courts, and special courts. The types and number of courts are presented in table 1.

Table 1: Types and number of courts in Finland

<table>
<thead>
<tr>
<th>General courts</th>
<th>Administrative courts</th>
<th>Special courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>27 District Courts</td>
<td>6 Administrative Courts</td>
<td>The High Court of Impeachment</td>
</tr>
<tr>
<td>5 Courts of Appeals</td>
<td>1 Supreme Administrative</td>
<td>The Market Court</td>
</tr>
<tr>
<td></td>
<td>Court</td>
<td></td>
</tr>
<tr>
<td>1 Supreme Court</td>
<td></td>
<td>The Labour Court</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The Insurance Court</td>
</tr>
<tr>
<td></td>
<td>33</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td></td>
</tr>
</tbody>
</table>

The prosecution service, the Legal aid service, the Enforcement of judgements and Systems of sanctions all operate separately from the courts under the mandate and administration of the Ministry of Justice.

F. Contini (ed.) Handle with Care: assessing and designing methods for evaluation and development of the quality of justice. IRSIG-CNR. Bologna
Available at www.lut.fi/hwc
General courts for civil and criminal matters

Finland is divided into 27 judicial districts, each with a District Court. The districts vary greatly in size, both in terms of population and of area. A District Court is made up of a Chief Judge and a number of other professional Judges.

In civil cases, the proceedings start with a pre-trial phase. Most disputes are resolved already at this phase. If not, the case will be continued under the direction of the Judge in oral preparation. At this stage, the parties must notify all their claims and their arguments, as well as the evidence they intend to substantiate. Unless there is an amicable settlement during the pre-trial phase and preparations, a main hearing will be held in which witnesses and testimonies will be heard. One single Judge presides over the pre-trial procedures and the decision is given either by composition of one or three Judges depending on the case requirements.3

In criminal cases, the court is composed of one presiding professional Judge and two lay members (volunteers elected by the municipal councils). One Judge alone tries minor cases. Some criminal cases can also be dealt with in the composition of three Judges. A simple criminal case can be solved also in a purely written procedure. The prerequisite is that the defendant admits the crime and agrees that the case can be solved in the written procedure. A potential victim of the crime also needs to give permission to written procedure.4

The greatest volume of cases dealt by the District Courts concern petitionary matters. These include e.g. divorce, bankruptcies and the adjustment of the debts of private individuals. Such matters are normally decided in chambers without a hearing being held.

The second instance in an ordinary case is the Court of Appeal. In the Courts of Appeal, three Judges hear the cases. After preliminary preparation, the case can be resolved either after hearing or in written procedure. The third and final instance is the Supreme Court. Its most important task is to establish precedents. The Supreme Court hears both civil and criminal appeals, but cases are admitted only under certain conditions. The case is decided in a composition of five members. If the matter is important in principle and has far-reaching consequences, it is decided in a plenary session or in a reinforced composition of eleven members. At the moment, there are altogether 18 judge members in the Supreme Court5. Usually, the cases are decided based on written materials; the Supreme Court may, however, also conduct oral hearings and inspections.6

Administrative jurisdiction

The Administrative Courts hear appeals of private individuals and corporate bodies against the acts of the authorities. An appeal is usually first heard by a regional Administrative Court. The Administrative Courts hear, for example, tax, municipal, construction, social welfare, health care, immigration, as well as other administrative cases. In certain of these, the appeal must be preceded by a complaint to a separate lower appellate body. The procedure is mainly written. The Administrative Courts also conduct oral hearings. They have to be held whenever it is necessary for the resolution of the case or when a party so requests. The Supreme Administrative Court finally decides the legality of the acts of the authorities. The bulk of its caseload consists of appeals against the decisions of the Administrative Courts. Five Judges hear the cases. The Supreme Administrative

---

Court may conduct also inspections or oral hearings. In addition to its purely judicial tasks, the Supreme Administrative Court supervises, on a general level, the lower judicial authorities in the field of administrative law.\textsuperscript{7}

**Special courts**

The High Court of Impeachment (which has been convened only a few times) hears criminal cases relating to offences in office allegedly committed by a member of the Council of State, the Chancellor of Justice, the Parliamentary Ombudsman or a member of either the Supreme Court or the Supreme Administrative Court. The Market Court hears disputes regarding public acquisition, competition between firms and improper marketing. Depending on the nature of the case, the rulings of the Market Court are open to appeal before the Supreme Administrative Court or the Supreme Court. The Labour Court hears disputes relating to collective agreements on employment relationships and on civil service relationships. Its decisions are not subject to appeal. Disputes relating to individual employment relationships are heard by the general courts and individual civil service relationships by the Administrative Courts. The Insurance Court considers certain cases falling within the field of social insurance, e.g. occupational accident insurance and pensions. Such cases are usually first heard by an appellate board, whose decisions are then subject to appeal to the Insurance Court.\textsuperscript{8}

The key figures related to the annual budgets of the whole Finnish justice system and the courts are presented in table 2. Table 3 presents the number and gender of Professional Judges and Presidents in Finnish courts.

Table 2: Annual budget of the Finnish justice system and the courts\textsuperscript{9}

<table>
<thead>
<tr>
<th>Annual public budget allocated to the whole Justice system</th>
<th>911 956 000 euros (1,7% of total public expenditures)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual approved budget of all courts</td>
<td>277 295 000 euros</td>
</tr>
<tr>
<td>Annual implemented budget of all courts</td>
<td>276 441 062 euros</td>
</tr>
</tbody>
</table>

Table 3: Number and gender of court Judges and Presidents\textsuperscript{10}

<table>
<thead>
<tr>
<th></th>
<th>Number</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court Presidents</td>
<td>44</td>
<td>33 (75%)</td>
<td>11 (25%)</td>
</tr>
<tr>
<td>1\textsuperscript{st} Instance Presidents</td>
<td>37</td>
<td>28</td>
<td>9</td>
</tr>
<tr>
<td>2\textsuperscript{nd} Instance Presidents</td>
<td>5</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Supreme Presidents</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Professional Judges</td>
<td>988</td>
<td>473 (48%)</td>
<td>515 (52%)</td>
</tr>
<tr>
<td>1\textsuperscript{st} Instance Professional Judges</td>
<td>758</td>
<td>356</td>
<td>402</td>
</tr>
<tr>
<td>2\textsuperscript{nd} Instance Professional Judges</td>
<td>186</td>
<td>89</td>
<td>97</td>
</tr>
<tr>
<td>Supreme Professional Judges</td>
<td>44</td>
<td>28</td>
<td>16</td>
</tr>
</tbody>
</table>


1.2. Key functions in the administration of justice

The mandate of the Ministry of Justice covers: Courts, Criminal sanctions agency, Office of the Prosecutor general and prosecutor's offices, National administrative office for enforcement and Enforcement offices, Legal aid offices, European institute for crime prevention and control affiliated with the United Nations, Training institute for prison and probation services, Office of the Bankruptcy ombudsman, Legal register centre, Office of the Ombudsman for children, Office of the Non-discrimination and Equality ombudsman, Office of the Data protection ombudsman and Sámi Parliament. As an addition, several boards and committees operate under the mandate of the Ministry of Justice. The Ministry of the Interior is responsible for the police.

The Ministry of Justice of Finland has a Law drafting department, a Department of judicial administration and a Criminal policy department. There are also different units, which do not form a separate department. The organization (departments and units) of the Ministry of Justice is presented in Figure 1.

Figure 1: Organization of the Finnish Ministry of Justice.

The task of the Law drafting department is the legislative drafting. One important duty is to assist other Ministries in preparing draft statutes. There are separate units for advising on EU law and legislative editing. A considerable amount of the department's work concerns the legislative cooperation within the EU as well as other international collaboration in addition to different national projects.

The Department of judicial administration is responsible for the preparation and implementation of issues relating to all judicial administration. The Department of judicial administration is

---

responsible for the preconditions for the operation of the courts, the enforcement units and the legal aid offices. Important responsibilities include tasks relating to employer and personnel management and personnel training, premises, leases and performance management within the sector. The Ministry of Justice manages the general organisation and development of judicial administration in Finland through legislation and different kinds of administrative measures.15

Department of criminal policy is responsible for the strategic planning and direction of criminal policy and the monitoring and assessment of the functionality of the criminal law system. Furthermore, the department performs tasks in relation to crime prevention and international crime prevention cooperation. The duties also include drawing up strategies for the enforcement of penalties, strategic guidance of the Criminal sanctions agency, and preparing legislation on the enforcement of penalties. The central administration unit of the Criminal sanctions agency is responsible for directing the practical operations of the agency. The tasks of the department also include resource management and other issues regarding the Prosecution service.16

The Unit for democracy, language affairs and fundamental rights promotes and monitors the realisation of the right to vote and the general prerequisites for citizen participation. The unit is responsible for arranging national elections, municipal elections and referendums. The unit also takes care of the duties assigned to the Ministry of Justice in the Act on Political Parties. The tasks of the unit include promoting and monitoring the realisation of the linguistic rights and taking care of the duties assigned in the Language Act. The Media and communications unit is responsible for the Ministry's external and internal communication. The Administrative unit is responsible for general administration. The Economy unit prepares the budget for the administrative sector and monitors its implementation. The Information management unit is responsible for the general guidelines for the information management of the administrative sector.17

The Finnish Bar Association is an organization whose activities the Attorneys-at-Law Act of 1958 regulates18. The structure of the Bar is regulated in the By-laws of the Bar Association, which the Ministry of Justice has confirmed by a separate decision. The association has about 2,000 members. Only members of the Bar Association may use the professional title “attorney-at-law”. The Bar Association is actively involved in public discussion on judicial issues by giving expert statements (for example concerning Ministry of Justice, European Union and Parliament of Finland). The Bar Association (together with universities and other educators) provides its members and their employee’s continuing education. According to the rules of proper professional conduct, every member of the Bar must spend at least 18 hours per year in developing their professional skills. The Disciplinary board oversees the fulfilling of this education requirement19. The Bar Association has a Code of Conduct20 (professional and ethical standards of legal profession), which all members must follow.21

There are also several permanent and temporary boards and committees operating under the Ministry of Justice, for example Advisory Board for ethnic relations, Advisory Board on personal

---

15 See more: Ministry of Justice of Finland. The organization. [http://oikeusministerio.fi/en/index/theministry/organization.html](http://oikeusministerio.fi/en/index/theministry/organization.html)
injury matters, Advisory Board on civil society policy, Advisory Board on language affairs, Advisory Board for bankruptcy ombudsman, Advisory Board for ombudsman for children, Advisory Board for non-discrimination ombudsman, Consumer disputes board, Names board, Data protection board and Judicial appointments board. The main function and task of the boards is to promote and give recommendations on issues related to their area of expertise and assists offices and officials on their area of expertise.  

1.3. Current issues in the administration of justice

In 2010, there were large reform, which halved the number of District Courts in Finland (from 54 to current 27). In the year 2018, the number of District Courts is planned to be furthermore dropped to 20. The aim of the reform is to achieve sufficient size of the courts and sufficient number and variety of cases in each court in order to maintain the availability and quality of services in a changing environment. The aim is to form administratively larger entities in order to distribute and organize the work and resources more effectively, enable better use of information systems (e.g. remote access and audio recording), utilize and improve personnel skills and competences effectively and harmonize working methods and practices between courts. The aim is also to centralize the handling of very basic and uncontested claims to fewer courts. This will have impacts on the resource and personnel levels between courts. The reform is also expected to bring needed savings under strict financial pressures. The population is increasingly concentrating to the southern parts of Finland. The reform will, however, aim to maintain sufficient geographical court network and recognition of minority language. The decreasing need for personal interaction and improvement of electronic communications have also enabled the reform.

The establishment of a Judicial Administration Council separate from the Ministry of Justice has been in political debate for few decades in Finland. The decision concerning whether or not the Judicial administrative council will be established will be made in near future. At the moment Finland is the only Nordic country, which does not have separate central administration authority for courts. There is a clear consensus in Finland that the judicial system operates effectively and that the courts are independent. However, the international development would require that the independence of the judiciary should also be clearly seen with regard to the structures of society, political field and the judiciary field. The main aim is to shift the operational administrative duties to the Judicial Administration Council and thus enable Ministries to concentrate on strategic management, law drafting and preparation of the political decision-making, as well as international cooperation. The council would be independent, operating under the Ministry of Justice mandate. The possible establishment of the council will likely have impacts on quality issues, e.g. on the management and control practices (management by results system), on training procedures, on resource allocation procedures and on the coordination and improvement on the whole judicial chain. Some experts have especially highlighted the potential to make administration less fragmented and closer to the court, as well as to improve the co-operation between the different operators in the judicial chain.

---

http://oikeusministerio.fi/en/index/theministry/neuvottelu-jalautakumat.html
26 Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
27 Interview: Antti Savela, Oulu District Court, 10.5.2017
2. Classical judicial evaluation arrangements
This section describes the classical judicial evaluation arrangement in Finland.

2.1. Introduction
All decisions by the District Courts may be appealed to the Court of Appeal. The parties have a right to refer both questions of fact and questions of law. The Court of Appeal first carries out a screening procedure, where it is determined if the matter is to be taken up for further consideration. If the Court of Appeal considers that the decision has been correct already in the District Court, the appeal will not be entertained. The Courts of Appeal have to arrange an oral hearing if the evidence of the case has to be evaluated again or when a party so requests unless the appeal is clearly without merit. The appeal procedure is similar in both civil and criminal cases. The Supreme Court hears both civil and criminal appeals, but cases are admitted only under certain conditions.28

The Supreme Court may grant a leave to appeal in cases in which a precedent is necessary for the correct application of the law, a serious error has been committed in the proceedings before a lower court or another special reason exists in law. Normally two members decide whether leave should be granted. In the Supreme Administrative Court, usually no leave to appeal is required. The main exception to this rule is an appeal against a decision in a tax case, for which leave is required. The Supreme Administrative Court itself grants the leave.29

There are two officials exercising supervisory powers in relation to all public officials (including Judges): Chancellor of justice and Parliamentary ombudsman. They act on complaints received from members of the public and can express an opinion on proper conduct, issue a warning, or bring criminal charges for breach of professional duties. The Chancellor of justice is an official appointed by the Government, and the Parliamentary ombudsman is an official elected by the Parliament. The overseers of legality have no jurisdiction to alter the decisions of other authorities, nor to award damages based on complaints. Their rulings are not subject to appeal.30

2.2. Recruitment and initial evaluation of Judges
Provisions of judicial selection can be found in the Constitution of Finland (731/1999) and in the Act of Judicial Appointments (205/2000)31. Finnish Judges are appointed by the President of the Republic on recommendation from the Government, as advised by the judicial appointments board.

The Board is expected to promote the recruitment of Judges from all brands of legal life, including Court Referendaries, the civil service, Academia and other legal professions32. The courts of first instance also have some locally elected lay Judges.

2.2.1. Selection bodies
An independent Judicial Appointments Board makes preparations and drafts a reasoned proposal in co-operation with the court needing to fill in a permanent judge or manager position.

---

31 Section 102 of the Constitution of Finland and Section 2 of the Act on Judicial Appointments
The board has no jurisdiction regarding the appointment of the President or a Judge to the Supreme Court or Supreme Administrative Court. In these positions, the court in question makes a reasoned proposal directly to the Government and President of the Republic. The board can give an opinion also in these matters if requested from the court.33

The appointment of Judges for a fixed period is a task for the Supreme Courts. The Supreme Court or the Supreme Administrative Court appoint Judges to temporary positions for periods longer than a year. Shorter appointments are a matter for the Chief Judge of the court in question.

The term of the Judicial Appointments Board is five years at a time. The Judicial Appointments Board is composed of members of the judiciary and three members from outside the judiciary. Each member have a personal substitute. The Judicial appointments board is chaired by the member nominated by the Supreme Court (the member nominated by the Supreme Administrative Court is the vice-chair). Other members are one President of a Court of Appeal, one Chief Judge of an Administrative Court, one Chief Judge of a District Court, one Senior Justice or Justice of a Court of Appeal, one District Judge, one Administrative Court Judge, another Administrative Court Judge or a Judge from one of the Special courts. The members outside the judiciary are: one practising lawyer appointed by the Bar Association, one prosecutor appointed by the Prosecutor general, and one academic appointed by the Ministry of Justice.34

2.2.2. Selection process
In year 2015 the board made 151 permanent Judge and manager appointments35. For these appointments, there were altogether 1006 applicants. From the applicants about 60 % were female and 40% male and about 85 % of the applicants had already a position in the judiciary. The typical applicant is a person in a fixed-period Judge position. 15% of the applicants were from another branch of legal career. Typical examples of outside applicants are prosecutors and legal counsellors.36

The main steps in the selection process are37:

1. The applicants send a written application (including all personnel record and certificates of education and previous work experience).
2. Before making its appointment proposal, the board requests a detailed assessment concerning the applicants and an opinion of the nominee from the court that has opened the position. In District Court Judge positions a statement and assessment from both the District Court in question and from the Appeal Court is required38. The court that has announced the open position must give a detailed assessment and acquire sufficient information as the basis of its assessment concerning all applicants who seem eligible in regard of the qualifications they have presented. If the applicant is not sufficiently well-known in the court issuing the opinion, a written statement can be requested from the applicant's employer such as another court or another agency. If possible, information should also be obtained on eligible

---

33 Section 7 of the Act on Judicial Appointments
35 In the year 2015, the board needed to vote in 4 proposals, all other 147 nomination proposals were unanimous decisions. In the same year, the board proposal was the same as the opinion of the court in question in 130 nominations and differed from the court opinion in 21 proposals. The President of the Republic made all appointments as suggested by the board.
38 Interview: Antti Savela, Oulu District Court, 10.5.2017
applicants working outside the court system. The court may also obtain other opinions and statements. Usually the court also interview the applicants as the basis for the assessment. 39

3. After the courts have submitted their assessment and opinion to the board, the applicants are reserved the opportunity to comment on the statements and information acquired for the preparation of the appointment.

4. The board selects one person from the applicants to be proposed for appointment.

As an addition, in manager positions suitability testing is used. An external, specialized firm conducts the suitability testing. The test is a one-day psychological test focusing on managerial and leadership abilities. The test-day includes dozens of both oral and written of tasks, which are evaluated by experts. 40 41

The assessments required from the court concerning the applicants' qualification and familiarity with the position need to be detailed. The applicants' qualifications should be assessed versatile by looking at the knowledge and skills they have acquired through their education and earlier work experience. The focus is on the applicants' ability to perform the duties required in the position. Familiarity includes issues such as substantive and process knowledge, command of legal information, problem analysis and solving skills, ability to familiarise oneself with the facts and legal material of a case, process management skills, reasoning skills and language skills. 42 43 44 45

A person appointed for a position in the judiciary must also have the necessary personal characteristics. These include talent, ability to work, initiative, efficiency and leadership skills. These also include professional ethics: the ability to make independent decisions, independence, motivation for personal development, teamwork skills and an attitude towards work and changes. These skills can be acquired in other legal professions, aside from working for the court system. Such professions include attorney, prosecutor, university researcher, lecturer, and law drafting officials, and legal professions in various administrative sectors. 46 47 48

2.2.3. Selected candidates
Those holding positions in the judiciary are required to be Finnish citizens and have a Master of Laws degree in Finland (or approved and supplemented in Finland). Goal of the Act on Judicial Appointments (205/2000) is to ensure that persons with versatile experience of various branches of law fill positions in the judiciary. For this reason, the person appointed in a position in the judiciary need to have prior experience of court and other legal work and the functioning of society on a more general level. Thus, the appointed Judges are usually persons with long judicial work experience (e.g. as a Referendary 49), as well as work experience outside the Judiciary. 50

39 Interview: Antti Savela, Oulu District Court, 10.5.2017
40 Interview: Antti Savela, Oulu District Court, 10.5.2017
41 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
44 Interview: Antti Savela, Oulu District Court, 10.5.2017
45 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
47 Interview: Antti Savela, Oulu District Court, 10.5.2017
48 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
49 Also called as an Assistant Judge or a Senior Assistant Judge. Referendaries are responsible for the practical preparation work, case memorandums and proposed settlements under the supervision of responsible Judge. In certain written procedure cases, an experienced Referendary may serve as one of the deciding composition. Referendary need to have finished Master of Law degree and the practical court training.
50 The persons appointed as Presidents or Chief Judges must also have proven leadership skills and experience.
Usually, Judges appointed for the first time are persons around the age of forty. The most typical career path for a Finnish Judge proceeds as follows: University degree in law - Judicial traineeship at a District Court - Work as a referendary at a Court of Appeal or Administrative Court - Temporary service as a District Judge, Justice of a Court of Appeal or Administrative Judge - Appointment to a tenured judgeship. However, also other type of career paths exist, for example concerning Judges appointed from other branches of legal professions. In year 2015, 93% of appointed Judges had a position in the Judiciary at the point of nomination. In recent years, the proportion of outside applicants in the appointments have been between 4-9%, which is slightly less than proportion among the applicants.

The gender balance between selected appointees in 2015 was about 60 % female and 40 % male, which is the same distribution as among the applicants. There have not been any need for separate mechanisms to promote gender balance in Judge appointments. The appointment is always done based on qualification and versatile assessment of skills, knowledge, experience and personal characteristics. In manager positions, the majority is male, but this is assessed to balance as the proportion of female Judges in further career positions is increasing.

As Finland has two official languages, the Constitution guarantees the right for every person to use their own language (either Finnish or Swedish) in courts and other public authorities. The appointed Judge must have an excellent spoken and written command of the language of the majority of inhabitants in the court's judicial district. In unilingual courts, they must also have a satisfactory understanding and spoken command of the second language. In certain few language-specific positions, the appointed persons must have an excellent spoken and written command of the minority language and a satisfactory spoken and written command of the majority language spoken in the judicial district. No other official minority requirements exists.

Before appointment, the person must give a clearance of all outside bonds and interests specified in the State Civil Servant Act (759/1994). The appointed Judge must give a judicial oath. They are also guided by accountability rules of public officials.

### 2.2.4. Training and internship of Judges

In Finland, judicial training has traditionally been based on practical court training (learning by doing) in the courts and on the in-service training for Judges that the Ministry of Justice provides.

Court training refers to a traineeship system that provides induction into judicial tasks in courts. The official title of a court trainee is “Trainee District Judge”. The training period is one year. The training may be carried out completely in a district court or by first working six months in a District Court and then another six months in a Court of Appeal or Administrative Court. In a Court of Appeal or Administrative Court, the Trainee District Judge works as a Referendary. As a Trainee District Judge may be appointed a person who has earned a Master's degree in law, who has the personal characteristics necessary for the performance of the judicial tasks and who is suitable for the judicial decision-making. Before a person may be appointed as a Trainee District Judge, he or she must take a Judge's oath or give a Judge’s affirmation. After having completed the one-year
court training, the Trainee District Judge may apply for the honorary title of “Master of Laws with court training”. 55

The Court Referendaries are given career advice and they are encouraged to broaden their experience through applying for temporary appointments and service in various deciding compositions of different courts.

Ministry of Justice has been in charge of the provision of in-service training for the Judges. Judicial administration department’s training unit organizes trainings for the court personnel and Judges. The General advisory boards define yearly the general guidelines and goals for the trainings. They also gather the training needs from the courts, and define the general contents of the trainings. The individual trainings are then planned and designed by different planning groups, which are composed of Judges and specialists. Planning groups define and decide more precisely the training (targets, topics, methods). The purpose of the trainings is to maintain and develop the professional skills and competences of the personnel of the courts. The aim is not only on the individual’s development, but also to adopt better working methods and processes, as well as improve the quality of the work on the courts. Thus, in addition to legal subjects, Judges are provided e.g. with language training, leadership skills training and ICT training. There has been a special emphasis on the management of proceedings in the courtroom. There is also training for court Presidents and managers on leadership and management skills.

The duration of the training events offered varies based on the needs (from information sessions to more long-term programmes). Methodologically, the training aims to combine theory and practice (lectures, presentations, group work, simulation etc.). Usually, professors, other experts and serving Judges work as trainers. In different development projects, first number of Judges and other personnel have been trained as peer educators in their own organizations. These trained peer educators and “training-for-trainers” method have proven to be a valuable source of training expertise for the in-service training organised. 56 There are both national and regional training. The court may also arrange training for themselves. Usually at least the larger courts arranges also courts specific training events 57 58.

Prior to year 2017, Finland have not had compulsory training for Judges 59; Judges have participated in training on a voluntary and independent basis according to their personal needs and interest. However, the individual training is based on personal training plan, which is prepared based on personal and customized development needs and the needs and resources of the court. The training plans are prepared and training needs evaluated in co-operation during the development discussion between the Judge and the manager. The idea is that after the training plan is agreed, the Judges are able to use the training offered by the Ministry and by other service providers (e.g. Universities) in accordance to their personal plans. 60 61

Even though the training has not been officially compulsory and that there exists variations in the training enthusiasm between individuals, in practice all Judges participated to some training according to their personal plans at least 3 days a year. Training and personal development is generally regarded as a natural part of judge’s work and functions. A court is entitled to a national

---

56 The European Judicial Training Network (EJTN), Finland. http://www.ejtn.eu/About-us/Members/Finland/
57 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
58 Interview: Antti Savela, Oulu District Court, 10.5.2017
59 See chapter 2.2.5. Upcoming training reform.
60 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
61 Interview: Antti Savela, Oulu District Court, 10.5.2017
training financial compensation for each Judge that have participated to training for at least 3 days during the year (maximum amount of compensation 3 days/man-year). This is one motivational aspect for courts to encourage regular training and self-development of personnel and one mean to finance the training days.62 63

The training practices adopted by the Ministry are intended to promote the independence of the judiciary. The development teams consisting of Judges, the training needs determined by the court committees, the service of Judges as peer educators, and the opportunity of the Judges to seek training on their own accord, all support the ideal of judicial independence. The link between the training and the needs of the court will also be left on the responsibility of the management of the court.

2.2.5. Upcoming training reform

New Court Act has come into effect in Finland on the January 1st 2017. This will also change the system and practices of judicial training and recruitment. The reform will introduce Judge training-positions called “Assessor Training Judge” and the foundation of Judicial training board.

In addition, the training of Judges will be made compulsory and more systematic. The idea in the reform is to implement a training path, where all Judges would have planned training program throughout their whole career based on their skills and needs.64

Training path will begin with substantially more extensive court training than previously. The court training will also be more systematically controlled with emphasize on feedback and self-evaluation. Referandaries’s skills will be evaluated in the annual performance appraisals more closely including the evaluation of training needs.65

The reform will introduce in courts training-positions of Assessor Training Judges aiming to create a Judge career system where Referandaries can advance to fixed-term training Judge position and get versatile practical experience of Judge's work. In addition to learning by doing, the Assessor Training Judges will participate in a training program, which is specifically designed for enhancing career of a Judge. Assessor Training Judge will be appointed for three years by Supreme Court or Supreme Administrative Court (like other fixed-term Judges). They will work in courts similar to any other Judges. The requirements will also be the same as for Judges with three years previous working experience. The Judicial training board (to be established) will approve the training programs for the Assessor Training Judges. Also a specified tutor-Judge for each training Judge will be part of the training process.66 67

The training program aims to give good foundation to act as a Judge, but persons without Assessor Training Judge background can still be appointed as Judges and the execution of the system does not guarantee a Judge position. As an addition, persons outside judiciary will still be appointed as Assessor Training Judges and Judges. A comprehensive training program will be designed by Judicial training board to persons without previous judicial work experience. Judicial training board will also plan training program for Referendaries appointed as Judges without Assessor Training Judge position background.68

62 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
63 Interview: Antti Savela, Oulu District Court, 10.5.2017
65 Oikeusministeriö. Tuomareiden koulutusjärjestelmän kehittäminen. Mietintöjä ja lausuntoja. 38, 2015
67 Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
The courts will also have training committees that will be responsible for personnel development, providing in-house training and guiding the personnel to training programs. They will also follow the training activity and realisation of the training program. This is seen to increase the planning and follow-up of trainings. Training will also try take better into account the judge's personal skills and previous work experience.

The Judicial training board will be an independent actuator under the mandate of the Ministry of Justice. It will be appointed for five-year terms including representatives from Judges, academia, lawyers, prosecutors and representatives from the Ministry. The Ministry of Justice’s Training unit will be responsible for the practical arrangement of trainings according to the plan of the judicial training board.

The first positions of Assessor Training Judges will be established during spring 2017 and the aims is that the first training will start in fall 2017. The Training board will organize entrance examinations and make the selection. The aim is to select approximately 15-20 Training Judges a year.

Development of the training system is aimed to not only improve quality but also the efficiency and the practical training needs. The need to improve the training system of court personnel and to develop skills more systematically has been obvious. The current training system does not fully meet the prevailing needs and cannot withstand international comparison. Unlike almost in all other EU member states, there has not previously been an official, systematic and compulsory Judges training system in Finland. This has been considered a defect, which has had possible effect also on the quality. Possible lacks in the competences of the personnel may cause, for example, unnecessary complaints and delays. The development of training system is seen to improve the efficiency of court operations and ultimately result in cost savings. In this situation, the renewal and overall development of training system should be considered as a necessary investment in the quality and efficiency.

2.3. Continuous evaluation of Judges
This section describes how the continuous evaluation of Judges is carried out in Finland.

2.3.1. Evaluation bodies
As an independent and autonomous professional, the Judge has the main responsibility for the quality and effectiveness of his/her work. The managers carry out monitoring activities regularly, but interventions are made only if clear problems or negative trends emerge. Productivity, timeliness and judgments are the main subject of continuous evaluation of Judges. The quality of judgments is a more sensitive issue and the productivity and effectiveness are seen somewhat easier to evaluate and control. The continuous evaluation is needed, because in promoting and recruiting situations, a detailed and versatile statement about the person’s knowledge and skills is required from the court manager. However, no official Judge specific registration concerning the quality evaluations are kept.

69 Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice 27.1.2017
70 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
71 Oikeusministeriö. Tuomareiden koulutusjärjestelmän kehittäminen. Mietintöjä ja lausuntoja. 38, 2015
72 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
73 Interview Antti Savela, Oulu District Court, 10.5.2017
74 Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice 27.1.2017
75 Interview Antti Savela, Oulu District Court, 10.5.2017
76 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
The continuous evaluation of Judges is the responsibility of the court manager(s). In larger courts, this usually means the department managers (management team) in co-operation with the court President. In smaller courts, the manager usually personally knows the personnel and the evaluation is more straightforward in practice and can be handled by a single court manager/president. In larger courts, the departments are quite independent related to e.g. distribution of work and monitoring performance. Also close colleagues and other peers have a role in evaluating the work situations and react if needed.

The large size differences between Finnish courts influences significantly the operating environment and management requirements. Thus the exact ways and levels of details and systematics in evaluation practices varies between courts and depends heavily on the managers/management team focus, interests and ways of working.

2.3.2. Evaluation process
As Judges do not have specified working time nor performance based salary, the focus of evaluation is in the work results.

There are variations between courts, but the primarily statistical evaluation is based on the reports acquired from the case management system (e.g. number of solved cases, handling times of solved cases, number of pending cases, number of old pending cases).

In larger courts, the department managers follow the workload and work situation of individual Judges based on the statistics on regular basis and they are controlled approximately twice a year in management team meetings. In these meetings the work situation and the work activity of each Judge is evaluated. One important aim in these evaluation meetings is to ensure that the workload is even between the Judges. If there appears to be large differences in the workloads and activity, the reasons are evaluated (e.g. complex case structure, personal reasons). The aim is to ensure that the times from filing to hearing/handling of the cases are as equal as possible. If problems appears in capacity and work situation, the Judge is asked to given an explanation for it. If the workload situation is too problematic, a re-distribution of cases or temporary easement in case distribution are considered.

Different types of department meetings, executive board meetings and other internal discussions are arranged as a part of everyday court management system. In these meetings, the current topics and improvement needs are discussed. The goals and arrangement of these type of meetings varies between the needs of the court and the department.

The yearly development discussion between the Judges and the supervisors are a central tool for evaluation. In the discussion the work and actions are evaluated and discussed diversely and based on personal situation and needs; e.g. possible complaints, functions in work community, workload situation, possible delays and capacity situation. As an addition, improvement and training needs for the following year is reviewed and agreed. There are no other systematic and standardized ways to evaluate the treatment of the parties or work community behaviour: namely, if problems or

---

77 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
79 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
80 Interview Antti Savela, Oulu District Court, 10.5.2017
81 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
82 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
complaints acquire, they are examined, discussed and reacted to accordingly, and on a case-by-case basis by the supervisors. Possible complaints or compensations are not registered in any official register.\textsuperscript{83, 84}

All public agencies (including courts) need to have a gender and equality program. The appointments to Judge and management positions are, however, completely gender neutral and are based purely on the evaluation statements prepared on person’s past competencies, abilities and knowledge. Judge positions divide equally between males and females.

2.3.3. Focus on the evaluation of judgements and legal writings

The Code of Judicial Procedure and the Act on Criminal Procedures sets the minimum requirements for judgments and reasoning. The Supreme Court will restore the case to lower courts on procedural grounds if the justifications are insufficient. Due to the diversity of cases and different factors affecting the process of reasoning, there are no unified model for structuring and conducting judgments and writings.\textsuperscript{85}

The proportion of changed judgments by appellate courts are not recorded or registered by Judges. However, all decision of appellate court are delivered and advised to lower level courts. The department managers and/or court manager goes though the appellate decisions and changed judgments at a general level. If some trends emerge, these are taking into consideration in the development discussions and in planning the training needs.\textsuperscript{86} If it appears that there is a clear problematic trend in the judgments of an individual Judge, the reasons are analysed and discussed accordingly and case-by-case with the Judge in question. If needed, additional data of past judgments and justifications are acquired. The quality of judgments in Finland is broadly and generally good, there still exists some variability in the quality between courts and sometimes even between the same court’s Judges\textsuperscript{87}. However, all and all, the situations where there have been systematic problems with individual Judge’s judgments and legal writings are highly unusual.\textsuperscript{88}

In some courts there are Judge specialisation procedures used (e.g. specialization for criminal/civil cases or for some specific case group). Specialization is seen as a means for ensuring unified application of law, as well as increased effectiveness and expertise in the area. For practical reasons, the specialization has been possible only in larger courts. In courts where there are specialization procedures, there is also rotation between specialized areas (typical time-span 2-3 years).

Important tool also in the evaluation and improvements of judgements and legal writings are the personal training plans. Judgements and legal writings are central elements in training programs and in different quality projects undertaken in various judicial districts. Individually planned training programs are the main mean to improve and maintain legal competence. For example for newly appointed Judges with a working background outside judiciary, usually more comprehensive training program is planned.

\textsuperscript{83} Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
\textsuperscript{84} Interview Antti Savela, Oulu District Court, 10.5.2017
\textsuperscript{86} Interview Antti Savela, Oulu District Court, 10.5.2017
\textsuperscript{87} Valtiontalouden tarkastusviraston tarkastuskertomus (125/2006). Käräjäoikeuksien tulosohjaus ja johtaminen. Edita Prima Oy.
\textsuperscript{88} Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
2.3.4. Consequences of the judicial evaluation on the quality of justice

Even though there is not a directly performance based salary system in place, two salary levels for Judges exist. The two salary levels are seen also as problematic and large part of the managers would like to have equal salary for all Judges. However, there is some support among managers for establishing even more detailed performance and quality based compensation system. However, it is acknowledged that more systematic and coherent evaluation procedures and more objective evaluation criteria would be needed as a basis for renewing salary and compensation system.\(^89\)

When a person is applying for a position in judiciary or promotion (e.g. fixed Judge position), a detailed and versatile evaluation of past performance and expertise is conducted as a basis for the official statement\(^90\): what data is available concerning the person, what can be concluded from the data and on what grounds is the conclusion based on.\(^91\)

Aging and (part-time)-retirements of Judges are a challenge in Finland. This has also consequences on evaluating similarly and objectively the working ability and ensuring working capability in different parts of judicial career.\(^92\)

The evaluation practices are directly linked to training and improvement. The evaluation data is used in assessing training needs and conducting personal training programs.

2.3.5. Consequences of judicial evaluation on the appointment to managerial positions

A person appointed to a manager position (court/department manager) need to have proven leadership skills and previous management experience. However, person’s judicial expertise is still considered the primal factor in manager selection. On one hand, it is said that management skills and personal characteristics should be highlighted more in manager selections in order to receive younger managers with more enthusiasm for improvement and leadership. On the other hand, there are arguments that the main responsibility of managers is to ensure uniform judgments and this is not possible without extensive judicial expertise. If manager is not actively involved in the judicial work, it is seen to undermine the credibility also as a manager.\(^93\)

The requirements, duties and tasks of court managers have increased a lot in recent decades. Therefore, the manager role is becoming more and more professional, needing special skills and personal characteristics. In larger courts, there are limited possibilities in practice to continue actively working also as a Judge. The reasons behind the increased demands are for example the growing size of courts, increased result responsibility and changes brought by technology development and digitalization. The manager role requires the ability to balance the needed autonomy of Judges and necessary management actions. At the same time, there have been constant cost pressures with decreasing resources and budgets, making the management duties sometimes unrewarding and stressful. This has led to decreased willingness for management positions among the most qualified and best expert Judges.\(^94\)

There are no mechanisms for gender balance in management nominations. In manager positions, the majority of both applicants and nominees are still males. This is largely due to historic reasons:

\(^90\) See also chapter 2.2.
\(^91\) Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
\(^94\) Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
2.4. The evaluation of courts activities

The courts are very independent in terms of quality evaluation. The external quality evaluation is concentrated on operational performance and legality control.

The quality of court operations is evaluated mainly in the context of the national “management by results” system adopted for the courts in 1995. The State Budget Act (423/1988) and Parliamentary budget process provide the statutory background for the system. The management by results system is one aspect of the political accountability of the courts. Every year when confirming the state budget the parliament sets specific results targets for each administrative sector including the courts.  

2.4.1. Actors involved

The budget and the performance targets for the courts are first negotiated and agreed on the level of the administrative sectors. Courts are divided into two sectors: first sector consist of the general courts and Labour Court and another sector of the Administrative Courts, Market Court and Insurance Court. After parliament’s confirmation of the annual State budget for administrative fields, the Ministry of Justice is responsible for drafting the overall budget and performance targets for the sectors. This is done in co-operations with the court managers. After the budget and targets are agreed for the administrative sector, each court has annual “face to face” budget and performance target negotiations with the Ministry of Justice representatives. The management by results system requires a lot from the management of individual courts. The courts must actively monitor operations and the progress of cases, and both plan and examine the use of resources closely. As preparation for the results, negotiations the courts should have internal discussions of results, targets and improvement needs.  

Courts of Appeal have central role in evaluating the court activities in their jurisdiction. One is the inspection visits of the Court of Appeal to the courts in its jurisdiction from time to time (approximately every 1-2 years). The inspection visit lasts usually about 2 days and is conducted by a group of 2-3 Judges and Referendaries from the appeal court. The content of the inspection is to go through the quality and quality control, conformity of rulings, timeliness of decisions and discuss possible problem areas in the judgements of the given court. The statistics and judgments are inspected based on a random sample of the cases. An important part of the inspection is the discussions with the managers and possible other personnel. The Court of Appeal must make a report on the inspection. The reports are also provided to Chancellor of Justice and Parliamentary ombudsman.

95 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
100 Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
101 Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
103 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
104 Interview: Antti Savela, Oulu District Court, 10.5.2017
Practically all Court of Appeals have quality improvement projects ongoing in their jurisdiction. Individual courts may also have their own quality projects. The projects vary in length and scope but are important frameworks and tools for court quality control, improvement and target setting. Often, the projects have yearly changing improvement theme and team. The most sustained and systematic quality project has been carried out in the jurisdiction of Rovaniemi Court of Appeal. The Court of Appeals also arrange regular improvement days for the jurisdiction where quality issues and best practices are central topics. The Ministry of Justice encourages the quality projects but are not directly involved in them.

There have been surveys conducted about public confidence and trust in the court system produced by the National Research Institute for Legal Policy. Generally, the trust among citizens towards judiciary is very positive. The surveys have been directed at the general public that means that the respondents have not necessarily been involved with the courts. In such cases, the research has primarily concentrated on the public perceptions about the courts rather than detailed quality evaluations. Faculty of Law at the University of Turku has also conducted a survey about public opinion towards the court system. The Turku research indicated that 68% of citizens considered the courts to have been successful in their operations and 17% considered them to have failed. Further, only one third of the citizens considered court judgements to be fair, whereas 57% consider them unfair. Currently a survey is conducted by the Ministry of Justice related to citizens’ opinions about the general fairness and level of criminal sanctions and sentences.

As a basis for the work carried out in the quality projects undertaken in different jurisdictions, opinion surveys among court stakeholders (prosecutors, lawyers, and parties) have been conducted. However, there are no systematic or national procedures for collecting stakeholder opinions.

2.4.2. Evaluation process

The main aims in the annual budget and performance target negotiations are to set performance targets and main actions for the following years (targets set for 1 year and 2-4 years), discuss the present state, and results of previous year, as well as analyse improvement needs. A protocol document is prepared based on the negotiation. The representative of the Ministry of Justice and the manager of the court in question signs it. The negotiation usually takes 2-4 hours. The negotiation documents are available for other courts and for general public.

As a starting point for the negotiations, the court management team prepares an overview and analysis of the results, basic statistics and situation in the court in the previous year and makes a justifiable proposal for the results, budget and resources for the following year. The negotiating representatives in the Ministry then summarizes the information and discusses a joint outlook and position of the budgets and results of the whole sector. A joint kick-off meeting for the sector is also arranged before the individual negotiations. In this kick-off meeting, a summary of the overviews and analysis prepared by the courts is reviewed. The kick-off meeting increases the transparency and provides an overall picture of the situation in the whole administrative sector.

105 See chapter 3.1
107 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
108 Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
109 Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
In the individual court performance negotiations, the protocol includes three main sections: 1) strategic framework, 2) performance targets and improvement actions, and 3) resources and budget.\textsuperscript{110,111}

The strategic framework section in the negotiation protocol includes\textsuperscript{112}:\textsuperscript{113,114,115}

- Description of the basic mission
- Description of the operational environment and risk management
  - External environment analysis
  - Internal environment analysis
- Description of the vision (10 years)

The basis for the strategic framework comes from the national targets set for the whole administrative sector.

The main part in the negotiations is the setting of performance targets and budget for the following years. This is divided to two main parts: societal effectiveness and operational efficiency. The operational efficiency targets monitor the concrete outputs and the societal effectiveness represents the broader effects on citizens and society as a whole. The societal effectiveness targets are difficult to define and quantify and are thus usually not as concrete. Typical examples are connected to the transparency of process and decisions, securing the fundamental and human rights, stabilizing the legal praxis, and to the avoidance of unnecessary delays in all proceedings. The main actions to ensure the targets may include for example improving the systems of publishing decisions or arranging more training for personnel.\textsuperscript{113,114,115}

The operational efficiency section in the protocol includes first the review from the management team of the court on the performance and efficiency of previous years and the estimation for the following years: how many different and how complex cases are expected to come to court in the coming year, what will the target clearance rate, what is the time targets for different case groups (civil, criminal and insolvency) and what is the number and age of pending cases. A prerequisite for the negotiations is the production of good statistics of these areas and cases handled by the court. Based on the management overview and the statistics from previous year, an estimation of weighted workload for coming years is formed. The management can justify any forecasted special needs in the coming year that should be taken into account in target setting and resource allocation (e.g. large backlogs or large amount of complex cases).\textsuperscript{116,117,118}

There is a weighted caseload system in use, where the different case groups have a weight score depending on the complexity and time/resource requirements. In this system the case categories are divided in different complexity categories based on the approximate time they require. The weighted caseload system makes it easier to compare the performance of courts with different type of caseload. The scores are separate for District Court, Courts of Appeal and Administrative Courts. For example district courts have 15 score categories (scores ranging between 0, 1 and 9, 5). The

\begin{thebibliography}{99}
\bibitem{110} Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
\bibitem{112} Oikeusministeriö. Käräjäoikeuden tulostavoiteasiakirja kaudella 2017–2020
\bibitem{113} Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
\bibitem{114} Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
\bibitem{115} Rissanen Pinja. Tulosohjauksen suhde tuomioistuinten riippumattomuuteen. Pro-Gradu tutkielma, Tampereen Yliopisto, Johtamiskorkeakoulu, 2014.
\bibitem{116} Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
\bibitem{117} Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
\bibitem{118} Rissanen Pinja. Tulosohjauksen suhde tuomioistuinten riippumattomuuteen. Pro-Gradu tutkielma, Tampereen Yliopisto, Johtamiskorkeakoulu, 2014.
\end{thebibliography}
court personnel has been involved in designed the system and the scores. The scores are adjusted if needed.\textsuperscript{119} 120 121

The efficiency targets set and agreed in the negotiations are:\textsuperscript{122} 123

i. Productivity
   - Score of weighted judgements made by the court divided by the number of personnel working in the court.

i. Economic efficiency
   - Court budget divided by the score of weighted number of different types of judgments made by the court.

ii. Timeliness
   - Target average processing time for different case groups
     Example: Criminal cases 5.2 months / Civil cases in written procedure 2.2 months / Civil cases with hearings 14 months / Large civil cases 10.5 months / Summary cases 2.1 months / Debt restructuring cases 6.2 months)
       - Target processing time ranges
     Example: Criminal cases: 20 % in 0-2 months / 11 % over 9 months
     Civil cases: 3 % in 0-6 months / 31 % in 0-12 months
       - Target proportions of cases that have been pending over 12 months

In recent years, the emphasis has been in monitoring the age of pending cases. Especially the emphasis has been on the overall pending time of cases (including pre-trial procedures and pending time in lower courts). The cases with long overall pending time should be prioritized.\textsuperscript{124}

The proportion of changed judgements by appellate court is reviewed during the negotiation procedures on court level. Statistic table of changed judgment in all district courts is conducted as an appendix for the negotiation document. Appellate courts controls the judgments by using 12 different codes on if and how the judgments have changed. Only the proportion of cases where the changes have been connected to the justifications and conclusions (or case have been returned) are included in the statistical appendix. In the negotiation procedure, the statistic is used as a background information and if there is large distinctions compared to the general level, the reasons for it can be included to the discussion.\textsuperscript{125} 126

The set targets and the system must not compromise the independence of the courts. This is why the Ministry of Justices sets only the targets connected to service level and operational performance. The court sets independently other quality targets. These can also be documented to the negotiation agreement.\textsuperscript{127} 128

\textsuperscript{119} Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
\textsuperscript{120} Oikeusministeriö. Yleisten tuomioistuinten työmäärän mittaaminen. Lausuntonäytteistelmä. Mietintöjä ja lausuntoja. 5/2012.
\textsuperscript{121} See more in chapter 3.3.
\textsuperscript{122} Oikeusministeriö. Käräjäoikeuden tulostavoiteasiakirja kaudella 2017–2020
\textsuperscript{123} Rissanen Pinja. Tulosohjauksen suhde tuomioistuinten riippumattomuuteen. Pro-Gradu tutkielma, Tampereen Yliopisto, Johtamiskorkeakoulu, 2014.
\textsuperscript{124} Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
\textsuperscript{125} Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
\textsuperscript{126} Oikeusministeriö. Käräjäoikeuden tulostavoiteasiakirja kaudella 2017–2020
\textsuperscript{127} Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
\textsuperscript{128} Rissanen Pinja. Tulosohjauksen suhde tuomioistuinten riippumattomuuteen. Pro-Gradu tutkielma, Tampereen Yliopisto, Johtamiskorkeakoulu, 2014.
The setting of other quality targets varies between courts. The quality target areas and setting the targets are usually discussed and designed in the framework of the different quality improvement projects. There are recommendation and examples of quality target areas based on the work done in quality projects, for example:\(^\text{129}\):

- Judicial procedures
  - timeliness, transparency, cost efficiency
- Judgements
  - legality, reasoning, understandability, structural and substantive consistency
- Customer service
  - guidance, treatment of parties, availability, minority languages
- Organization
  - management, work processes, responsibilities, training, communication

However, the setting of quality targets is completely the responsibility of the management of the court.

The Ministry monitors the accomplishment and the situation concerning the operational targets set in the negotiations every six months: in the next negotiations and once in between. The evaluation of the accomplishment of the targets set are done by means of annual reports drawn by the administrative sectors. The annual reports are used as a tool also in the negotiation process.\(^\text{130}\) In addition, the courts make their own monitoring actions and some also compare their situation actively to other courts.\(^\text{131}\) All and all, the general knowledge and awareness of the operational and performance situation has increased by the introduction of the management by results system.

2.4.3. Consequences of the evaluation of quality of justice at court level

Resource allocation to courts is conducted under the same system of management by results and it is based on the same estimations of future workload and performance and agreed in the same negotiations. There is no automatic links between performance and financial resources. However, if there occurs a considerable change compared to the estimation affecting the ability to achieve the targets (e.g. in workload, backlogs, case structure), the court can request and justify the need for temporary extra resources. These are considered accordingly and on a case-by-case basis.\(^\text{132}\)\(^\text{133}\)

The evaluation of quality is linked to improvement and learning through the quality projects, joint quality improvement days and the planning of the training programs. Large part of the court quality work is done in the framework of the regional quality projects, where court personnel and stakeholders are widely participating. The projects have a variety of improvement themes based on the evaluated improvement needs. The training programs are also based on evaluated quality improvement needs.

2.5. Resource allocation to courts

The background and starting point for the court resource allocation is the State budget frames and the budget it provides to the whole justice sector. The allocation of resources to individual organisations in the administrative sector must be within this frame. Decisions regarding the budget frames are based on ministries proposals concerning the costs frames in their administrative sector. In case of large changes in resource requirements, there are possibilities for applying supplementary


\(^{130}\) Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017

\(^{131}\) Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017

\(^{132}\) Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017

\(^{133}\) Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
budget. Due to financial pressures in recent years, the budgets and leeway outside the frames have been constantly decreasing.\textsuperscript{134}

2.5.1. Actors involved
Based on the State budget frame, the Ministry of Justice prepares general guidelines and principles for the allocation of the budget to courts. The resources are discussed and agreed between the Ministry and the courts during the management by results negotiations, at the same time as the operational targets. The decision of the resource allocation is documented in the same negotiation protocol.

The system of resource allocation is time consuming for the Ministry. However, it is considered beneficial, as it provides the opportunity to take into account different situation and organization of specific factors. It also enables the Ministry to coordinate the principles of allocation and ensure equality and objective rules. The resources given to a court and the grounds of the allocation are available to the other courts. The resource and result responsibility of courts have increased after the introduction of the system.\textsuperscript{135}

2.5.2. Resource allocation process
The number of staff (divided by tasks and permanent/temporary) and the amount of staff costs are the central resource negotiated in the process, but also other resources (e.g. equipment, rent, investments, and improvement) are part of the negotiations.\textsuperscript{136}

Basis for the allocation are the current resources, pending workload situation and the estimation of the workload for the following year (using the weighted scores). The workload situation is relatively settled and can be reliably evaluated based on historical data (thus only minor resource changes are usually required). Substantial resource changes are usually connected to larger structural reforms. The general aim is that the court would be able to keep at least the current level of resources. In recent years, there have been resource cuts, but these are planned systematically over-time (not at once).\textsuperscript{137, 138}

The estimation of the weighted workload score for the following year is the primary criteria in resource allocation. The weighted workload scores does not adequately cover the most complex cases, so the work-time requirements for these and other possible special circumstances are customized and estimated separately.\textsuperscript{139} If large changes to estimated caseload or other circumstances happen between the negotiations, the possibility for temporary extra resources is discussed and decided based on a justified application from the court. As a basis for the application, court collects statistical data and evidence of the actual workload from the exceptional complex cases compared to the score points. In some special and unforeseeable circumstance, the Ministry may also decide to divide and reallocate the workload between courts (e.g. this was done in case of asylum complaints in recent years).\textsuperscript{140}

In larger courts, the resource allocation procedures inside the court and between departments must also be designed and planned. Usually, the same principles are used in internal resource allocation: the estimated workload being the central deciding factor. Also, the structure of the personnel (e.g.

\textsuperscript{134} Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
\textsuperscript{135} Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
\textsuperscript{136} Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
\textsuperscript{137} Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
\textsuperscript{138} Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
\textsuperscript{139} Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
\textsuperscript{140} Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
between civil and criminal departments) need to be taken into account. In internal resource allocation, the reallocation of resources and workload is more straightforward and part of the everyday management of the court. As a part of the internal resource management, one aim is also to promote the equalization and harmonization of working methods and procedures.\(^\text{141}\)

For Judges the cases are distributed randomly and evenly. In case of distribution, the weighted workload scores are not used, as the workload is seen to be even in time. The workload in exceptionally complex cases are estimated separately case-by-case (e.g. cases requiring full attention for a long period of time). Even work distribution and comparing the work performance of Judges is central management challenge due to the large variations in size and other requirements of cases.\(^\text{142}\)

### 2.5.3. Consequences of resource allocation on quality of justice

There are quite large differences in the case structure and complexity between different regions in Finland (Helsinki metropolitan area having more complex case structure than other areas). The workload scores are a tool for providing more balanced resource distribution between courts. Even though the score system does not perfectly reflect all differences between workload, it gives a good overall picture of the general workload differences. The scores have been improved in time if noticed that they do not adequately express reality. The score system is complemented with situation specific consideration and estimations of incoming highly complex cases to better ensure balanced resources.\(^\text{143}\) Extra resources are coordinated by Ministry and are based on transparent justified reasons.\(^\text{144}\) The resource allocation system based on the State frame budget does not enable large staff resource changes in a short period of time, thus in situations where the case structure in a court changes suddenly, there is a danger for backlogs.\(^\text{145}\)

Starting point in the resource allocation is to ensure balance in the clearance rate: enabling court to manage the flow of estimated incoming workload. If the court is historically backlogged, the resource allocation system does not enable the court to remove the backlogs in reasonable time. This type of situation requires the application and consideration for separate, extra and temporary funding and resources. In recent years as the budgets has decreased, extra funding have been more difficult to get.\(^\text{146}\)

As the target and resource negotiations can, due to independency requirements, only deal with operative performance issues, there is obviously a danger for pushing efficiency in the expense of other quality aspects. This is why there is a responsibility for the court management and the appeal court to ensure that the quality of rulings and other quality issues are highlighted. Due to productivity pressures, there can be situations where the present outflow is maximized by overly solving simpler cases.\(^\text{147}\)

### 2.6. Assessment of existing evaluation methods

This section provides and assessment of the existing evaluations methods: evaluation of Judges, evaluation of court activities and resource allocation procedures.

---

141 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
142 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
143 Oikeusministeriö. Yleisten tuomioistuinten työmäärän mittaaminen. Lausuntotiivistelmä. 5/2012.
144 Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
145 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
146 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
A summary of the classical judicial evaluation arrangement introduced in the chapter is presented in table 4.

Table 4: Summary of classical judicial evaluation arrangements

<table>
<thead>
<tr>
<th>Description</th>
<th>Evaluation of Judges (sections 2.2 &amp; 2.3)</th>
<th>Evaluation of courts (section 2.4)</th>
<th>Resource allocation (section 2.5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Detailed quality and work result evaluation in recruiting and promotion</td>
<td>- Management by results system</td>
<td>- Negotiation in the framework of management by results system</td>
<td></td>
</tr>
<tr>
<td>- Personal training plans based on individual improvement needs</td>
<td>o Administrative sector level performance targets</td>
<td>o State budget frame</td>
<td></td>
</tr>
<tr>
<td>- Yearly development discussions with supervisor</td>
<td>o Yearly face-to face target negotiations with courts</td>
<td>o General guidelines and principles by Ministry of Justice</td>
<td></td>
</tr>
<tr>
<td>- Regular work result monitoring based on case management system statistics</td>
<td>▪ Strategic framework, mission and vision</td>
<td>▪ Staff costs and number of personnel</td>
<td></td>
</tr>
<tr>
<td>o productivity, pending cases/old cases (number &amp; type), timeliness</td>
<td>▪ Management overview of court situation and performance</td>
<td>▪ Equipment, rent, investments, improvement</td>
<td></td>
</tr>
<tr>
<td>- Problem situations analysed and discussed when needed</td>
<td>▪ Societal effectiveness targets</td>
<td>- Based on the evaluated weighted workload for coming year</td>
<td></td>
</tr>
<tr>
<td></td>
<td>▪ Operational efficiency targets (1 year and 2-4 years)</td>
<td>o Complex case structure / Backlogs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>▪ productivity, economic efficiency, timeliness</td>
<td>▪ Extra resources based on a justified application</td>
<td></td>
</tr>
<tr>
<td></td>
<td>▪ Overall quality (% of changed judgement in appeal court)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>o Monitored statistically every 6 months</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>o Annual reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Quality improvement projects in appeal jurisdictions</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>o Quality targets</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>▪ procedures, judgments, customer service, organization</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>o Yearly quality improvement themes and actions</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Inspection visits by Court of Appeals</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Occasional national public trust surveys</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Evaluation of Judges**
The introduction of the training positions and the more systematic training for Judges will have a significant impact to quality improvement in longer run. The Judicial training board (even though recently set) has started working effectively. It is important that the planning of training have more clear organization, including broad representation and involvement of Judges in planning the...
content of the training programs provided. The renewing of the training system also enable the preparation of more detailed and long-term individual training plans for Judges.148 149

The practices of evaluation of Judges depend heavily on the management of the court. The large variations in size and operative environments of courts make it difficult to push for uniform management practices. As the individual manager’s motivation and interest have such a key role in evaluation of Judges, an important focus area should be the training, supporting and enabling good court management and allowing possibilities to exchange good practices between managers.150

As the quality evaluation of autonomous Judges is challenging, innovative means to enhance the self-management of employees should be introduced. For example, establishing more precise targets, improving self-reflection procedures and increase the awareness of court level operative targets among Judges. There should be standardized procedures for handling cases and clear mechanisms to ensure that the procedures are followed. A key task for managers should be to establish clear targets (what is expected) and rules (how is evaluation carried out). Clear and jointly agreed targets and rules make it easier to intervene in problem situations – when the agreed rules are not followed.151 152

Recent improvement themes and projects have been concentrated on increasing the use of technology and different solutions for digitalization, standardizing and equalizing judicial procedures and methods (both inside and between courts) as well the shortening and equalizing the processing times between cases with different requirements.153 One needed tool for Judges would be an establishment of digital “judge-portal” which would include various information needed in Judge’s work.154

Evaluation of court activities
Ministry as the negotiating party has raised some doubts with respect to the independence and autonomy of the judicial system, even though, the ministry does not interfere in quality issues nor in the application of the law. There were criticism towards the system especially in the beginning of the implementation. In the beginning, there were opinions that setting targets by administrative officials is in contradiction with the independent position of the judiciary. Claim was also made, that the system pays too much attention to the number of cases and handling times. The Chancellor of Justice stated that the system cannot interfere with the objective and subjective independence of the courts in their decision-making and other application of the law. However, the fact that general level information about handling times, the number of cases to be resolved or similar data is written in the documents of individual courts does not endanger the independence of the court in reaching a decision in individual cases. In time, both the ministry and the courts have found the experiences gained from the management by results system to be fairly positive.155

148 Interview: Antti Savela, Oulu District Court, 10.5.2017
149 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
152 Interview: Antti Savela, Oulu District Court, 10.5.2017
154 Interview: Antti Savela, Oulu District Court, 10.5.2017
The system has influenced the planning of work in the courts and increased the awareness and target orientation of court operations. The courts and especially the manager(s) follow much more closely and proactively the volume of cases, adopt more accountability and identify potential problem areas. The system has also increased the knowledge the ministry has about court operations and the degree to which legislative reforms have been implemented. Open, face-to-face, yearly discussions encourages good relationship between the Ministry and the courts. Personal relationships are easier to achieve in small country like Finland, making it possible to have relative smooth communication and information flows. The possible establishment of the Judicial Administration Council will bring changes to the management by results system. Possibly in the future, the council will carry out the negotiations making it easier to balance the performance and quality issues in target setting and encounter general quality improvement targets to the process. In addition, the involvement of appeal courts in the negotiation process have been discussed.

In 2015, the management by results system was renewed by prolonging the time horizon for the targets. Previously the targets were set only for the following year. After the renewal, the targets are set both for the following year and for four years. The idea was that especially in more strategic target areas, the planning horizon should be longer enabling more long-term planning and improvement efforts. The renewal has been difficult to implement in practice, making the target setting still too short-sighted. The biggest difficulty has been the estimation of the impacts of upcoming structural and administrative changes on an individual court level (e.g. reduction of District Courts, centralization of the handling of certain cases and budget cuts). For the renewal to function effectively, the court would need to be able (prior to the negotiation) estimate the workload and resource requirements more sustained, with all the changes going on, this is not realistic at the moment.

Large part of the court quality evaluation and improvement work is carried out in the independent and separate quality projects in different appellate court jurisdictions or by individual courts. The different projects have achieved good results, but the problem is that independent projects do not enable the formation of national quality evaluation practices or nationally joint quality indicators. It is acknowledged that different regions should utilize more the results of other projects in their own quality evaluation and improvement work. At the moment, there are limited means to spread the results of projects on national level – the ministry can only recommend the benchmarking of good practices. An important future improvement theme would be to establish nationwide and joint quality indicators and quality management systems. The potentially established Judicial Administration Council, with Judge representatives, may have more means to coordinate and promote nationwide quality evaluation practices and improvement work. On the other hand, the good results of the quality projects can be seen to be a consequence of carrying out the work in smaller and restricted regions. The independent regional projects have been easier to implement, enabled recognition of the specific operational environment, as well as enabled adopting participative bottom-up approach and carrying out the work systematically over a long period of time.

There is an on-going AIPA-project that aims to create an electronic system for administration of justice. AIPA is an electronic database which contains all the documents related to a judicial matters dealt with by the prosecutors, District Courts, Courts of Appeal and the Supreme Court. AIPA will

---

156 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
157 Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
158 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
159 Interview: Heikki Liljeroos and Raimo Ahola, Finnish Ministry of Justice, 27.1.2017
160 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
161 Interview: Antti Savela, Oulu District Court, 10.5.2017
enable paper-free work, electronic archiving and electronic co-operation between different authorities. It also enables transition to a procedure where the institution of matters, consideration of cases, decisions in cases and archiving are all performed on the basis of electronic material. The exchange of information between authorities, parties and interest groups will be timely because it is carried out electronically and automatically.\(^{162}\) The electronic trial materials will be at the disposal of all involved actors whenever they need them. The ongoing improvement project concerning the use of information technology and digital justice chain (AIPA-project) will likely make the collecting and analysing information easier.\(^{163}\)

An improvement need in the court quality evaluation practices is also the lack of collecting systematically stakeholder opinions and improvement suggestions on a national level. At the moment, these types of efforts are done only as a part of the quality projects.\(^{164}\)

**Resource allocation**

Even though the targets and resources are negotiated in the same process, there are not always clear links between them. The background for the resources is the State budget frame that cannot be exceeded. The system is functional and good especially in quite stable conditions. If there are rapid changes in the workload or backlog situation of a court, it may not be possible to match the resources to the changing situation as rapidly as needed.\(^{165}\)

In an ideal situation the resource allocation would be based on the overall caseload situation of a court (including old backlogs) not only on the estimation of the future workload. As the frame budget have been constantly decreasing in recent years, the possibility to manage old backlogs have become even more difficult.

The weighted caseload system improves the balanced resource allocation between courts. The system has been also constantly improved based on practical experiences. However, the system is not capable to completely incorporate the large case structure differences between regions.\(^{166}\) However, the differences in the caseload and structure between courts and regions have been constantly decreasing (and will decrease in the future) as the size differences between courts will diminish due to structural changes.\(^{167}\)

### 3. Innovative practices in quality evaluation and quality development

This section introduces three innovative practices carried out in Finland: Quality project in the jurisdiction of the Court of Appeal of Rovaniemi, Delay reduction projects – combining external expertise and internal participation and Procedures of designing the weighted workload scores.

First two of the introduced innovations has been rewarded by the Crystal Scale of Justice Prize (The European prize for innovative practice contributing to the quality of justice). Quality project in the jurisdiction of the Court of Appeal of Rovaniemi won the prize in 2005 and the delay reduction projects got a special mention in 2010.

First two introduced innovations are both improvement process innovations, where the carefully planned and systematic way of carrying out improvement work has produced good results. As an addition of systematic long-term approach to improvement, a key to successful quality

---


\(^{163}\) Interview: Antti Savela, Oulu District Court, 10.5.2017

\(^{164}\) Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017

\(^{165}\) Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017

\(^{166}\) Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017

\(^{167}\) Interview: Antti Savela, Oulu District Court, 10.5.2017
improvement seems to also be that professionals take an active part in the development. Wide participation enables not only commitment for improvement and easier implementation of results but also the improvement of the participating individuals.

The third introduced innovation describes the process of designing the weighted workload scores and the weighted system applied in Finnish courts. The way the scores has been designed has increased the acceptance of them through intensive participation of personnel and made the scores better reflect the actual differences in case requirements.

3.1. Quality project in the jurisdiction of the Court of Appeal of Rovaniemi

The quality project in the courts in the jurisdiction of the Court of Appeal of Rovaniemi (later referred as “the Quality project”) was launched in 1999 and it is still on going. All courts within the appellate jurisdiction of the Court of Appeal of Rovaniemi participate in the project. In addition, the most central stakeholders of the jurisdiction have been actively involved. The quality project covers both civil and criminal cases. The project’s aim has been to improve the quality of court services by supporting the basic work of courts. Basically, this means developing the functions in a way that the proceedings meet the criteria of a fair trial, the decisions of courts are well reasoned and that the services of courts are affordable to all customers.

The Quality project was initiated by the need to respond to the changes in the operational environment of judicatures. These changes such as more rapid change of legislation, internationalism, constitutionalism and evolution of information society posed new intellectual and skilled challenges to Judge’s professional expertise and know-how. Judges need to be more creative and able to dispense new judicial sources including for example European legislation and international human right conventions. They also need to be ready to adapt new working methods and make more clear, detailed and understandable justifications. Because of these changes in operating environment, the significance of efficiency, productivity, economy and effectiveness of the output of different parties as a part of the quality of courts have increased.

In addition, from time to time Finnish courts have been target for public criticism. Even the trust of citizens towards courts have been decreasing. In order to tackle all these challenges, the Quality project was launched to develop the quality of court services systematically and persistently. The main principles on which the quality project has been based on are the societal functions of the courts, access to justice, procedural justice, trust in the courts and the desired standard of quality in adjudication.168

Organization and execution

The development work of the Quality project is steered by the Development committee. The members of the Development committee are personnel from the courts and from the stakeholder organizations that are participating in the project. The composition of the committee changes every third year. A chosen Chairman amongst the members of the Development committee manages the Development committee. The Development committee creates an official plan about the quality development themes and relevant education for three years at a time (later referred as development plan).

A Coordinator for quality is selected amongst the personnel of the District Courts for one year at the time to support the execution of the development plan. The Coordinator plans and organizes the education linked to the quality work and acts as a contact person to stakeholders. The Coordinator also supports the Working groups on quality and edits the report on quality.

Principally four Working groups on quality are formed to work on the quality development themes announced in the official plan. Each theme has thus its own Working group on quality. The Chairman of the Development committee and the Coordinator for quality form the Working groups. The members of the Working groups are representatives from the District Courts and from the Court of Appeal of Rovaniemi. As members, there may also be prosecutors, advocates and public legal assistants. At first, the participants were mainly persons with legal duties, but from 2010, the office personnel of courts and stakeholders have also participated in quality work. This has increased the effectiveness of the quality work and the motivation of office personnel. Each Working group has also its own Chairman who is chosen amongst the members of that particular Working group. The President of the Court of Appeal of Rovaniemi affirms the compositions of the Working groups for quality.

The Working groups on quality map out the possible challenges of their quality development themes and explore the practices used in District Courts concerning these themes. Then the Working groups define mutually accepted procedures and make a suggestion about the ways how different practices can be standardized and improved. Each Working group composes a report in which these improvement proposals are introduced. The work of the Working groups have mainly been done in meetings and via e-mail between the group members.

The development plan made by the Development committee is checked and updated yearly. There are typically four quality development themes per each year, although there can be an exception to the amount of themes if a new relevant theme arises when the plan is updated. The quality development themes concern the quality aspects of procedures and decisions. Hence, quality aspects of other internal organizational factors of courts are left out of the range of the project. For example the quality themes from 1999 to 2009 have been:

- in 1999: penalty harmonization in larceny, drunk driving and violent offences and problems in the preparation of civil cases
- in 2000: penal practices in drugs offences, management of evidences, and follow-up of the proposals made to themes of 1999
- in 2001: substantive case management by the Judge in criminal cases, case management in extensive civil cases and follow-up of the proposals made to themes of 2000
- in 2002: case management in debt adjustment cases, substantive case management by the Judge in civil cases and follow-up of the proposals made to themes of 2001
- in 2003: drafting of reasons for the court’s findings on evidence in civil and criminal cases, harmonization of court practices relating to the selection of penalty types, harmonization of court practices relating to the enforcement of suspended sentences and preparation of a model for application for a summons and a model response in a civil case on the basis of a supplied factual situation
- in 2004: conduct of the Judge in court as an element of procedural justice, preparation of a civil case by the parties and application of chapter 7, section 6, of the Penal Code and follow-up of the proposals made to themes of 2003
- in 2005: case management in criminal cases and Judges’ co-operation in the case management of civil cases and the use of the three-Judge-composition in civil cases and follow-up of the proposals made to themes of 2004

169 Interview Antti Savela, Oulu District Court, 10.5.2017
• in 2006: procedures and evidence in cases relating to the detention of a crime suspect and the imposition of a travel ban, penal practices relating to violent offences and follow-up of the proposals made to themes of 2005.

• in 2007: procedures when child is heard in trial, interpretation and translations in judicial proceedings, a model appeal and a model response to the Court of Appeal and the openness of criminal procedure in pre-trial investigation, in consideration of charges and in matters where coercive measures are used.

• in 2008: approaches in protecting witnesses, parties and other persons to be heard during the different phases of criminal procedure (pre-trial investigation, consideration of charges and trial), structuring and writing the judgment, mediation practices at the court when mediating on the basis of chapter 5, section 26 of the Code of Judicial Procedure, and the amounts of compensation awarded for ache and pain and other temporary harm, for cosmetic injury and for suffering in assault cases.

• in 2009: reasons for delays in processing regular and major criminal cases and ways of eliminating them, preparing testimony especially considering disputes in house and real estate transactions, publicity of trial documents and creating a method for harmonizing and developing the working processes of the different case groups of the court.

Each autumn, Quality conference is arranged. Before the conference, the reports of the Working Groups are distributed to the participants of the conference and at the conference these reports are orally presented by the Chairmen of Working Groups. After presentations the reports are discussed and new quality targets based on the improvement proposals of working groups are set. The Quality conference is held in turns in Kemi, Oulu and Rovaniemi. A quality target list for following year is made based on the reports of working groups and this target list is taken to a part of the report on quality. The quality target list is approved by the President of the Court of Appeal of Rovaniemi and the Chief Judges of District Courts.

The actual quality development work is mainly based on discussions between judges and other personnel. At first, the quality development work focused mainly on developing the work of judges, but recently also the working processes of supportive personnel have been developed. The Court of Appeal does not direct these discussions, instead the discussions happen voluntarily, which secures the independence of the judges. The definitions of quality development themes aim to provide concreteness and the targets of development are kept small enough to make improvements in practice possible. As a part of the Quality project, 4-6 education days are arranged on yearly basis to support the development work. In addition, District Courts’ own internal development work supports the Quality project.

The monitoring of the quality target list is planned in advance. In District Courts, the Chief Judges monitor the realization of quality targets. The quality targets are also monitored continuously by monitoring the procedure and decision practices and by arranging regular discussion opportunities to judges. The Court of Appeal of Rovaniemi monitors the realization of quality targets and gives feedback to the District Courts.

---

176 Interview Antti Savela, Oulu District Court, 10.5.2017
From 2010, the quality work has concentrated on courts’ working processes, as the aim has been to improve and unify these processes. Before 2016, the working processes of criminal, dispute, child, coercion and debt arrangement issues have been worked through. From the year 2016 onwards, principally one new case group is taken under work per year.  

As a part of the Quality project, several reports have been published. In 2006, a plan for quality indicators was established (more information in the following sections). From the different practices of District Courts, a mutual report was made and distributed as a handlers’ guide. As a part of the Quality project in 2014, a study program for District Court clerks was piloted. Based on the feedback from the pilot, the study program for court clerks was made national in 2015. In addition, a quality indicator plan in seven languages, a final report on piloting of quality indicators, a handler’s guide about criminal cases and multiple quality reports were published. In 2015, a final report on quality measurement from 2013 was published as well as a handler’s guide for disputes and quality report on preparing the application of summons. A guide concerning child, coercion and debt restructuring issues was published in 2016.

The Quality indicators

One of the most important outcomes of the Quality project were the Quality indicators for adjudication in courts within the jurisdiction of Rovaniemi Court of Appeal. The Quality indicators were designed to verify the state and development of the courts’ judicial administration in order to map the needs of development and training in judicial administration. The Quality indicators also aim to enable other parties in judicial administration to take part in the discussion and development work concerning the quality of adjudication.

The Quality indicators evaluate and develop the external quality of the court, which means that the targets of evaluation are the quality factors of the judicial process and making of decisions instead of individual judges. There are six aspects in the Quality indicators: the process, the decision, treatment of the parties and the public, promptness of the proceedings, competence and professional skills of the Judge, and the organization and management of adjudication. In these aspects, there are altogether 40 quality criteria that are central to their own area. The criteria of Quality indicators have been selected in a way that they would cover as much as is possible of those court activities that affect the quality of the proceedings and of the judgment.

The Quality indicators and criteria are presented in table 5.

Table 5: Quality indicators

<table>
<thead>
<tr>
<th>Aspect</th>
<th>Quality criteria</th>
</tr>
</thead>
</table>
| 1. The process | • the proceedings have been open and transparent vis-à-vis the parties  
| | • the Judge has acted independently and impartially  
| | • the proceedings have been organized in an expedient manner  
| | • active, but non-coercive, measures have been taken to encourage the parties to settle (civil cases and the civil liability issues in criminal cases) |

178 Rovaniemen hoviokeuspirin tuomioistuinten laatuhanke. Laatuhankeen työsuunnitelma vuosille 2016-2018
180 How to assess quality in the courts? Quality Benchmarks for Adjudication are a means for the improvement of the activity of the courts. The Quality Project of the Courts in the Jurisdiction of the Court of Appeal of Rovaniemi, Finland.
181 How to assess quality in the courts? Quality Benchmarks for Adjudication are a means for the improvement of the activity of the courts. The Quality Project of the Courts in the Jurisdiction of the Court of Appeal of Rovaniemi, Finland
Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice

| 2. The decision | • The decisions are just and lawful  
• The reasons for the decisions have convinced the parties, legal professionals and legal scholars of the justness and lawfulness of the decision  
• The reasons of the decisions are transparent  
• The reasons of the decision are detailed and systematic  
• The reasons of the decision can be understood  
• The decision has a clear structure and is linguistically and typographically correct  
• The pronouncement of the decision has been understood |
|---|---|
| 3. Treatment of the parties and the public | • The participants in the proceedings and the public have been treated with respect to their human dignity  
• Appropriate advice is provided to the participants in the proceedings, while still maintaining the impartiality and equitability of the court  
• The advising and other service of those coming to court begins as soon as they arrive at the venue (courthouse etc.)  
• The participants in the proceedings have been provided with all necessary information about the proceedings  
• Communications and public relations are in order, where necessary  
• The lobby arrangements at the court are in accordance with the particular needs of various customer groups |
| 4. Promptness of the proceedings | • The case has been dealt with within the optimum processing times established for the organization of judicial work  
• The importance of the case to the parties and the duration of the proceedings at earlier stages have been taken into account when setting the case schedule  
• The parties feel that the proceedings have been prompt  
• The time limits that have been set or agreed have been adhered to |
| 5. Competence and professional skills of the judge | • Judges take care of the maintenance of their skills and competence  
• Judges attend continued training sessions regularly  
• Judges’ participation in training is subject to agreement in the annual personal development talks  
• The court has specialized Judges  
• The parties and the attorneys have the impression that the Judge has prepared for the case with care and understands it well  
• Judges participate regularly and actively in Judges’ meetings, in quality improvement conferences and also in other work of the Quality Working Groups |
| 6. Organization and management of | • The organization of adjudication and the management of the court proceed with professionalism and support the discharge of judicial |
Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice

Adjudication duties of the court
• The assignment of new cases to the Judges is methodical and carried out in a credible manner
• The specialized competence of the Judges is utilized in the processing of cases
• Adjudication has been organized so that the use of reinforced compositions is de facto possible
• Personal development talks are held with every judge every year
• The court has a methodical system for the active monitoring of case progress, making it possible to take measures to speed up delayed cases
• The security of the participants in the proceedings and of the court personnel is guaranteed
• It is ensured by the management of the court that the judges and other staff are not overloaded with work

The indicators are not planned to be evaluated every year for all courts. Instead, they are proposed to be used for a period of 3 to 5 years. Individual judges and courts can also use the indicators as a way to develop their own work and to compare it to others' work. Evaluation of indicators is conducted as an analysis that is based on the successes and failures of the activities. The analysis is done using a six-point scale and written evaluation. The overall amount of points of the indicators are computed by counting the points of individual criteria of each aspect together. As an exception, the scale of points for optimal processing times is from 0 to 15, which means that the maximum amount of points of the overall quality evaluation is 210 points. The six-point scale is presented in Table 6.

Table 6: The six-point scale of Quality indicators

<table>
<thead>
<tr>
<th>Points</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 points</td>
<td>The criterion is not met at all (fail)</td>
</tr>
<tr>
<td>1 point</td>
<td>The criterion is met partially (pass)</td>
</tr>
<tr>
<td>2 points</td>
<td>The criterion is met satisfactorily (satisfactory)</td>
</tr>
<tr>
<td>3 points</td>
<td>The criterion is met well (good)</td>
</tr>
<tr>
<td>4 points</td>
<td>The criterion is met laudably (laudable)</td>
</tr>
<tr>
<td>5 points</td>
<td>The criterion is met in an exemplary manner (exemplary)</td>
</tr>
</tbody>
</table>

The quality measurement using Quality indicators was piloted in 2007. The piloting was executed using mainly Webropol-program through which questionnaires concerning Quality indicators were sent to Judges, litigants, prosecutors, advocates and legal assistants. In addition to these questionnaires, which were mainly numeric, an analysis of the comments of expert working group to court judgments and statistical analysis were used in evaluating the quality. The piloting of Quality indicators was mainly successful and no major problems occurred during the piloting. The piloting was re-organized in 2013 and at the same time, some of the questions were slightly

182 Interview Antti Savela, Oulu District Court, 10.5.2017
183 How to assess quality in the courts? Quality Benchmarks for Adjudication are a means for the improvement of the activity of the courts. The Quality Project of the Courts in the Jurisdiction of the Court of Appeal of Rovaniemi, Finland.
184 How to assess quality in the courts? Quality Benchmarks for Adjudication are a means for the improvement of the activity of the courts. The Quality Project of the Courts in the Jurisdiction of the Court of Appeal of Rovaniemi, Finland.
formatted. Next quality measurement is planned to be executed in 2019. The possible need for updating the indicators will be evaluated after that.

Further development

The Quality project work will continue also in the future. In the plan for 2016-2018, altogether five quality themes have been chosen to be worked on. These themes are:

- updating and editing the quality reports to more uniform and user friendly direction
- continuing to going through working processes of case groups in order to unify and develop them
- planning and developing the actions which aim to activate the use of arbitration in the courts in the jurisdiction of the Court of Appeal of Rovaniemi
- when necessary, the president of the Court of Appeal of Rovaniemi can form a compact working group to work on with urgent legal issue
- participating in the national co-operation of quality projects

The piloting results of Quality indicators inspired the Court of Appeal of Rovaniemi to start planning a new quality assessment system for its own use. This quality assessment system is based on CAF (Common Assessment Framework) model and it was chosen because it is broader than the quality indicators system in which the focus is on the quality of judicial processes. The quality assessment system of Rovaniemi Court of Appeal is used to map the development needs and to assist the court management in annual budget and performance target negotiations. In addition, it serves also in human resource training and development and it helps to open up the adjudication to the court’s stakeholders.

The CAF model is originally developed by EU member states for the public sector. It was mainly suitable to serve as a basic structure in the quality assessment system of the Court of Appeal; however, the terminology and sub-criteria of the model had to be formulated to be fitted in the court organization. In the CAF model, there are altogether nine criteria, which have been divided into two categories: enabler criteria and result criteria. The enabler criteria includes the following criteria areas: leadership, strategy and planning, people, partnerships and resources, and processes. The criteria areas of results are: citizen/customer-oriented results, people results, social responsibility results and key performance results. Altogether, there are 9 main criteria and 28 sub-criteria.

The assessment systems used in the quality indicators of adjudication within the jurisdiction of the court of appeal are used also in the quality assessment system of Rovaniemi Court of Appeal. Subjective information is collected by personnel self-assessment surveys, the appellate courts’ common job satisfaction survey, customer and stakeholder surveys and by assessments by groups of experts. Objective information on the other hand is collected principally from the reporting systems used in the Court of Appeal.

The quality assessment system is planned to be rolled out over a three-year period in a way that the self-assessment survey is implemented on first year, the stakeholder survey on second year and the expert assessment on third year. A Quality working group is in place to monitor and implement the quality assessment and management work in Rovaniemi Court of Appeal. The Quality working

---

185 Interview Antti Savela, Oulu District Court, 10.5.2017
187 Rovaniemennovioikeuksenlaatuistuintenlaathanke. Laatuhankeentytösuunnitelmavuosille2016-2018
group ensures that the self-assessment, customer and stakeholder surveys and expert assessments are implemented. It also reports from the results, monitors the changes and their effects that may occur in the court organization and drafts improvement plans based on the observations.

**Assessment**

The core idea of the Quality project was to influence the most central factor from which the quality of justice depends: the expertise of the judge. As a result of the Quality project, collaboration between the courts in the jurisdiction of the Court of Appeal of Rovaniemi has increased as well as peer-to-peer interaction between judges. This has naturally increased conversations between judges that helps to broaden horizons, maintain expertise and to advance the unity of judicial practices. By improving the expertise of the judges, the quality of judgments can also be improved.\(^{190}\)

During the Quality project personnel’s attitudes towards change has also become more positive than before. The personnel has started to discuss more about the productivity of their work and the need for development has been assimilated. The Quality project has had the support of the judges and their utilization of the final reports have improved the unity of practices.

Overall the Quality project has been successful and it has received both national and international acknowledgments (such as in 2005 The Crystal Scales of Justice of the Council of Europe and the European Commission\(^{191}\)). The reasons why the project has succeeded includes:

- The work has been strongly bottom-up in nature and the Judges have had autonomy to develop the project
- The quality themes have concentrated on the contents of jurisdiction
- The project has enhanced the culture of discussing and it has increased open discussions between personnel
- The personnel and other stakeholders (e.g. prosecutors, lawyers, and police) have been active in participating to the project work
- The work has been carried out systematically over a long period of time, which has make it easier to implement changes and enabled personnel to absorb and comprehend the actions made
- The quality work has been fractioned into yearly improvement themes which has made the project easier to design and enabled the large participation of personnel
- The long history of quality improvement work has created an “improvement culture” to the jurisdiction
- The project has resulted in concrete outputs (e.g. Quality indicators, manuals, guidebooks, reports) and given an example of improvement work procedures to be benchmarked and utilized in other countries and courts.\(^{192}\)

So far, the outputs of the project (manuals, reports and guidebooks) has been somewhat utilized also outside the Rovaniemi judiciary and in other quality projects. The outputs has also been used as a material in the training of judges. However, it is acknowledged that the utilization of the output of the project in other jurisdiction should be encouraged more. Due to the differences in the operational environment of courts, the working methods and procedures of the project may be feasible source of best practices and benchmarking. There exists a certain social cohesion and sense of community in the Rovaniemi Court of Appeal jurisdiction with has been a good ground for tight co-operation in improvement. There has also been persons with enthusiasm for quality

\(^{190}\) Mäkinen, Harri. Rovaniemien hovioikeuspiirin tuomioistuimten lainkäytön laadunparannushanke.


\(^{192}\) Interview Antti Savela, Oulu District Court, 10.5.2017
improvement to act as an engine for continuing improvement. This type of improvement culture is not directly transferable to other areas and jurisdictions. The good results and the successful approach can, however, be a rousing example for other areas to start their own sustained and participatory quality improvement projects.

3.2. Delay reduction projects – combining external expertise and internal participation

Delays in justice systems have been a matter of concern all over the world for a long period of time, but the reasons for delays are still little understood and proposed solutions have never kept up with the growth of the problem. The president of the European Group of Public Administration observed already in 1999 that courts in all European countries face problems of ineffectiveness and inefficiency of management, which has resulted in the courts being burdened with backlogs of work, and with cases portrayed beyond reasonable time limits. This consistent problem causes not only violations against basic human rights, but it also produces significant expenses for societies all over. Despite the widespread concern for delays in recent decades, the primarily underlying reasons for global process inefficiencies in justice systems are still quite unclear and controversial. One point is globally agreed on: much more systematic research concerning the practices of courts and new innovative solutions are needed in order to assess the potential problems and find functional development opportunities.\textsuperscript{193}

In 2006, the Finnish Ministry of Justice had the idea that totally a new and fresh perspective and expertise was needed in the battle against the delays and for finding novel improvement solutions to the court system operations and processes. This idea shaped up as a judicial process improvement and delay reduction projects, which consists of three main parts. These parts are presented in figure 2 and described in more details below.\textsuperscript{194}

This process improvement approach has been at the moment applied to several court instances in Finland: Helsinki Court of Appeal (2006-2009), Insurance Court (2008-2010), Helsinki District Court (2010-2012), Helsinki Administrative Court (2010-2012), Supreme Administrative Court (2010-2012) and Vaasa Administrative Court (2012-2014). All the implemented projects followed similar working methods procedures.

Figure 2: Main parts of the process improvement projects

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{figure2.png}
\caption{Main parts of the process improvement projects}
\end{figure}

In the projects, the court system processes are viewed and analysed with cross-scientific perspectives by melting knowledge and ideas from operations management and law. Expertise and perspectives from process improvement and operations management are exploited and combined


\textsuperscript{194} Sweden has also planned and implemented similar type of project innovation: Marie B. Hagsgård. Internal and External Dialogue: a Swedish Approach to Quality Work in Courts. Oñati Socio-Legal Series, Vol 4, No 5, 2014
with legal expertise in order to find applicable and systematic methods and procedures to improve process efficiency in justice courts. In order to do this, and improvement team consisting of both Operations Management experts and management and employees from the courts were formed. The teams had regular workshop meetings. The improvement work in the teams was carefully planned as a systematic, logically progressive unity and project, where the external operations management experts utilized many forms of methodologies and interventions in different stages of the project. The main stages of the projects were: (i) thorough analysis and evaluation of the process and the improvement needs (e.g. numerical analysis, operational statistics, and interviews), (ii) planning the improvement initiatives (in-group workshops), (iii) implementing the improvement actions (e.g. pilot-testing, training, personal guidance), and (iv) evaluation of the improvement actions (e.g. interviews, numerical analysis, need for changes).

The projects lasted as long as 2-4 years. This thorough and time-consuming methodology was crucial for gaining commitment to the planned actions and giving the opportunity to different employee groups to participate in designing the improvement initiatives. Practically all the employees in the courts had the opportunity to be a part of the project in some way and to express their opinion, through interviews, group workshops, pilot-testing, personal guidance, etc. All the actions taken in the project were transparent to all employees during the project.

As a result of the improvement projects, the courts have new work and management procedures in use, which have had an impact on process efficiency. The new procedures include for example:

- Work planning practices applying project control approach
  - New work planning practices were developed where the more complex cases are treated as projects. The proceeding of the case is scheduled and the needed resources estimated right after case arrival, and the handling process is planned according to this scheduled date.

- Follow-up and control system using time limits for each stage of the handling process
  - An ICT-based monitoring system was built. It has time limits for every phase of the handling process and sends alerts if the case exceeds these limits. The system can be used as a tool for planning the order of work and for overall management follow-up of the situation.

- Procedures to plan and control the flow of complex cases
  - The more complex cases often get stuck in the process, and in order to avoid this, procedures to identify and highlight these cases from the mass was developed.

- Prioritization rules and definite handling time objectives for different case groups.

In addition to the fact that all the reforms described above have made the control of the workflow and daily operations in the court instances easier, and more practical and timesaving, one of the biggest changes has taken place in the attitudes of the personnel towards time and delays during the projects. The handling time objectives have become an automatic part of everyday work. Time has received more attention as an important quality criterion.

Example of project results: Follow-up and control system

A follow-up and control system called the “time-frame alarm-system” was designed and implemented in the projects. The time-frame alarm-system aims to be a work planning tool and mean to equalize throughput-times and reduce the number of cases pending over 12 months.

The basic idea of the time-frame alarm-system is that the cases in danger to be delayed and lag behind need to be detected earlier, when the overall time-frame can still be reached, not only after they are already delayed or several months old and the process has not even started. With the help of the time-frame alarm-system, attention can be paid to delays happening in the early handling stages, and appropriate interventions can be made or priority given for these cases before the throughput-time builds up unreasonably.

The time-frame alarm system was designed to be three-phased, with control points with time-frames set in three different handling phases. The time-frames for these phases and the alarm-levels were designed in the way that no cases would be pending over 12 months. The alarm-system was designed on the basis of an idea from traffic signals, consisting two alarm-levels: lower alarm-level (when a case starts to draw closer to the set time-frame for the phase) and upper alarm-level (when a case has exceeded the set time-frame for the phase).

As an example, the idea of the process control points, time-frames for them and alarm-levels designed for Insurance Court is presented in figure 3 and table 7. Similar system was designed also for Helsinki Administrative Court and Supreme Administrative Court.

Figure 3: The control points, time-frames and alarm-levels set for normal and priority cases
Table 7: Reasons for alarms and the alarm-levels

<table>
<thead>
<tr>
<th>Reason for alarm</th>
<th>Recipient of the alarm</th>
<th>Lower alarm-level (days pending)</th>
<th>Upper alarm-level (days pending)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Control point 1</td>
<td>Referendary has not been selected for the case</td>
<td>Court Clerk</td>
<td>130 / 60</td>
</tr>
<tr>
<td>Control point 2</td>
<td>The decision draft has not been delivered to Judge division</td>
<td>Referendary</td>
<td>180 / 80</td>
</tr>
<tr>
<td>Control point 3</td>
<td>A decision has not been made for the case</td>
<td>Judge</td>
<td>270 / 120</td>
</tr>
</tbody>
</table>

The practical tool for work planning and the monitoring of pending inventories forms the alarm-system symbols and listings in the case management system. With the help of the alarm-system symbols and listings, a person can easily control his/her workload situation and plan the work according to the age of the cases. The data system also enables the managers to monitor the overall situation of pending cases and inventories easily online, as the pending case listings are available from the data system by the whole court, the departments, persons, subject groups, complexity, priorities and decision divisions.

If the pending time of a case has for some reason exceeded the set time-frames in some control point, the alarm system symbol appears in the case listing in the data system for the particular person responsible for the next advance phase in the handling. If the case has exceeded the lower alarm-level, the symbol in the listings is one exclamation mark, and if the case exceeds the upper alarm level, the symbol is three exclamation marks. As an addition to these symbols, also the whole time period of pending is updated daily to the listing. The case lists in the order of age and the exceeding of alarm-levels are the following: first are the priority cases with three exclamations marks in the order of age, then normal cases with three exclamations marks in order of age, and so on. With the help of these different symbols, it is easy to control the overall situation of different pending inventories: the exact age of cases, the number of cases over time limits, the number of priority cases, and complex cases.

An example of the basic scene in the data system is depicted in figure 4. In this example a Judge’s pending inventory listing is presented with the alarm-system symbols: age in days, exclamation marks, green diamonds for priority cases and black diamonds when the case is evaluated as complex. (All identification information of the cases has been hidden from the picture due to privacy reasons.)
Assessment
The implementation of the improvement initiatives and wide approval of them are the hardest part. The project and its stages “prepared the soil” step by step for improvement and change in the court instances. This and all the discussions held during the years helped all personnel groups to comprehend the importance of the subject at hand. On this account, the implementation of the actions was easier; majority accepted the improvement actions and valued them as sensible. This is crucial for the reforms to stay as a standard way of operations even after the outside experts leave.

Change requires the problem and implementation to be taken seriously. The use of external expertise, systematic procedures for improvement and time given for the personnel to adjust to and influence the changes really helps in achieving this. The crucial role of the top management in the adoption and implementation of change was also evident. In all projects, the court manager was an active member in the project group and in designing the improvement initiatives from start to finish; highlighting the importance of the issue and encouraging the personnel take the reforms more seriously.  

The slow, phased proceeding of the project was regarded as one of the crucial elements in the successfulness of the implementation. If change is wanted, a significant amount of time, constant reminding and different methods are needed. The use of outside expertise can have a positive impact on the development of new and fresh improvement solutions.

---

3.3 Weighted caseload system

The workload and time needed to dispose of a case varies considerably between case groups and case types in courts. To manage the performance of courts effectively, it is important to know the workload that is caused by a certain type of a case and to relate it with the needed resources. Case weights recognize that different cases take different amount of time to be processed effectively. The absence of weighted caseload measures makes it difficult to measure court process performance and compare the productivity and resource utilization of different court instances. The large variations in the workload of different types of cases can cause delays and backlogs for the larger and more time-consuming judicial cases and cause additional costs arising from improperly allocated judicial resources. The weighted caseload system and scores are used only to compare and evaluate the workload between courts. The scores are not used to measure individual workload or productivity of Judges or other personnel.

In Finland, the estimation of workload of courts is measured through a weighted caseload system, which aims to make different cases comparable. The general courts have had the system in use for a longer period of time. The Administrative courts started to design their system in 2010.

System for general courts

In the system for general courts the existing case categories (coercive measures, crime, summary, civil, land court, petitionary and insolvency cases) are divided in different complexity categories based on the approximate time they require. The crime cases, large civil cases and petitionary cases are divided in three categories, which are “ordinary”, “average” and “laborious”. Insolvency cases are divided in two categories, which are “ordinary” and “average”. Coercive, land court and summary cases have only one complexity category. The court’s time monitoring system is used to calculate the average handling time of each category. In order to determine the weighted scores for each different category, the average handling times of different categories are compared to that particular courts’ handling time of an ordinary crime case which was decided to have score 1. In addition to the amount of handling time, it was decided that in estimating the workload of cases and in giving the weighted scores, the duration of the main hearing and the composition of the decision-making body should also be taken into account. This means that cases in which the decision-making body has to be enlarged, the weighted score rises 0, 5 points per each extra Judge. For cases in which the main hearing exceeds the normal time, the score rises 1 point for every full day exceeding eight hours. The courts were asked to deliver their opinion of the weighted caseload system. The majority of the statements were supporting for the weighted caseload system, and stated that it is a reasonable base for resource allocation. It was noted that there was a need for an objective and uniform system for measuring the caseload of all court organizations in allocating resources. However, there was also some critique about the lack of details and lack of consideration of the special features of different cases in the measuring system. The weighted scores for general courts are:

- Crime cases “ordinary”: 1
- Crime cases “average”: 2
- Crime cases “laborious: 6
- Civil cases “ordinary”: 2,4
- Civil cases “average”: 4,8
- Civil cases “laborious”: 9,5
- Summary cases: 0,1

---

• Coercive measure cases: 0,5
• Land court cases: 5,4
• Petitionary cases “ordinary”: 0,6
• Petitionary cases “average”: 1,1
• Petitionary cases “laborious”: 2,2
• Insolvency cases “ordinary”: 1,1
• Insolvency cases “average”: 2,3.

System for Administrative Courts

In Administrative Courts, the designing of a weighted caseload system was started by organizing a survey among all court personnel concerning the time needed for different pre-trial actions in different types of cases. The procedural actions in the pre-trial phase were divided into the ten most important actions, for which time estimations were given. In the survey all pre-trial actions were given a time span of which the respondent was asked to choose an estimation for cases in different case groups (for example less than 15 minutes… over 2 hours etc.). Altogether 288 representatives of the personnel replied the survey. A starting point for creating the weighted case categories was the arithmetic mean of the answers to the survey. Based on this preliminary score, different case groups were set up based on the approximate time consumption. As a result, the different case groups were divided into four categories according to their average time consumption: Category A (least time consuming), Category B (less time consuming than average), Category C (more time consuming than average), and Category D (most time consuming). The principle is that the time consumption of cases in category A and D is significantly different from the time consumption of other categories. First, preliminary scores were given to the different categories. The basis for establishing the preliminary scores was the differences of average time consumption between cases according to the survey outcomes. As an addition to the survey, the categorization and the scores were given to court representatives to be commented on in several different occasions during the planning process. Different courts gave their opinions and comments concerning the categories and the scores for the categories. This way also practical experience could be effectively used during the planning of the preliminary categories and scores. Based on the comments of the court experts, a work group representing the management teams of the pilot courts formed a consensus concerning the scores for the different categories, to be tested and implemented.

The scores for the different categories were:
• Category A: 0,3
• Category B: 1
• Category C: 2,5
• Category D: 5.

The overall opinion of the courts is that the system is appropriate and has potential to improve the accuracy of the performance measurement and the comparison between courts. Nevertheless, the categories and scores still needed to be tested in practice in order to get information and experiences about their actual functionality.

Assessment

The applied systems have had good acceptance in the Finnish courts, even though it is acknowledged that the appropriateness of the case categories and scores need to be constantly

---

updated based on practical experiences. It can be said that, due to the large variations in the time consumption of different cases, even a rough and approximate weighted caseload system is better than not weighting the cases at all.

It is important that practitioners are involved in the designing of the system, and that opportunities to give guidelines and feedback are provided throughout the designing process. This will improve the system and the approval of it.

The weighted caseload system helps performance management in courts by providing data that are more accurate for goal setting and resource allocation. The weighted caseload system gives new opportunities to analyse the court’s productivity and backlog situation in closer details. Especially it provides opportunities to compare the productivity and resource utilization of different courts more reliably and detailed. Some amount of the productivity differences in courts can be explained by the different case structures and thus different time consumption.

There still remain differences in the court productivity that cannot be explained by the case structure. The system cannot take into account all differences in the case requirements. The criticisms towards the system is mostly connected to the lack of details to accurately provide information to evaluate the differences between courts. It has been emphasized that the system can be used as a guideline in allocating resources, but the court specific situations need to be flexible taken into account.

References
- Replies by country: [http://www.coe.int/T/dghl/cooperation/cepej/evaluation/2016/Par_Pays/Finland%20data%20file.pdf](http://www.coe.int/T/dghl/cooperation/cepej/evaluation/2016/Par_Pays/Finland%20data%20file.pdf)


European Judicial Training Network (ETJN). Finland. [http://www.ejtn.eu/About-us/Members/Finland/](http://www.ejtn.eu/About-us/Members/Finland/)


208 Interview: Tuomas Nurmi, Helsinki District Court, 2.2.2017
• Judicial System in Finland: [https://www.asianajajaliitto.fi/en/legal_services/judicial_system_in_finland](https://www.asianajajaliitto.fi/en/legal_services/judicial_system_in_finland)


Interview: Deputy Head of Department Heikki Liljeroos and Planning Manager Raimo Ahola. Finnish Ministry of Justice, 27.1.2017

Interview: Chief Judge Tuomas Nurmi. Helsinki District Court, 2.2.2017.

Interview: Chief Judge Antti Savela. Oulu District Court, 10.5.2017.


Laatukeskus, Excellence Finland. [www.laatukeskus.fi/palvelut-asiantuntijapalvelut/caf](http://www.laatukeskus.fi/palvelut-asiantuntijapalvelut/caf)


- Oikeudenkäynti käräjäoikeudessa: https://oikeus.fi/fi/index/esitteet/oikeuslaitos/oikeudenkaynti.html
- Court Trainings: https://oikeus.fi/tuomioistuimet/en/index/courttraining.html


Quality Project of the Courts in the Jurisdiction of the Court of Appeal of Rovaniemi, Finland. How to assess quality in the courts? Quality Benchmarks for Adjudication are a means for the improvement of the activity of the courts.


Rovaniemi Court of Appeal (2013). Model for the quality assessment system.


Samofal Marina. Experience of initial training of candidates for a post of judge and newly appointed judges in the member States of European Union. High Qualification Commission of Judges of Ukraine.


Tuomarinaltatalautakunnan toimintakertomus (2015).


The evaluation and development of the quality of justice in France

Under the scientific supervision of
Hélène Pauliat: Professor of public law, University of Limoges, OMIJ

Scientific coordination
Caroline Foulquier-Expert: University lecturer in public law, University of Limoges, OMIJ

List of all contributors
Laurent Berthier: Senior lecturer, University of Limoges, OMIJ
Caroline Boyer-Capelle: Senior lecturer, University of Limoges, OMIJ
Caroline Foulquier-Expert: Senior lecturer, University of Limoges, OMIJ
Pauline Lagarde: Doctor in public law, OMIJ
Ludovic Pailler: Senior lecturer, Post-doctoral researcher, OMIJ
Hélène Pauliat: Professor of public law, University of Limoges, OMIJ
Nadine Poulet: Senior lecturer, University of Limoges, OMIJ
Agnès Sauviat: Senior lecturer, University of Limoges, OMIJ

Abbreviations
art.: article
BOP: Program Operational budget (Budget opérationnel de programme)
CAA: Administrative Court of Appeal (Cour administrative d’appel)
CE: Council of State (Conseil d’Etat)
CEPEJ: European Commission for the Efficiency of Justice (Commission européenne pour l’efficacité de la justice)
CJA: Administrative Justice Code (Code de la justice administrative)
CSM: High Judiciary Council (Conseil supérieur de la magistrature)
CSTACAA: High Council of administrative courts and administrative courts of appeal (Conseil supérieur des tribunaux administratifs et cours administratives d’appel)
dir.: under the supervision of (sous la direction de)
ENA: National school of administration (Ecole nationale d’administration)
ENM: National School for Judges (Ecole nationale de la magistrature)
IGJ: Directorate-General for Justice (Inspection générale de la justice)
LOLF: Legislation governing public finance (Loi organique relative aux lois de finances)
MIJA: Mission of inspection of administrative courts (Mission d’inspection des juridictions administratives)
OMIJ: Observatory of Institutional and Legal Change (Observatoire des mutations institutionnelles et juridiques)
RAP: Annual performance report (Rapport annuel de performance)
TA: Administrative court (Tribunal administratif)
TASS: Labor and Employment tribunal (Tribunal aux affaires de la sécurité sociale)
TGI: County court (Tribunal de grande instance)
TPBR: Agricultural land court (Tribunal paritaire des baux ruraux)
v.: see
0. Background

The complexity to define the evaluation indicators of the quality of justice still leaves great scope for quantitative indicators of judicial performance. The management of the judicial institution must indeed be efficient for political authorities. But the quality of justice is also a very important concern for a great number of people involved in the administration of justice. Although the evaluation and conception of the methods of measuring and developing the quality of justice in France have been subject to many doctrinal research works, they do not give rise to a clearly identified policy of the Ministry of Justice.

Among the numerous publications dealing with this issue, the evaluation of the quality of justice in France has particularly given rise to a discussion, supported by the Mission de Recherche Droit et Justice, and lead between 2013 and 2015 by the Observatoire des Mutations Institutionnelles et Juridiques (OMIJ), the Center for Studies and Research in Administrative and Political Sciences (le Centre d’Études et de Recherches en Sciences administratives et Politique) (CERSA), and the Department of Research on Justice and proceedings (le Département de Recherche sur la Justice et le Procès) (DRJP). Two reports, one dealing with the ordinary justice, and the other dealing with the administrative justice, have thus questioned the definition of objectives and indicators allowing to take into account the notion of quality in the measuring of judicial performance.

The quality of justice is not a government priority. However, it has been one of the driving forces of the Law on modernizing the justice of the 21st century, which includes fragmented and diverse provisions which are all corrections or additions contributing to improve the quality of justice. But, the institutional promotion of the quality of justice remains fragmented. The Ministry of Justice does not neither lead any steering of all the courts on this matter, nor coordinates the initiatives taken by the latter to do so. At the most, the ministry has organized experiments prior to the vote of the aforementioned law and delivered guidelines on its innovations. As a result, the courts are the first actors in evaluating and promoting the quality of justice. They are all the more attached to it because this is as a tool for valuing their work in a context of impoverishment of Justice that makes their task ever more difficult.

Indeed, the evaluation and improvement of the quality of justice come up against a major obstacle in practice, that of the concrete situation of the courts. They are faced to a chronic shortage of human, material and financial means which not only affects the achievement of the quantitative objectives and the fulfillment of the increasing tasks assigned to them but

---

1 See, more particularly, for global studies, Emmanuel Breen (dir.), Mesurer la justice? Elaboration d’indicateurs de qualité de la justice dans une perspective comparative (PUF, 2001); Marie-Luce Cavrois, H. Dalle and Jean-Paul Jean, La qualité de la justice (La Documentation Française, 2002); Marco Fabri, Jean-Paul Jean, Philipp. Langbroeck and Hélène. Pauliat (dir.), L’administration de la justice et l’évaluation de sa qualité en Europe (LGDJ, January 2005); Laurent. Berthier, La qualité de la justice (Thesis, Limoges, 2011).

2 This mission is a public interest grouping jointly established by the Ministry of Justice and the Centre National de la Recherche Scientifique (CNRS).

3 University of Limoges.

4 University Paris II Panthéon-Assas.

5 University Paris I Panthéon-Sorbonne.


gives them only very limited flexibility, perhaps even nothing, to allocate additional resources for the development of qualitative objectives. This thus depends, to a large extent, on the judges who are not all discouraged by this factual situation and sometimes add to their personal workload, time-consuming initiatives carrying a real added value.

1. The institutional context

1.1. Judicial structure overview

For historic reasons and so as to maintain the French conception of separation of powers, a summa divisio exists between ordinary justice and administrative justice (for an extended overview see Appendix 1).

The different administrative courts fall into two groups: the general administrative courts and the specialized administrative courts.

There are 51 general courts exercising in three different levels of courts; 8
- the Administrative courts (Tribunaux administratifs): there are forty-two of them, eleven out of which are in the overseas territories. The administrative court is the ordinary administrative court (Article L. 211-1 of the Code de justice administrative).
- the Administrative courts of appeal (Cours administratives d’appel): they were established by the law of December 31st, 1987. Today, there are eight of them (Bordeaux, Douai, Lyon, Marseille, Nancy, Nantes, Paris and Versailles). The Administrative Courts of Appeal are the ordinary courts of appeal of the administrative courts, except from some appeals that fall in the jurisdiction of the Conseil d’État (Article L. 211-2 of the Code de justice administrative).
- the Council of State (Conseil d’État) is the highest court in the administrative jurisdictional order. The jurisdictional attribution of the Conseil d’État are exercised by the Litigation Section. Its main function is a function of judge of annulment, which enables it to ensure the uniformity of case law at the national level. It acts as a judge of annulment to evaluate and judge appeals brought against the judgments of the administrative courts of appeal, against the decisions of specialized administrative courts and against the decisions, in certain matters, of the administrative courts in first and final instance. Today, more than 70% of the decisions of the Conseil d’État fall within its jurisdiction as a judge of annulment.

In some matters, it may be a judge of appeal, for instance against judgments of administrative courts in municipal and departmental elections. This assumption, however, remains marginal and represents, depending on the year, from 1% to 6% of its judicial activity.

Lastly, and more frequently, it may be a judge competent in first and final instance, mainly on the basis of the subject-matter of the dispute (see Article L. 311-1 of the Code de la justice administrative). It thus directly judges the lawsuits against the higher acts of the executive power (decrees, regulatory acts of ministers) and against acts without territorial anchorage, thus falling outside the jurisdiction of an administrative court (such as litigations related to regional or European elections). About 25% of the decisions of the Conseil d’État are rendered in first and final instance.

The President of the Litigation Section as well as the State Councilors appointed by him also act as judges hearing applications for temporary measures.

---

8 See Appendices, table 2.
There are also some thirty specialized administrative courts. They have jurisdiction in certain specific disputes and their decisions are ultimately subject to a review by the Conseil d’Etat. These courts include, more particularly, departmental courts and regional courts for military invalidity pensions, or the National Court for Right of Asylum (Cour nationale du droit d’asile - CNDA).

However, this report shall focus on non-specialized administrative courts. The French constitutional principles stipulate the independence of administrative justice with a block of jurisdictions in its favor (i.e. annulment or reformation of administrative acts)⁹.

The different actions that can be brought before administrative courts are mainly the following:

- Annulment because of illegality (recours pour excès de pouvoir) where the applicant requests the annulment of the contested measure.
- Remedy of full jurisdiction (recours de plein jure) where the applicant requests a review of the contested act (a review of a penalty for example) or an order/injunction to pay a sum of money.
- Emergency proceedings (référés d’urgence) where the applicant asks for a provisional or quick decision (suspension of the execution of a decision, for example).

Concerning the figures dealing with administrative courts, the Conseil d’Etat has 222 active members (officials and judges¹⁰) and 414 agents (administrative staff and courts clerks). Administrative courts of appeal and administrative tribunals have 1130 judges and 1438 registry officers. These figures are taken from the 2015 business review (Bilan d’activité 2015 – Conseil d’Etat et justice administrative) and are as at December 31st, 2015.

The annual budget of the administrative justice is estimated to 413.8 million euros (about 0,12% of the total state budget) in the Finance Law for 2017 (including Council of State).

The ordinary courts order is made of first instance courts, second instance courts and a Cour de cassation¹¹.

The first instance courts shall first of all be distinguished according to whether they have jurisdiction in criminal or civil matters. In criminal matters, the jurisdiction of the courts is determined on the basis of the tripartite classification of offenses in increasing order of seriousness (infraction, offense, crime). There were 307 police courts in 2015 that had jurisdiction in the most serious infractions, fifth class offences, and an undisclosed number of local courts (jurisdiction de proximité ; at least one within the jurisdiction of the Court of appeal) that had jurisdiction in the first to fourth class offences (the least serious ones). Local courts shall be abolished by July 1st, 2017; their jurisdiction shall then pass to police courts¹². Their number shall be reduced the same date, since they will no longer be attached to the lower courts (tribunaux d’instance) but to the

⁹ See more particularly the decision Conseil de la concurrence of the Conseil constitutionnel dated January 23rd, 1987, n° 86-224 DC.

¹⁰ Non-specialized administrative courts deal with disputes between private individuals and public authorities (State, local authorities, public institutions) or private bodies with a public service task, such as professional bodies or sports federations. Only the administrative judge can therefore annul or reform the decisions, whether individual or general, made by those authorities.

¹¹ See Appendices, table 2 presenting the number of French ordinary courts.

¹² Law n° 2016-1547 on modernizing the justice of the 21st century [2016] art. 15.
county courts (tribunaux de grande instance). Offenses fall within the jurisdiction of the local criminal courts (tribunaux correctionnels), that are issued from the 168 county courts (tribunaux de grande instance). Crimes and related offenses fall within the jurisdiction of the Criminal Court of law (Cour d'assises), which is a non-permanent court. There is one Criminal Court of Law per overseas department or overseas collectivity, that is to say 106. A criminal court has the same jurisdiction for the territorial collectivity of St. Pierre and Miquelon. In addition to these ordinary law courts, there are extraordinary courts that are specialized. They first of all represent the 155 juvenile courts and criminal courts for minors (cours d’assises des mineurs). The first ones have jurisdiction in infractions, fifth-class offenses and crimes committed by minors aged 16, and the latter, for crimes committed by minors aged from 16 to 18. There are also special criminal courts that won’t be presented.

The different types of courts are more numerous in civil matters. A distinction is made according to whether they have ordinary or special jurisdiction. The 307 lower courts (tribunaux d’instance) and the 168 county courts (tribunaux de grande instance) have ordinary jurisdiction.

The lower courts and county courts have jurisdiction in all disputes where the law has not attributed exclusive jurisdiction to a court and an exclusive jurisdiction in certain issues (capacity of persons, real estate for example). The lower courts (tribunaux d’instance) have jurisdiction for all personal action up to 10 000 euros as well as for certain special actions (action in boundaries, litigation concerning the conditions of the funeral). The local courts (jurisdiction de proximité) have jurisdiction in personal actions up to 4,000 euros and shall disappear as at July 1\textsuperscript{st}, 2017\textsuperscript{13}. The courts of first instance that have a special jurisdiction are of four types. 210 employment tribunals (conseils de prud’hommes) and 6 labour tribunals (tribunaux du travail) are responsible for hearing disputes concerning individual employment relationships. 136 commercial courts (tribunaux de commerce) settle disputes between traders or related to commercial acts. Their jurisdiction shall be extended to disputes between artisans on January 1\textsuperscript{st}, 2022\textsuperscript{14}. An agricultural land court (tribunal paritaire des baux ruraux) which has jurisdiction in litigations between rural landlords and rural lessee, is established in each one of the 307 lower courts (tribunaux d’instance). Until January 1\textsuperscript{st}, 2019, the 114 courts in charge of social security matters (tribunaux des affaires de la sécurité sociale) have jurisdiction in general social security disputes. After that date, litigations shall be transferred to the lower and county courts (tribunaux de grande instance and tribunaux d’instance).

The second instance courts that are represented by 36 Courts of Appeal and the Superior Court of Appeal (tribunal supérieur d’appel) of St. Pierre and Miquelon, are competent to hear appeals against the first instance decisions in both criminal and civil matters. All disputes are allocated between specialized chambers within each of these jurisdictions.

Lastly, the Cour de Cassation handles appeals on points of law brought against the decisions of the courts of first and second instance. As the only judge of the Law, it ensures the uniformity of its application throughout the territory.

In 2014, the ordinary courts had 7,054 professional judges, 62% of whom were women. The figures for non-professional judges are older. They were 24,932 in 2012 (unknown number of women). The annual budget for ordinary justice is set to 3,421.4 million euros (commitment authorizations in the Finance Act for 2017). This figure does not include prison administration (5,763 million euros), judicial protection of youth (843 million euros), access to law and

---

\textsuperscript{13} Ibid.
\textsuperscript{14} Law n° 2016-1547 on modernizing the justice of the 21\textsuperscript{st} century [2016], art. 95.
justice (403 million euros), the conduct and strategic management of the justice policy (361 million euros) and the budget of the High Judiciary Council (Conseil Supérieur de la Magistrature) (3.7 million euros).

The 2017 key figures of Justice (concerning the activity in 2016) have just been published: 2.6 million decisions in civil and commercial matters and 232,000 decisions in administrative matters.

1.2. Key functions in the administration of justice

Concerning professional judges in the ordinary order, article 64 of the Constitution specifies that “the President of the Republic guarantees the independence of the judicial authority”, which means establishing only a judicial authority and not a judicial power, that is moreover under the protection of the executive power. The President “shall be assisted by the High Judiciary Council (Conseil supérieur de la magistrature - “CSM”, hereinafter). Since the constitutional law no. 3008-724 dated July 3rd, 2008, this institution is not chaired anymore by the President of the Republic and the Minister for Justice is no longer its Vice-President. The reason of the constitutional change was linked to the effectiveness of the principle of separation of powers.

Article 65 of the Constitution stipulates that the CSM is divided into two configurations of 15 members, each composed of a majority of non-judges. It has functions only at the level of appointment and discipline, it is therefore very little involved in the administration of ordinary justice. One is competent with regard to the judges (magistrats du siège), the other with regard to public prosecutors (magistrats du parquet). They are respectively chaired by the first President of the Cour de Cassation and the Public Prosecutor at the Cour de Cassation (Procureur général près la Cour de cassation). The section competent in regard to judges makes proposals for the appointment of judges at the Cour de Cassation, the first president of the court of appeal and the president of county courts (tribunal de grande instance) and gives its assent to the appointment of other judges. The section competent in regard to public prosecutors simply gives its opinion on the appointment of public prosecutors, which implies its opinion is not binding, as opposed to the section competent for judges. Indeed, the appointment always falls under the regulatory power of the President of the Republic, which provides debates on the required independence of the prosecution service. Each of the two sections of the CSM is also entrusted with a disciplinary mission at request of the Minister for Justice, a first President of a Court of appeal, a public prosecutor at a court of appeal, the President or Public Prosecutor at the High Court of Appeal, a litigant or the Human Rights Defender. The Judges’ section can directly impose a sanction whereas the public Prosecutors’ section only gives a simple opinion. The Minister for Justice is the only one to be competent to impose a sanction against public prosecutors. Whomever the author of the sanction, it may be appealed against before the Conseil d’État on grounds of ultra vires. On the basis of its disciplinary function, the CSM has drawn up a compendium of ethical obligations for all judges, published in 2010 and currently being reworked on.

While the CSM is responsible for making decisions on ethical issues, the organic law of August 8th, 2016 established an Ethics College (collège de déontologie), organically

15 This ambiguous situation was recently made worse by the Decree no. 2016-1675 of December 5th, 2016 establishing the Directorate-General for Justice, since it subjects the Cour de Cassation to the supervision of the Directorate-General for Justice while no text existed before on this matter. See 2.4.1.

16 This majority of non-judges, which exists since 2008, is very much contested by magistrates.


18 Organic law n° 2016-1090 related to statutory guarantees, ethical duties and to the recruitment of the judges as well as the Conseil supérieur de la magistrature [2016] art. 28
separate from the CSM. It is composed of three judges of the ordinary order, a judge of the Conseil d'État or the Court of Auditors (Cour des comptes), and an academic. It is responsible for “giving opinions on any ethical issue concerning a judge personally”\(^{19}\) and “examining the declarations of interests”\(^{20}\) the judges of the ordinary order have to address to their superiors within two months of their establishment\(^{21}\). The Ethics College “presents each year to the Conseil supérieur de la magistrature a public report reporting on the execution of its missions”. Thus, the Ethics College is in a way subordinate to the CSM\(^{22}\), which remains the main body guaranteeing the independence and impartiality of justice. Many authors question therefore the interest of the coexistence of these two organs.

The equivalent of the CSM for administrative justice is the High Council of administrative courts and administrative courts of appeal (Conseil supérieur des tribunaux administratifs et cours administratives d’appeal). It also has an Ethics College (see infra).

The discipline of non-professional judges\(^{23}\) is not uniformly ensured. There is no central independent ethical body to which the non-professional judges of the Social Security courts (tribunaux des affaires de la sécurité sociale) and the farming lease courts (tribunaux paritaires des baux ruraux) are subject. The disciplinary power towards commercial judges is exerted by a National Disciplinary Commission (Commission nationale de discipline). This National Disciplinary Commission (Commission nationale de discipline) was established by the law of August 6th, 2015\(^{24}\) based on the model of the commission competent to hear employment tribunals judges on ethics cases. Moreover, a college of ethics (collège de déontologie), established by decree in 2016, is responsible for giving opinions on any ethical issue concerning personally a judge of a commercial court (traditionally called in France a consular judge, juge consulaire). It is also responsible for making recommendations that would guide the judge with their ethical obligations and best practices\(^{25}\). It is unfortunate that this initiative has not been copied for the judges in charge of social security matters since this ethical development is also necessary for them.

There are also councils which, at a national level, have consultative functions for commercial and employment tribunals. The National Council of Commercial Courts (Conseil national des tribunaux de commerce), which is chaired by the Minister for Justice\(^{26}\), was established by a decree to promote a better quality of commercial justice and to deepen reflection on ethical issues. It may thus be consulted on the training and ethics of commercial judges, the organization, functioning, activity, competence and establishment of commercial courts.

---

\(^{19}\) This mission resumes the mission defined for the CSM on June 1\(^{st}\), 2016, when it established the counselling and ethics reporting service in order to provide “the full effect of its general mission of ethics reporting” (Release of the CSM [2016] <http://www.conseil-superieur-magistrature.fr/publications/avis-et-communiques/communiqué-du-1er-juin-2016-loccasion-du-lancement-du-service-daide>.

\(^{20}\) Ordinance n° 58-1270 which organizes the status of the ordinary order [1958], art. 10-2, I.

\(^{21}\) Organic law n° 2016-1090 related to statutory guarantees, ethical duties and to the recruitment of the judges as well as the Conseil supérieur de la magistrature [2016], art. 26, II.

\(^{22}\) The Decree by the Conseil d’État that shall be passed in order to implement the provisions of article 10-2 of the mentioned order of 1958 shall surely confirm the relationship between the two institutions.

\(^{23}\) Non-professional judges are jurors in Cour d’assises. In the other cours in which they seat, they are judges entitled to rule on cases as assessors of a professional judge (e.g. in farming leasing courts) or as only judges of a court (e.g. in commercial courts).

\(^{24}\) Law n° 2015-990 for the growth, activity and equality in economic chances [2015], art. 258, 15° to 18°.

\(^{25}\) Decree n° 2016-514 on the judicial organization, alternative mechanisms for resolving existing disputes, and the ethics of commercial Judges [2016] art. 17.

\(^{26}\) It is composed of three senior officials in the Ministry of Justice, two senior judges of the ordinary order, a member of the Conseil d’État, a commercial court clerk, two qualified personalities and ten commercial judges.
can also make proposals related to these matters. In addition to the Minister for Justice, the High Council for employment tribunals (Le Conseil supérieur de la prud’homie)\textsuperscript{27}, established by a law, is responsible for formulating opinions, on its own initiative or on request, suggestions, of carrying out studies on the organization and functioning of the employment tribunals (conseils de prud’hommes), formulating any proposal it deems appropriate. It is consulted on matters such as the institution, competence, organization, functioning and proceedings before the employment tribunals on the election, status and training of the social security judges. It is also responsible for drawing up a code of ethics for social security judges.

These commissions, colleges and councils are all bodies that could be merged to ensure the consistency and synergy of ethical opinions and practices, and extended to all non-professional judges such as the assessor judges of the Tribunal paritaire des baux ruraux.

Other bodies indirectly contribute to the administration of justice. Let’s mention the Human Rights Defender (Défenseur des droits), a kind of Ombudsman. As an independent administrative authority, it is responsible for ensuring “respect for the rights and freedoms by the State administrations”\textsuperscript{28}. It can be submitted by any person or ex officio. It has very effective means of information and can make recommendations, resolve disputes, or refer the matter to the competent disciplinary authority. However, the Human Rights Defender operates to a very limited degree in the administration of justice except in the context of action in defense of children rights, and more specifically by promoting the right of the child to be heard before a court\textsuperscript{29}.

The National Bar Council (Conseil national des barreaux) was established by Article 21 of the Reform law act n° 90-1259 of December 31\textsuperscript{st}, 1990. It is composed of elected representatives of lawyers and has legal personality. It is responsible for representing the profession of lawyers with the public authorities and harmonizing the rules and practices of the Lawyers profession as well as the training\textsuperscript{30} programs and actions. Within its first mission, it contributes in particular to the drafting of texts concerning the Lawyers profession and the conditions of its exercise as well as to the drafting of those related to the judicial institution. It thus took part in the reflection on the modernization of justice by publishing a white paper

\textsuperscript{27} It is composed of five representatives of the ministries for justice, labor and agriculture, eleven representatives of employees and eleven representatives of employers.

\textsuperscript{28} Constitution [1958] art. 71-1.

\textsuperscript{29} The Human Rights Defender has consequently dedicated his annual activity report for 2013 to the child and his legal statement. He also took action in his mission as a mediator in order to resolve a difficulty related to the refusal of a matrimonial judge to hear a child in proceedings concerning his parents' divorce (friendly settlement 15-008729).

\textsuperscript{30} The Conseil National des Barreaux is entitled with a regulatory power the limits of which are set out by the Conseil d’Etat (CE, December 16\textsuperscript{th}, 2008, n° 289940 : “is limited by the rights and freedoms that belong to lawyers and in the essential rules of the practice of the profession; therefore, if the Conseil national des barreaux can, where necessary, imposes on all the Bars a rule which shall be applied only by some of them, or even, in the same matters, implement a different rule, it cannot legally lay down prescriptions which call into question the freedom of exercise of the profession of lawyer or the essential rules governing it, and that would have no basis in the legislative rules or in those laid down by the decrees by the Conseil d’Etat as provided for by Article 53 of the Law of December 31\textsuperscript{st}, 1971, or would not be a necessary consequence of a rule in the traditions of the profession”)

76
(livre blanc) on the justice of the twenty-first century, including 44 proposals for improving the quality of justice\textsuperscript{31}.

1.3. Current issues in the administration of justice

The issue of the quality of justice is not a new one. Some ministers for justice wished to lead a true quality policy in this area, but it has often been thwarted by the limited resources allocated to courts. The Outreau case\textsuperscript{32}, which was a real judicial earthquake, has reinforced questions about the way of assessing the quality of justice and about avoiding dysfunctions within the institution\textsuperscript{33}.

The current issues of the administration of justice relate first to the implementation of the state of emergency (état d’urgence), linked to the terrorist attacks, since November 2015. This situation has demonstrated a real competition between the ordinary courts order and the administrative courts order. Discussions have recently focused on the extension of competences recognized to the administrative courts because of our greater “understanding” of the Public authorities’s actions, at the expense of the ordinary courts. But apart from this specific context linked to the terrorist attacks known to France, issues about administration of justice focused above all on the fact that the two highest judges in France (the First President of the Cour de cassation and the Vice-President of the Council of State) consider that the judicial authority is today considered above all as a public service, to which public authorities apply the mechanisms of “ordinary” public administrations, while its mission is specific.

This bring us to the budgetary issue. Indeed, the Judicial budget remains insufficient\textsuperscript{34}. However, public authorities have implemented a staffing increase in the judicial institution\textsuperscript{35}, but with an under-consumption of FTE regularly denounced; the establishment of the legal assistant function by the law of November 18\textsuperscript{th}, 2016 shall provide some help to the courts, but credits for payroll are used to employ temporary agents instead of professional judges, which is definitely not a guarantee of quality, especially as a medium term objective. Last but not least, the very quality of the decision is not necessarily called into question, but rather the time it takes to get the copy of the decision, because the court clerks’ departments are congested. The overall balance shows that processing times are increasing in the ordinary order.

What may be problematic concerning the Conseil d’Etat and the administrative order, is the control of delays in the future because of the extension of the jurisdiction of the administrative judge. The annual performance project (Projet annuel de performance, PAP) pointed out that the reducing delays in making decisions “would soon experience a limitation: the administrative judge must succeed in meeting the need for promptness with the equally


\textsuperscript{32} In the Outreau case, seventeen persons were charged with sexual abuse of minors and put in custody; one of them died before the trial. Ten of them were convicted before first instance courts. Six of the ten convicted persons were acquitted before second instance courts. The controversy was about the lack of caution vis-à-vis the declaration of minors, a one-sided investigation, a restriction to right of defence, a fail in judicial supervision and an excessive media pressure.

\textsuperscript{33} Ministry of Justice, Rapport du groupe de travail chargé de tirer les enseignements du traitement judiciaire de l’affaire dite d’Outreau (La Documentation française, 2005).

\textsuperscript{34} For 2017, it rises to 6.892 billion euros (excluding pension costs, 8.584 with pension costs), which represents a 2.636 billion budget for the courts.

\textsuperscript{35} 666 additional full time equivalents – FTE voted for 2017.
essential imperative of the quality of justice rendered”. Promptness shall not question the quality of the decision; however, most of the foreseen proceedings keep strengthening the authority of a single judge at the expense of collegiality.

2. Classical judicial evaluation arrangements

2.1. Introduction

The traditional methods of evaluating and promoting the quality of justice do not, strictly speaking, constitute a coherent policy. A related factor is the division of the two French judicial orders which gives a different spirit to the existing methods. The administrative judicial order, composed of a small number of courts, is only headed by the Conseil d’État. On the other hand, the ordinary system, composed of much more numerous courts, is not headed by a single authority, but by several authorities. In addition to this reticular animation, ordinary judges remain committed to their independence. This is obviously not without impact on the traditional methods of evaluating and promoting the quality of justice. However, the observable differences are not irreducible, at least some objectives are shared.

2.2. Recruitment and initial evaluation of judges

2.2.1. Selection bodies

Administrative courts

The members of the administrative courts are recruited according to different processes. For the members of the Conseil d’Etat (CE), they are selected either once they have graduated from the Nation school of administration (École Nationale d’administration, ENA), either through the system of secondment or through an external selection. Members of administrative courts (TA) and administrative courts of appeal (CAA) are recruited either through external or internal competition, or once they have graduated from the Nation school of administration (ENA), or through an external selection. They can also become members through the system of secondment.

In each case, different selection authorities are involved but the members of the administrative courts are always present, and more particularly the members of the CE. The selection authority may first be a contest jury panel: concerning candidates who have graduated from the ENA, the recruitment panel is composed of civilian administrations high officials, professors, university lecturers as well as a member of the CE. Concerning the recruitment competition for the members of the TA and CAA, the jury panel is composed of members of the TA and CAA, a counselor of the Cour de Cassation, university professors, and the body is chaired by a counselor of the Conseil d’Etat. When there is an external selection, the selection committee which examines the candidatures is composed, for appointments in TA or CAA, of members of the High Council of the TA and CAA (Conseil Supérieur des TA et CAA) and chaired by the Vice-President of the CE; when it comes to members of the CE, it is composed of the vice-president of the CE and the section presidents of the CE (présidents de section). This body shall give an opinion and the decision of appointment shall be taken by decree.

Access to the functions of members of the TA, CAA and CE can also result from the system of secondment. Concerning the members of the TA and CAA, the Higher Council of the TA and CAA hears the candidates for a secondment. For a secondment to the CE, a committee composed of the Vice-President of the CE and the Sections Presidents of the CE shall deliver

36 Anne Weber, “Le juge administratif unique, nécessaire à l’efficacité de la justice ?” [2008] 125 RFAP 264. For example, the President of the judgment division is entitled by the law of November 18th, 2016 to order a mediation process with the consent of the parties (CJA, art. L. 213-7).
an opinion before the decision of the Vice-President. There is undoubtedly a strong presence of the members of the administrative courts; the composition of the selection authorities is not very open to other persons or institutions except very punctually to the members of the Cour de Cassation or to Academics. Legal assistants and lawyers are not associated.

Ordinary courts

Professional judges of the ordinary order are recruited as legal trainees to attend the National School for Judges (Ecole nationale de la magistrature, “ENM”, hereinafter) by competition or title. To do so, the selection is carried out by authorities that are systematically composed of judges belonging to the ordinary order and presided over by a Counsellor of the Cour de Cassation. There are three competitions. A first jury panel makes the selection for the first and third competitions. It is composed of a Counsellor of the Cour de Cassation, four other judges of the ordinary order, a high-ranking judicial officer of the administrative order, a university professor, a lawyer, a psychologist, a qualified person for recruitment and a person selected based on his or her competences in a different position, such as a hospital director. The jury panel of the second competition is composed of a Counsellor of the Cour de Cassation, a member of the court services directorate, two judges of the ordinary order and a university professor. The selection based on the title is carried out by the promotion board (commission d’avancement) after a reasoned opinion of both the heads of courts and the administrative authority. This internal authority of the judicial system owns a rather closed composition: four Counsellors of the Cour de Cassation, two first presidents of courts of appeal, two general prosecutors, ten court judges as well as high member of the Directorate-general for justice (l’inspection générale de la justice). Once the initial training is over, trainee judges are selected and classified by a jury panel composed of a judge of the Cour de Cassation, a high official of the Ministry of Justice, a high-ranking judicial officer of the Conseil d’Etat or of the Court of Auditors (Cour des comptes), three judges of the ordinary order, two university professors and a lawyer.

It still remains possible for some people to be directly integrated into the body of professional judges, without completely intending the ENM curriculum. They are then appointed with the assent of the activity commission.

Finally, there is a complementary competition. Its jury panel is composed of a Counsellor of the Cour of Cassation, a high-ranking judicial officer of the Conseil d’Etat or of the Court of Auditors (Cour des comptes), four judges of the ordinary order, two university professors and three other persons chosen because of their legal competence. This jury panel shall evaluate the tests of the competition and, after a probationary training period of the persons selected, declare them, if necessary, fit for the exercise of judicial functions, taking into account a report drawn up by the director of the ENM.

The multiple access ways and selection authorities, as well as the different conditions of access, undermine the cohesion of the body of professional judges but make it possible to enrich the staff of judges with individuals with varied and useful experiences in order to better understanding the society.

---

37 The first one is open to persons that have completed four years of law studies, the second to persons proving four years of work in public service ant the third one to persons proving to have eight years of experience in the private sector, eight years of non professional judicial experience or eight years experience as local elected representative.
Non-professional judges of the ordinary order are appointed under conditions that do not directly favor the quality of justice, insofar they are chosen among persons whose legal skills, ability to make decision or to conduct a hearing are not certain. The jury members who form the criminal court which is called Cour d’assises in France are chosen by lot on the electoral registers and successively by the mayor and by a special commission each year, by the first president of a court of appeal, his delegate, the president of county court (tribunal de grande instance) where the cour d’assises is or its delegate sits. They may be dismissed by the accused or his lawyer first, then by the prosecution. Other non-professional judges, namely the judges belonging to the agricultural land courts (tribunaux paritaires des baux ruraux) and commercial courts (tribunaux de commerce) are elected by a board representing the parties to the disputes each court has to deal with. Commercial judges are thus elected by a special electoral board. It is composed, in each jurisdiction, by commercial delegates who are elected in this jurisdiction by people with industrial and commercial functions, the members in office in the commercial courts and former members of the commercial courts. By contrast, the sentenced persons for actions that are contrary to honor, probity or morals are excluded from this special board. The non-professional Judges of the agricultural land courts (tribunaux paritaires des baux ruraux) are elected by the people they represent that is to say on the one hand, the landlords and on the other hand, the lessees. Last but not least, the members of employment tribunals are jointly appointed by the Justice Minister and the Labor Minister every four years on proposal of the labor and professional unions. The social security courts jurors are appointed for three years by order of the first president of the Court of Appeal, after consulting the President of the TASS on a list drawn up by the regional manager of the youth, the sports and the social cohesion in the district where the social security courts has its sities and taking into account the proposals of the most representative employer and trade union organizations.

2.2.2. Selection process

Administrative courts

The following paragraphs shall only deal with general administrative justice, that is to say, the Conseil d’État, the administrative courts of appeal and the administrative courts. Specialized administrative courts, as the National Court for Right of Asylum or the financial courts (National Accounts Court, Regional Accounts Court) shall not be covered.

The types of candidates are diverse: they concern young graduates, but also professionals. Young graduates represent the most important part of the candidates, they are selected through competitions. Professionals can also be recruited, under certain conditions: those concerned are officials belonging to a body recruited through the ENA way, university professors and lecturers, administrative members of parliamentary assemblies, military servants, civil servants attached to the civil service of the State, local authorities, the European Union or public hospitals. Moreover, civil servants with a four year professional experience, with no diploma requirements, are allowed to take the internal competition to enter the ENA. Likewise, judges of the ordinary order, civilian or military agents belonging to a body or a category A (employees in charge of design, management and supervision) or an equivalent position and with a four years experience in the civil service may become judges of the administrative courts or administrative courts of appeal. Lastly, employees of the private sector, local elected representatives and association officials, who have completed eight years of political mandate or professional experience, without specific qualification conditions, are authorized to present the “third entrance examination” for the ENA.

The selection process is therefore different according to the nature of the candidates and there
are three selection processes: the ordinary competitive exam, the secondment and the external process.

Competitions are either external or internal. The first ones are rather for young graduates. In the Conseil d’Etat, positions for being “auditors” (classical function of beginners) are proposed to students who complete their schooling at the ENA. From 4 to 6 positions are proposed each year. They are usually chosen from among the first pupils classified of their year group. The auditors shall become, through promotion, "masters of requests" (maîtres des requêtes) after a career spanning about three years, then "Counsellors of State" twelve years later approximately. In addition, approximately 7 positions per year of the students who are graduates of the ENA are specifically dedicated to the judges of the administrative courts of appeals and administrative courts. A specific competition is attached to this recruitment process. The second ones, internal competitions, are open to public officials who fulfill certain conditions. They must have at least four years of professional experience, without specifying qualifications, to apply to a position in the Conseil d’Etat. Concerning administrative tribunals and administrative courts of appeal, internal competitions are only opened to the judges of the ordinary order, military and civil servants of category A, or assimilated with four years proven professional experience. A specific entrance competition to the ENA, referred to as third competition, is open to private sector employees, elected officials and association leaders who have eight years professional experience.

Secondment allows the filling of certain positions that are dedicated to persons with specific experience and competences. At the Conseil d’Etat, special masters of requests may be recruited this way, or by means of "given extended leave". The same process applies to "special counsellors" of the Conseil d’Etat (selected among the qualified persons in the different fields of national activity), for a period of five years, by decree adopted by the Council of Ministers on the proposal of the Minister for Justice. Positions in the administrative courts and administrative courts of appeal are also proposed each year by way of secondment.

The external recruitment is a reward for professional and political career with great experience. At the Conseil d’Etat, one master of requests over four and one counsellor over three are appointed by the government after consulting the vice-president of the Conseil d’Etat. A part of the external appointments is dedicated to the members of the administrative tribunals and administrative courts of appeal on a proposal from the vice-president of the Conseil d’Etat. A specific external recruitment also exists at the level of administrative tribunals and administrative courts of appeal.

There are no specific selection procedures for minorities in the administrative courts.

The nature of the procedure is not uniform, it varies according to the method of selection. The competition procedure is the most used and the most framed. All competitions include eligibility tests, written tests and oral admission tests. There are five eligibility tests to enter the ENA, no matter if it is the external competition, the internal one or the third competition. They cover public law, economics, general culture, social issues and public finances. Admission tests are oral. They concern European Union law, international law, foreign languages and are complemented by an interview with the jury panel and a collective test of interaction.

Concerning the administrative courts and administrative courts of appeal, there are three
eligibility examinations: an administrative litigation case study, short-answer questions on legal, institutional or administrative topics, a composition on a subject of public law (for the external competition) or an "administrative memorandum" about a practical administrative problem and legal questions (internal competition). The admission oral tests consists in a subject of administrative law followed by legal questions and an interview with the jury panel.

Secondment and external recruitment do not include written tests. It only includes an interview with the jury panel after the submission of an application.

A number of skills and abilities are taken into account during the selection process. There are not, strictly speaking, psychological test, nevertheless, some tests allow the evaluation of the ability to manage workload, analytical skills, intelligence, dedication, patience. These concerns were highlighted with a recent reform dealing with competitions. The entrance competition to the ENA was modified in 2015 (decisions of April 16th, 2014 and March 6th, 2015). The aim is to ensure a satisfactory balance between the reviewing of knowledge, the evaluation of competencies and the detection of the aptitudes of the candidates. The latter two requirements have been strengthened in two ways. On the one hand, a collective interaction test was imposed. It allows to test the abilities, the relational qualities of the candidates: dialogue, conviction, listening. Candidates are in fact placed in three situations in a random order: the role of “exhibitor”, proposing a point of view, the role of “respondent” with starting a discussion and discussing with the exhibitor, and the role of “observer”, a person who analyzes the different discussions. On the other hand, the interview with the jury panel is now part of a recruitment process. It aims to estimate the candidates' personality, motivation and academic background, as well as their understanding of the issues and values of the public service.

The selection of the candidates for administrative tribunals and administrative courts of appeal enable to appreciate the qualifications required from the candidates in terms of work capacity and organization, open-mindedness, sense of analysis, taste of study and reflection during the interview with the jury panel.

The evaluation of legal competence is essential for future legal professionals which is carried out during the technical tests of public law or administrative memorandums.

One of the most striking developments in administrative justice in France is its openness to civil society and to litigants in particular. The litigant has a role which is reconsidered and consolidated, both in terms of access to the courts and in the way the trial is handled. The candidate is necessarily sensitized to this matter. This issue is often discussed during the recruitment interviews with the jury panel (mainly composed of administrative judges, see supra).

Assessment of group work capacity is not subject to specific tests. Nevertheless, it is evaluated during the interview with the jury panel. This interview focuses on the candidates' career or academic background, motivation, personality and areas of interests. Candidates shall have previously filled an individual sheet in which they specify elements enabling the verification of their capacity to become an administrative judge and to comply with professional ethics. This can lead to discussions. Candidates are also frequently faced with work situations, the answers of which would reflect their team spirit and openness. Moreover, the collective interaction test established in 2015 enables the assessment, in the exercise of different roles (exhibitor, respondent, observer), of the behavioral and relational skills of the
candidates. The working in group is then the subject of in-depth studies during the training of the selected candidates.

No attention seems to be paid to diversity in recruitment.

**Ordinary courts**

**Candidates for professional judiciary positions**\(^{38}\) who attend the ENM are recruited by way of competition or title. **Applicants in competition** are mostly recent graduates who have completed at least four years of law studies. Other applicants, with the same level of education, can be public servants with a four years professional experience and people who have completed eight years of professional experience, non-professional judicial experience or eight years of local mandate (elected in a local authority). These three categories of persons take part to different competition examinations. Although the tests vary according to these categories, they have common characteristics anyway. The written eligibility tests evaluate the legal knowledge and general culture of the candidates. The admission tests are different. For young graduates and persons who have eight years professional experience, they include a written examination requiring synthesis skills, oral tests related to their legal and linguistic knowledge and a group work test on a concrete case and an interview with the jury panel who shall review the general culture, the academic or professional background and the motivation of the candidate. Concerning the civil servants, the admission test is “a thirty minute conversation with the jury panel in order to assess the candidate's professional intelligence and open-mindedness”\(^{39}\). This illustrates that the conditions for selecting this category of candidates are inconsistent with the qualifications required from other candidates, providing an easier access to the ENM\(^{40}\). Moreover, this category of candidates to the competition is the only one for which the jury does not have the opinion of a psychologist after interview with the candidate.

**Candidates by way of title** have specific legal qualifications. They have a four year law degree and have practiced for four years a legal activity, a five-year law degree and have practiced for three years a position of legal assistant or have completed researches in law in a higher education institution, or a doctorate in law as well as another diploma in higher education system or a position of legal assistant. They are selected on the basis of a review of the application they have made, their criminal record, the opinion of the administrative authority responsible for investigating on the candidate and the marks obtained during the candidate's graduate studies. There is no hearing of the candidate by the heads of courts to which the files must be sent for the preparation of their justified opinion sent to the Minister for Justice who submits it to the advancement committee. Candidates may then be appointed by the Minister for Justice only with the assent of the latter. Their number may not exceed one third of the number of candidates recruited by competition.

Once they have graduated from the ENM, the jury panel must rank the justice auditors he considers competent by taking into account the results of the written examination related to judicial practice, the grade assigned to their judicial training periods as well as an interview with the jury panel on the basis of a concrete case explanation chosen by the candidate, on an ethical question and the experience acquired by the candidate. The panel also takes into

\(^{38}\) See Appendices 4 for a scheme of the selection process.


\(^{40}\) According to the report 2015 presented by the President of the jury panel of the 2015 session on the three qualification competitions to the Ecole de la magistrature, the young graduates who passed the competition were 245, 8 professionals and 27 officials.
consideration the justified opinion of the director of the ENM given on the basis of the report of the regional training coordinator who evaluates the deontological, relational and analytical skills, the synthesis, the adaptation, the respect of the procedural framework, authority, humility, conduct of a hearing or interview, amicable settlement of disputes and the ability to make a decision of common sense and enforceable. Last but not least, the jury panel must take into account the report of the director of the place where the candidate completed his judicial apprenticeship, carried out with all the judges who supervised the internship of the auditor.

**Direct accreditation to the profession of judges** is dedicated to persons who have seven years proven professional experience which qualifies them to practice, more particularly, legal functions. It is also reserved to heads of court services management who have seven years proven professional experience, and Category A officials of the Ministry of Justice who, without a university degree of four years in length in law, have seven years proven professional experience. They shall be appointed by the Minister for Justice with the assent of the promotion board also attended by the Director of the ENM and the President of the selection jury panel of the ENM. This commission may hear the candidates, which it usually does. It takes into account the open-mindedness, personality, adaptability, availability, listening ability, humility, analytical and synthesis capacity, legal and institutional knowledge and humanity of the candidate 41.

**Finally, a recruitment by means of a complementary competition** is open to persons with a university degree of four years in law as well as a seven year proven professional experience in the legal, administrative, economic or social field, which enables them to perform in judicial functions positions. The competition is divided into two parts. An eligibility phase consisting of written tests in order to assess the candidate's legal knowledge. An admission phase consisting in oral examinations to complete the evaluation of the candidate's legal knowledge and to examine his/her ability to deal with concrete legal situations and to judge them.

**Concerning non-professional judges**, the selection process is less related to the requirement of quality of justice given that theses judges are chosen by drawing lots, elected, or appointed without taking into consideration their judicial skills 42.

2.2.3. Selected candidates
A significant part of the candidates who are selected to join the administrative courts entered the profession by way of competition. They are thus rather young people and it is their first position. The judges who passed the ENA competition have a training of civil servants and thus have a rather singular profile for a judge. The candidates selected by way of direct recruitment competition for the TA and CAA have a more specialized profile. Secondment and external recruitment allow a relative diversification of the profiles: active state employees thus join the administrative jurisdiction, their professional experience allows an opening and a better taking into account of the administrative reality. They are active civil servants who join the administrative justice, their professional experience allows an opening and a better taking into account of the administrative reality. It should also be pointed out that external recruitment is currently used to recruit lawyers, but they are still very few even if this is a proven trend (less than 10% of the total number of candidates).

42 See below 2.2.1.
As for the candidates for judicial magistracy, those recruited by way of competition and title have different profiles. Most of them are young graduates. The remaining are persons who were formerly lawyers, members of the courts services departments, legal advisers, officials of the Ministry of Justice. The other professional profiles are very diverse (insurance agent, teacher, journalist or deputy general secretary of a federation). Most of the recruited candidates have a university degree of five years in law (76.05%). The quota of persons who have a university degree of four years in law (11.79%), a doctorate (4.94%) and no law degree (7.22%) is reduced. The average age of judicial auditors for the 2015 promotion is 28 years. Women represent 75.29% and men, 24.71%, which a relatively stable distribution since 2001. There is no recommendation that would, for the recruitment by way of competition or title, impose a balance distribution of genders for the justice auditors. Concerning the candidates who are directly integrated in the judicial profession, with an average age of 44.64 years, 56 of them have, between July 2014 and June 2015, received a favorable opinion from the promotion board before the probationary internship. 71.43% of them were women and 28.57% were men. The admitted examinees mainly used to have positions in the following fields: liberal professions (51.8%), judicial professions (18%), civil service executives (14.3%) and legal advisors (10.7%).

Concerning non-professional judges of the ordinary order, in the absence of statistics, we shall simply specify the conditions of eligibility of the candidates. The employment tribunal judge must be over 21 years old to be elected. The lists submitted for voting must consist of one candidate of each gender. The commercial judges must be aged over 30 years to be elected and have at least five years proven commercial professional experience. There is no requirement of parity between genders in this election because the election is a multimember plurality electoral system. The Tribunaux paritaires des baux ruraux assessors must be at least twenty-six years of age and are elected by way of first-past-the-post voting, which is another reason for the absence of parity.

As for the assessors of the Tribunaux des affaires de la sécurité sociale, they must be at least twenty-three years of age, but the lists they are appointed from do not have to be constituted alternately of women and men.

2.2.4. Training and internship of trainee judges
Successful candidates receive a training to become judges. Training is organized differently for the administrative and judicial systems.

Concerning the judges of the administrative courts, the training of the members of the TA and CAA takes place over a period of six months, a much shorter period than for the judges of the ordinary courts. This training is provided by the training center of the administrative justice (managed by the Conseil d’Etat). This center also provides continuous training. The high administrative court therefore plays a central role in the training of its judges in accordance with its task of administering the entire administrative justice. The Secretary General of the Conseil d’Etat and his departments, under the responsibility of the Vice-President, organizes, via the training center of the administrative justice, the handling of the future members of the courts and tribunals: the training is an integral part of the Conseil d’Etat’s human resources management mission. The involvement of the Conseil d’Etat is

---

43 The mentioned figures are based on a document drafted by the ENM and entitled: “Profil de la promotion 2015 des auditeurs de justice issus des trois concours d’accès et du recrutement sur titres”.
44 The mentioned figures are based on the report activity of the promotion board 2014-2015 (p.9 and seq.).
45 This ratio is mainly explained by the advancement of women.
Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice

probably conducive to training judges in line with the reality of administrative litigation, which can be considered as a guarantee of quality.

This training is common to all future judges whether they are recruited by way of direct competition, ENA competition or even if the candidates are recruited by way of secondment or by way of external recruitment. The training includes lessons on the one hand and internships on the other.

The teaching part deals with the subjects or topics corresponding to important disputes brought before the TA and CAA. The courses are taught by professionals, that is to say judges of the TA and CAA or members of the Conseil d’État. All courses are rather specialized. Some courses are dedicated to the knowledge of administrative litigations, they deal in particular with the admissibility of appeals and the competence of administrative judges. Other courses target specific and important litigations such as urban planning law, tax law, or social litigation. These courses are overwhelmingly provided by other judges of administrative tribunals and administrative courts of appeal. The short duration of the training imposes more synthetic courses but which are based on very complete documentation, bringing together and presenting the administrative case law. There are also more general courses designed to develop transversal skills such as documentary research. The young judges are divided into “training groups” of 6-7 people, where litigation files are dealt with at a weekly pace. This work group enables the participants to carry out the different positions (“reporter”, in French rapporteur = ordinary judge; “public rapporteur”, in French rapporteur public = the judge who gives her or his factual and legal opinion on the case) under the direction and control of administrative judges or members of the Conseil d’État. This intensive and more practical training is made to prepare the judges to the reality, and usefully supplemented by internships. Indeed, part of the training course is dedicated to internships either in a public administration, or in an administrative court to follow its works, but these internships are of unequal duration: two weeks for the course in court, six weeks for the internship in an administrative authority. They must be integrated in the first six months of the initial training. Future judges are also attached to a sub-section of the Conseil d’État and may attend its investigation sessions; this aspect of the training is a way of giving an overview of the functioning of a division of the Conseil d’État, which is the judge of annulment of the decisions of the TA and CAA.

All students are established in their position once they start the training. Therefore, there is no selection at the end of training as it is the case at the ENM. Once the training is completed, students shall be able to take office in a tribunal or court. From this point onwards, they gradually integrate the collegial judgement divisions (a two-year experience being necessary to make decisions alone), they will thus perfect their training alongside more experienced judges.

For judges of the ordinary order, the training of professional judges is provided by the ENM, a school under the supervision of the Ministry of Justice, headed by a director appointed by decree and whose board of directors is chaired by the First President and the public prosecutor of the Cour de Cassation. The learners of this school have the status of Court auditors and are paid during all their training. The schooling is done in small groups in order to work on concrete cases and, if necessary, to allow individualization of the training; this aspect of the training demonstrates a willingness to seek quality in training.

Court auditors are trained for a period of 31 months, apart from those recruited as doctors in law and who have at least three years proven professional experience as legal assistants with a
training period that does not exceed 15.5 months. During this period, court auditors must acquire thirteen fundamental capacities: deontology, analysis and synthesis, respect for the procedure, adaptation, authority and humility, relational capacity, preparation and conduct of a court hearing audience or an interview, decision-making, motivation, taking into account the institutional environment, teamwork, organization and management. They attend the ENM courses which are divided into training divisions. One of them deals with the administration of justice and includes instruction on the quality of justice that deals with performance and good practice\textsuperscript{46}. The growing number of court auditors leads the ENM to increase the number of on-line training courses by way of textual content, interactive media and videos. It is also worth highlighting the introduction of lessons designed to take into account the professional environment of the future judge; that is why the team of professors includes history, sociology, psychiatry, and forensics or criminology professors. These teachings give rise to simulations, team working, workshops or even debates. Court auditors must also undertake a number of internships\textsuperscript{47}, alternating with theoretical training, which gives them a first practical experience and training. In particular, they have to complete a six months internship in a law firm\textsuperscript{48}. This was set up as a remedy to the malfunctions of justice by enabling the future judge to take an objective eye at the function and role of lawyers. The aim of the different internships is to train the judges who do carry out their duties and if this is not the case, the candidate shall not be selected on the final list of suitable candidates. Indeed, the initial training to become a judge is probationary: the candidate is evaluated throughout her or his training. Finally, and once they have chosen their position, they carry out a training course of one week in a court of appeal and another one of twelve weeks with a view to their preparation for the taking office.

Candidates who are recruited by way of a complementary competition shall attend a six-month probationary training course at the ENM, which includes a four-month probationary period followed by a two-month specialization course in their first position. The reduced length of training is attributable to, on the one hand, the object of the supplementary competition, namely the professional retraining of persons who have had a proven legal professional experience that made them able to have judicial positions and, on the other hand, the opportunity that this way of recruiting represents to integrate quickly new professionals in the judge profession. This disadvantage is somewhat compensated by the openness to civil society and therefore to a better understanding of it by the judicial institution that this recruitment allows.

Candidates who are directly integrated in the judicial system must attend a probationary training course at the ENM, which includes a six-month probationary period, knowing that the promotion board may exempt them regarding their professional experience. After their appointment to a position, they must then attend another training for a period of six months. Once again, the short deadline of the training is justified by the legal experience that conditions the candidate's integration. However, it should be pointed out that legal provisions do not systematically require that this experience enables them particularly to perform judicial

\textsuperscript{46} ENM, Education program of the ENM for 2016 (2016).
\textsuperscript{47} See the Appendice no. 5.
\textsuperscript{48} Law firms, wich deal with criminal family and civil matters, have to apply to the ENM, so as to accomodate a court auditor for an internship. Then, the ENM appoints court auditors to law firm given their geographical preferences. During the internship, court auditors keep their status and are still paid by the State. They do the same job as lawyers (management of cases, legal writings, plea). Any difficulties are prevented by the declaration about previous activities of the court auditors. Such activities and the internship are taken into account when appointing the court auditor as judge to a court so as to avoid any conflict of interest and to maintain the justice good standing.
functions, which can be doubtful when the officials of the Ministry of Justice who have seven years proven professional experience are involved.

As for non-professional judges, their judicial training is a recent concern that shall be included in the paragraphs related to innovative methods.

2.3. Continuous evaluation of judges

2.3.1. Evaluation bodies

While putting an end to a certain control of the executive branch in the evaluation process of judges, the legal system of the current process of individual evaluation of the ordinary courts judges is set in amended article 12-1 of the Order December 22nd, 1958 on the status of judges according to which “the professional activity of each judge shall be evaluated every two years”. Details are then provided by decree. Administrative justice has adopted a quasi-similar system of individual evaluation. The rules are laid down in the order dated June 1st, 2004, which also provides that members of administrative tribunals and administrative courts of appeal are evaluated each year - more regularly than their ordinary courts counterparts - after an individual interview with the head of the court to which they belong.

Whether from the ordinary justice side or the administrative justice side, an internal evaluation was agreed on in France: judges of both the judicial and administrative courts are effectively evaluated by their direct supervisors. Indeed, it seemed necessary to entrust the individual judges' evaluation to the “innate evaluators” that is to say the heads of courts insofar as they, according to their position and their presence in the courts where the evaluated judges do work, may be best suited to measure daily and thus provide the most accurate and truthful information on the various criteria pre-established in the evaluation documents.

The evaluation of judges is done “hierarchically” in France, which may lead to a certain number of consequences related to the career and/or promotion of the evaluated judge. Indeed, the system of individual evaluation proposed by both judicial and administrative justice is part of a more global management approach of the judges' careers. The results of the evaluation have an impact on the assignment, promotion, transfer, mobility or secondment, or even, in some cases, the payment of various “performance” bonuses. In other words, the individual evaluation is exclusively directed towards the career of the judge and does not feed a more collective view of the quality of justice.

By proposing an individualized evaluation system, the French system inevitably makes a link between the results of this evaluation and the career of the judge (sometimes even taking a compensatory turn), which again gives an explanation to the fact that heads of courts were entrusted with such a mission.

Finally, the French system did not choose to outsource the evaluation processes by entrusting them to an organization that might have been “non-judicial” in a more holistic way of evaluation the quality of justice. By entrusting the evaluation to the heads of courts, there results a perhaps unsuccessful dimension of the evaluation of the quality, which should, a

---

49 See, more particularly, the circular of May 15th, 1850.
50 Decree n° 93-21 [1993].
51 The individual evaluation does not however apply to the judges of the Cour de cassation, to heads of courts and to members of the CE.
priori, be confined to professional aspects (and, *a fortiori*, to qualities related to judicial activity) of the evaluated judge. The French system thus remains confined to a professional appreciation of the judge in order to consider his/her promotion or to identify his/her training needs, which in practice are not always implemented because of the heavy workload within the courts and the lack of time of judges. For example, the *Conseil supérieur de la magistrature* or any other judicial inspection authority do not really take action in the process of evaluation of the professional quality of judges. However, such authorities are solicited in the process of appointing future heads of courts. They then assess the so-called management qualities more.

However, more informal evaluation experiments have been carried out because they had no hierarchical or statutory influence. A few years ago, the *ENM* concluded a so-called *intervision* Charter, which consisted of “a caring method of observation and reflection of the professional practices of judges, which is part of the improvement of the quality of justice”. But this innovative practice had very little echo in practice (see *infra*).

### 2.3.2. Evaluation process

The judges of the ordinary order, as well as the judges of the administrative order, are subject to a regular individual evaluation: every two years for the first and each year for the latter.

In all cases, the individual assessment of judges takes the form of a professional interview with the head of the court, which indicates, at once, the contradictory aspect of the process. The interview shall give rise to a discussion between the evaluation authority (heads of the court - president or prosecutor - or the hierarchical authority for judges of the central administration) and the evaluated judge. It is then mainly the professional activity of the judge that shall be assessed and measured. This reference to the professional activity is a guarantee of objectivity of the evaluation process.

Concerning the evaluation of **judges of the ordinary order**, the criteria were laid down by the order of 1958 and by the decree of January 7th, 1993. The evaluation authority relates a general assessment to the evaluated judge, sets out the positions she/he can be assigned to and defines her/his training needs. Beforehand, the judge shall have written a note describing her/his activities and the training she/he has followed. Because of the impartiality of the evaluation process, the evaluating authority cannot take into consideration the political, social, religious or philosophical opinions of the judge who is evaluated. The evaluation shall then take the form of a pre-filled sheet which shall be filled by the heads of the court (president or prosecutor) or the hierarchical authority for judges of the central administration after the interview.

The mentioned sheet shall then fill in a large number of items while using a series of five qualifiers: insufficient, satisfactory, very good, excellent, and exceptional. The use of the terms “insufficient” and “exceptional” shall be duly justified. The first step is to measure general vocational skills (the evaluation grid here refers to many elements such as common sense, strength of character, sense of responsibility, ability to decide, power and efficiency,

---

54 See below.
57 Ordinance n° 58-1270 which organizes the status of the ordinary order [1958], art 12-2.
initiative, respect for the litigant, availability, quality of relations with other judges, capacity to represent the judicial institution, etc.\textsuperscript{58}. The evaluation authority shall then measure the legal and technical professional competencies (accuracy and extent of legal knowledge, ability to use and update legal knowledge, analytical and synthesis ability, written expression, computer skills, etc.). Skills that are specific to certain positions (head of courts, secretary general, etc.) will be measured by more specific criteria such as the capacity to implement judicial policies, organize and conduct meetings, etc. All of these elements are then subject to a literal evaluation while putting an end to the old system of numerical note which is highly criticized. The evaluation form ends with a general evaluation of the supervisor, which deals with, more particularly, the training needs and the position the judge wishes to attend. Moreover, the form really values the non-technical qualities (such as organizational and facilitation skills, for example). The form provides a summary of the interview at the end of which the hierarchical authority puts into perspective the conditions governing the performance of the duties performed by the judge, establishes a qualitative and quantitative assessment since the last evaluation, assigns the judge with a certain number of objectives to be reached and sets out the training followed or chosen as well as the future intended functions or responsibilities. Finally, it should be noted that the observations of the judges who had to deal with the professional activity of the evaluated judge can be attached to the assessment file.

This logic of plural appreciation can be found in the system of evaluation proposed to the judges of the administrative order. Everything takes place during the interview, knowing that the evaluation criteria have been specified by the decree of May 12\textsuperscript{th}, 2009. The professional value of the judge is also appreciated\textsuperscript{59}. This is how the ability to live up the demands of judicial office is measured (extent and precision of knowledge, meaning of application of the law, quality of written and oral expression, sense of collegiality and participation in debating and deliberating and ability to decide), general professional skills (understanding of the context of the litigation activity, capacity for change, respect of the collective organization of work, autonomy and organizational skills), ability to serve (efficiency and working power, sense of public service, etc.), ability to perform supervisory functions (listening and leading skills, organizational and management skills, public relations, etc.). These different items are then indicated by a score from 1 to 5, but also by inserts allowing a phraseological appreciation of the head of the court. In addition, the evaluation document includes an item for the assessing of the reached objectives and results, as well as for determining the objectives for the coming year. Other items are related to the training considered and the prospects of career development wished by the evaluated judge.

Whether for the judicial aspect or the administrative aspect, the system of individual assessment includes a large number of criteria revealing a plural assessment of the professional quality of the judges. This is not therefore only limited to an exclusively technical or strictly judicial dimension, but implies the measurement of more managerial or even more “human” qualities.

Once the interview is over, each judge receives the report drawn up by the head of court. She/he may then add a number of observations that still reveal the contradictory nature of the evaluation process. The evaluated judge may even challenge the results of the assessment.

\textsuperscript{58} See Appendice no. 6.

\textsuperscript{59} Ordinance n° 58-1270 which organizes the status of the ordinary order [1958], art 5.
Concerning the gender balance in the appointment to higher judicial functions, there are no measures to restore gender parity on this point. No reference to gender appears in the evaluation documents.

2.3.3. Focus on the evaluation of the judgments and legal drafting

Decisions that are made by appeal courts or by the Cour de cassation are generally communicated to the lower courts when their decisions are amended. More generally, courts implement a case law monitoring system to know the important decisions made by higher courts and adapt this way their litigation. This may result in the calculation of an appeal rate or a percentage of annulment. But these numerical data are intended only to assess the litigation activity of the court considered as a whole and thus are not intended to measure, to be beneficial or detrimental, to the professional activity of the evaluated judge. In other words, these figures are only intended to measure the overall performance of the court with a view to allocating budgetary envelopes. The evaluated judge is thus “protected” in the core of her/his judicial activity against such assessments. It is a matter of respect for her/his sovereign appreciation of the case.

It is also true that, against certain criteria of evaluation included in the evaluation documents, a certain indirect evaluation of the quality of the decisions made by the judge is carried out by the head of the court. But each time the mentioned qualities shall be more formal than truly substantial.

For example, concerning the judges of the ordinary order; the authority in charge of the evaluation shall assess the ability to decide, as referring to the ability to resolve the disputes brought before her/him, to take measures within her/his competence or to deal with cases after a period of reflection. But this is not to measure the substantive quality of the decision, which would constitute an intrusion into the judicial activity of the judge and the reasoning he/she chose to use to resolve a dispute. Concerning the evaluation of the working capacity and efficiency, the authority in charge of the evaluation shall assess the capacity of the judge to deal, in the best conditions, in terms of quality and quantity, all cases he/she is in charge with. Nor should this appreciation lead to an evaluation of the substance of the decision. But the generality of the terms used makes it doubtful somewhat. More generally, the assessment made by the hierarchical authority on legal and technical professional competences may lead more directly to an assessment of the quality of the made decisions (then measurable by the overall appreciation of the analytical and synthesis abilities or the quality of her/his written expression). Insidiously, the evaluating authority could then critically examine the reasoning used by the judge.

Concerning the judges of the administrative order, the authority in charge of the evaluation shall value, inter alia, how the law is applied, the quality of the written expression, the ability to decide, the understanding of the context of the contentious activity or even the efficiency and work capacity. For the same reasons as explained above, an evaluation of the quality of the decisions made by the evaluated judge may result through these evaluation criteria. However, the logic of the professional evaluation is not that of infringing the freedom and independence of judgment of the judge who remains the only person who can decide about the case brought before her/him and about how the law is applied, except, of course, if serious inadequacies in the knowledge and application of the law, some negligence in the drafting are found, which should then give rise to a bad evaluation.
According more particularly to a decision of the European Court of Human Rights,\footnote{Taxquet Vs Belgium, app. no.926/05 (ECHR, November 16th 2010).} more up-to-date reflections were carried out, in particular by the \textit{Conseil d'Etat},\footnote{Work group on the drafting of the decisions of administrative courts, \textit{Report Martin} (2012).} in order to improve the drafting quality of judicial decisions to a strengthening of their intelligibility (see part 3). Similar discussions are ongoing in the \textit{Conseil constitutionnel}.\footnote{Release of the President of the \textit{Conseil constitutionnel}, Laurent Fabius, on May 10th, 2016. Maxime Charité “Réflexions sur la modernisation du mode de rédaction des décisions du Conseil constitutionnel” (\textit{Revue générale du droit}, 2017) issue 24631.} The idea is therefore how to put an end to certain drafting habits that are considered too archaic, to propose a simplified writing from a pedagogical perspective. But if such approaches, experimental for the moment, were to become widely developed, it would perhaps be appropriate to insert new criteria for the evaluation of judges while allowing them to measure its reality and while allowing the litigants at the same time to give their feelings.

\textbf{2.3.4. Consequences of the judicial evaluation on the quality of justice}

As it has already been mentioned and insofar as the evaluation system for the judges of the ordinary order and the administrative order is part of a professional interview conducted by the head of the court, the evaluation results help first of all the career evolution of the evaluated judge. The results condition the system of promotion, assignment, mobility or access to higher responsibilities. Positive results shall provide the evaluated judge with a new position, with more responsibilities or with the identification of possible training needs. It is the expression of a career logic resulting from the “hierarchical” nature of the evaluation.

Moreover, certain criteria used in the individual interviews are significantly similar to those used for the award of various bonuses. The Decree of December 11\textsuperscript{th}, 2007 conditions the attribution of the individual share of the salaries of the judges of administrative courts to the results obtained and to their way to serve, which appears fairly clear in the evaluation sheets. Similarly, the decree of December 26\textsuperscript{th}, 2003 on the compensation system of certain judges of the ordinary order introduces a flexible bonus according to the contribution of the judge in the proper functioning of the judicial institution and a bonus for additional work in case of increased workload that can be associated with the item “work capacity”. This confusion between the results of the professional interview and the compensatory logic necessarily fuels the criticism that the quality of judges shall not be measured only on a strict quantitative level by measuring her/his judicial “productivity”.

The plural form appreciation made on the individual professional quality of the judges is closely linked to their promotion, their career and may condition the compensation system. The quality of justice thus appears by adding up the individual professional quality of the judges, which, however, has many dimensions: technical, legal, managerial and performing qualities. This may seem insufficient, in a more global perspective, to improve the quality of justice.

\textbf{2.3.5. Consequences of the judicial evaluation on the appointment to managerial positions}

With regard to \textbf{ordinary justice}, a specific training was implemented by the National School for Judges (ENM) as of 2013. It shall allow judges to apply to the position of head of court.\footnote{The assistant director in charge of the continuous training at the ENM explained that: “Increasing administrative responsibilities and the introduction of new budget management methods have significantly altered the missions, requiring from now on, from the people who are in charge with, specific skills as well as an appropriate training. In addition to high quality legal advisers, courts obviously need managers who can set goals, define projects, lead teams, and manage change and conflicts”.

92}
This 10-month Advanced Course in Legal Studies (Cycle approfondi d’études judiciaires - CADEJ) (10 units of 3 days per month) “is included within the idea of reaching excellence in terms of quality of justice”; it must also allow women judges to attend positions such as heads of courts. The CSM refrains from taking into account the follow-up of any training to appoint a judge to the position of head of court. However, the Directorate of Judicial Services seems to be attentive to the candidate's training. It seems reasonable to assume that these persons have particular knowledge in the area of administration of justice, budgeting and human resources.

Appointment processes are clearly specified. The proposed movement project of judges (known as “transparency”) is now published so that judges can prepare for their new positions as heads of court when appointed. This draft is the basis for the opinion of the Conseil supérieur de la magistrature, but initially, the evaluation carried out by the head of the court is an element which is taken into account. Concerning public prosecutors, the Minister for Justice, in 2012, by way of order, imposed the principle of transparency. The appointment process is written. Articles 16 and 22 of the Organic Law of August 8th, 2016 generalize the process of transparency and eliminate the exclusions that existed until then, except from the appointment of the head of the Directorate-general for Justice. There are career interviews, at the request of the judge, that are carried out within the sub-directorate of human resources of the profession of judges; The interview is intended to accompany the career of the judge, to help him to achieve his professional goals through appropriate trainings. The minutes of this professional interview can be classified in the administrative file of the judge, and therefore be used by the CSM or the heads of courts, if the judge requests so. A mobility requirement is imposed for application to positions that are outside the hierarchy. For appointment to the position of head of courts, future first presidents and public prosecutors must draw up an inventory and a summary of the objectives of their action within 6 months, followed by a review of their activities, leading and court management every two years. The assessment of the activity of the court established by the heads of courts must enable the authorities participating in the appointment to have enough information on the conditions of performance of their functions and their aptitudes; These activity reports are registered on the files of the heads of courts so that they can be consulted by the CSM or the Ministry of Justice. The CSM seems to rely upon a number of decisive criteria for appointing heads of courts: the professional quality of the candidate is obviously a priority, but the profiling of the position is also essential; The CSM is interested in the managerial, administrative and leading abilities to appoint a head of court. According to the CSM, heads of courts must demonstrate their ability to manage and administer, but must also be full-function judges in order to keep legitimacy vis-à-vis their colleagues.

There is no specific policy to ensure a gender balance while appointing the positions of heads of courts. A working group had been set up in the CSM to promote parity in the profession and women's access to the highest judicial positions (Feb. 2014): 75% of the second-level judges, they only represent 25% of the heads of courts; in 2016, 9 women are presiding appeal courts out of 36. The working group made certain proposals, which were not taken up. The

---

64 There is no legal clarification about what this objective have to refer (activity of the court, training…). Article 21 of the organic law only orders to define this objective particularly considering reports on the functioning of the court of appeal and the other courts of its competence.

65 Organic law n° 2016-1090 related to statutory guarantees, ethical duties and to the recruitment of the judges as well as the Conseil supérieur de la magistrature [2016].

66 The rapport Canivet of 2007, dealing with the training of the heads of courts, opened the way for these discussions, insisting on the need to make emerge from the judiciary potential judges able to lead some change.
organic law, however, softened certain conditions allowing women to stay in the same jurisdiction for longer period of time (Article 8).

Concerning administrative justice, evaluation is one of the important elements in appointing a judge to a managerial position. The process is as follows: there is a criterion based on the duration of the functions, but beyond that, it is necessary to be inscribed on a list of aptitude; there are two of them (one of them which presupposes to have a two year proven professional experience as a president, allows to aspire to the position of divisional president of a court of appeal, section president at the TA of Paris and president of TA of at most 5 divisions and Vice President of the TA of Paris; the other presuppose to have a four year proven professional experience as a president, and allows to aspire to the position of president of TA of at least 5 divisions or vice-president of the TA of Paris). The High council of the TA and the CAA makes a decision based on the professional experience of the judge, her/his personality but also her/his managerial ability. Since the rating authority belongs, for the presidents of the TA, to the head of the Permanent supervisory authority of the administrative courts (Permanent Mission of Inspection of Administrative Courts, in Mission permanente d’Inspection des Juridictions Administratives – MIJA) who is an ex-officio member of the high council of the TA and CAA, it seems logical to consider that the assessment made on her/his abilities may lead to a potential appointment to another managerial position.

2.4. Evaluation of court activities

2.4.1. Actors involved

The evaluation of court activities by the litigants themselves is not a tradition in France; satisfaction surveys which have been carried out concern only the courts of the ordinary order.

A users’ satisfaction survey was carried out in 2001 by the Mission de recherche Droit et Justice (under the supervisions of the Ministry of Justice), and made by the Institute Louis-Harris, being mentioned that the quality of justice was an important political issue. The objective was to determine the level of satisfaction of people who had to deal with justice (only citizens, not judges or lawyers) and to identify the hierarchy of factors that contributed to their final opinion. This inquiry was part of a will to improve the quality of the judicial institution. The survey tried to identify the measure of the satisfaction of a user (good or bad functioning of the courts: conditions of accessibility and reception, information, delays, perception of the attitude of professionals, such as courtesy and politeness of the registry officers, waiting at the hearing, clarity of the final decision) as well as the level of satisfaction of a citizen (feeling that justice was administered). The majority of respondents said they trusted justice; the same would not apply to its functioning: 57% of the people interviewed said that justice did not function well in France, and this consideration does not depend on the fact that the person won or lost his case. The level of satisfaction is important with regard to the competence and attitude of the judicial staff, the reception and the conduct of the hearing; appreciations are much less positive on the information given during the processing of the case and on the processing delays; the lawyer is well seen (competence, availability). The honesty and human qualities of judges are acknowledged, but it is admitted that the judge

---

67 Report published in the Documentation française, 2001. The method was complex: a qualitative survey by means of around sixty in-depth interviews with actual users of three courts and a sample of judges, lawyers and staff employees; with regards to the results of this survey, development of a detailed questionnaire; lastly, telephone interviews of 1201 actual people who deal with justice. Certain criteria were selected (persons over 18 years of age who have actually dealt with justice for the past three years); 24,010 people had been contacted, only 5% fulfilled the upstream criteria and agreed to answer to the entire survey. The survey was not repeated on a regular basis given the huge amount of labor it needs.
alone is responsible for the decision. Respondents wanted a simplification of the processes, an improvement of the information given on the case as well as a reduction in the decisions’ delays. This survey was the first of such magnitude that was carried out, but it was not renewed under the same conditions because due to a lack of financial resources.

Another survey was carried out 12 years later to determine the level of confidence in justice: in November 2013, 68% of French people (sample of 3000 people) felt that justice had to be reformed, 55% remained confident in Justice, but 95% criticized its slowness, 88% its opacity: 88% considered it too complex, 80% felt that the judicial language was unclear. They also wished to be better informed about the foreseeable delays of the proceedings. 66% of the people who had been interviewed felt that the functioning of justice was not modern, but remained very reserved on the electronic transmission of documents, from fear of a lack of confidentiality (only 43% were positive). People who were questioned still have a very limited knowledge of the judicial system; they were quite numerous to consider that it would be better to go through a negotiated solution in some disputes rather than going before the judge. Litigants were somewhat satisfied with the judicial institution, so that the satisfaction of litigants seemed to be increasing compared to the survey carried out in 2001. 49% still considered that justice was not effective, even for those who had won their trial. Justice is seen as too slow, the wishes of the users is to simplify it and to shorten the processing times of the files.

A satisfaction survey was carried out by a member of the CEPEJ under the supervision of the tribunal de grand instance of Clermont-Ferrand in 2012. More generally, the CEPEJ implemented a document called “Measuring the Quality of Justice” (Mesurer la qualité de la justice - 2016), which dedicated a paragraph 5 to customer satisfaction surveys and to the caution that the interpretation of results imposes.

In addition to these inquiries, that show, even imperfectly, the quality of justice as seen by individuals, there are other mechanisms that make citizens involved in the judicial process or involve lawyers.

Another pioneering effort can also be mentioned: the Senate has opened a participatory space for Internet users in order to enrich discussions on the proposal to increase the efficiency of criminal justice; among the questions, there is one related to the methods for a more effective criminal justice.

Satisfaction surveys are carried out by law firms with their clients, they are even numerous and are similar to a customer satisfaction survey. But it does not seem that a specific inquiry has been conducted with the lawyers to determine their degree of satisfaction with the quality of the judicial institution (whereas it is the case, for example, in Switzerland).

Other authorities may be appealed to. The Ministry of Justice, per se, does not have specific competences for evaluation, but, with regard to the judiciary, the Inspectorate is supervised by the Minister for Justice.

The Inspection Générale des Services Judiciaires 69 has a permanent mission of inspection of the courts of the ordinary order and the legal entities, either public or private, whose activities

69 Established by a decree of December 22nd, 1958, then modified by a decree of July 25th, 1964 and a decree of December 29th, 2010.
are linked to those of the ministry. It evaluates the activity, functioning and performance of
the courts; this mission is based on benchmarks, developed according to a risk analysis.\(^70\) The
Inspector General coordinates the operational inspections conducted by the heads of courts in
the courts under their jurisdiction. The Inspectorate publishes an annual report and ensures the
follow-up of its recommendations. The Court of Accounts considered that this service still
had some malfunctions despite the reform of 2010 which had extended the scope of its action
to the inspection mission of the registries and the coordination of the inspection of the
penitentiary services, the inspection of the judicial protection of the youth, and had wished the
creation of a Directorate-General for Justice\(^71\) (Inspection générale de la justice) which
replaces the Inspection Générale des Services Judiciaires. The Decree no. 2016-1675 of
December 5\(^{th}\), 2016 thus established the Directorate-General for Justice (Inspection
générale de la justice). Its missions are defined in Article 2.\(^72\) The order of December 5\(^{th}\),
2016 specifies the organization and operation of the Directorate-General for Justice; the
obligation to sign a charter of ethics of the members of the Directorate-general for Justice is
specified in article 12. This evolution, which entered into force on January 1\(^{st}\), 2017, has been
strongly criticized since the Cour de Cassation is now under the supervision of the
Directorate-general for Justice, whereas it was expressly excluded previously. It is therefore
an important political choice, since the public authorities consider that the Cour de Cassation
is not enabled to carry out an evaluation mission.

There is also a Permanent Mission of Inspection of Administrative Courts (Mission
Permanente d’Inspection des Juridictions Administratives – the MIJA) (article L. 112-5 of the
CJA), established for the administrative order, except the Conseil d’Etat. It is made up of
councilors of State and it controls the proper functioning of the TA and CAA; it evaluates
therefore the results of their activity. The discussions carried out on this occasion allow,
according to the Conseil d’Etat, to “maintain and nourish the common reflection, which is
essential for the overall cohesion of the administrative courts as well as the factors of
effectiveness of the administrative courts and the ways to measure this efficiency”. The
Mission ensures “the dissemination of good practices made to facilitate the fulfillment of their
tasks by the courts, and may make any useful recommendations” (article R. 112-1 CJA).\(^73\)

In accordance with the principles set out in the note of the Vice-President of the Conseil
d’Etat and dated December 3\(^{rd}\), 2009, the activities follow a precise methodological guide.
This process, which is now relatively formalized, was enriched with a special dimension as of
October 2010, since a frame reference (in french Référentiel) was used for the preparation and
conduct of visits (see Appendix 9). According to the Conseil d’Etat itself, the content of the
Inspection missions “is in fact similar to audit missions whose purpose is to accompany the
head of court in improving the service provided to litigants”. The annual report of the Conseil
d’Etat dedicates a few lines to the activity of the Inspection Mission.

\(^70\) See Appendice no. 7 « Contents of the reference table of the control of functioning of the Court of appeal ».
\(^71\) Interim ruling of July 20\(^{th}\), 2015.
\(^72\) It “has a permanent mission of inspection, control, study, advice and evaluation on all organization,
departments, establishments and services of the Ministry of Justice and courts of the ordinary order as well as
legal entities governed by public law subject to the supervision of the Ministry of Justice and private legal
entities whose activities fall within the supervision of the Ministry of Justice or receive funding Programs from
the Ministry of Justice. It evaluates the activity, functioning and performance of the courts, establishments,
departments and organizations that are under its control and, in the context of a fact-finding mission, how to
serve staff. It shall make any useful recommendations and observations”.
\(^73\) See 2. 4. 2.
The *Conseil supérieur de la magistrature*, in addition to its competence in judicial appointments, discipline and professional ethics, may also, since the constitutional reform of July 25th, 2008, be directly referred to by litigants. This is not, strictly speaking, an assessment, since the litigant who is complaining from the behavior of a judge, which might give rise to disciplinary proceedings. With regard to administrative courts, the *Conseil supérieur des tribunaux administratifs et des cours administratives d’appel* (CSTACAA, in English High Council of administrative courts and administrative courts of appeal) steps in the promotion of judges but does not have any competence in evaluation matters. The head of the Inspection Mission (which is a councilor of State) shall mark the presidents of the courts, and she is a member of the CSTACAA.

The whole can contribute to improve the quality of justice.

No reform plans are under way to change the way courts are evaluated.

### 2.4.2. Evaluation process

The methods of judicial evaluation are intended for a collective assessment of the activity of the courts. The evaluation is first of all national but, in complement and sometimes in parallel, it is transposed locally.

The national evaluation process is driven by the budget process: every year, the annual performance project (*Projet annuel de performance, PAP*) describes the performance objectives to reach and the annual performance report (*Rapport annuel de performance, RAP*) describes the performance objectives set out by the courts as a whole. There is an annual performance report for ordinary justice and another one for administrative justice. These legal documents are widely available. In addition, each of the higher courts, the *Cour de cassation* and the *Conseil d’Etat*, draw up and publish an annual report. The report of the *Cour de Cassation* includes a paragraph dedicated to an analysis of the activity of divisions of the Court, data relating to flows and delays in judgment are recorded in the form of fairly precise charts and diagrams. The annual report of the *Conseil d'Etat* comes with a review of the administrative justice as a whole, consisting in summary data on the distribution between advisory activity and litigation activity and in the foreseeable delays of judgment. These reports provide an evaluative approach insofar as they provide an overview of judicial activity and also insofar as they produce analyzes on the evolution of litigations. These aspects are specified in section 2. 4. However, it should be added that there are national standards to evaluate quality, and they are mainly described through the budgetary allocation process, which is in conjunction with the achievement of a number of objectives. The speed of justice is the major criterion assessed on the basis of various indicators: delays, number of cases in stock, length of proceedings; the productivity of judges and court clerk officials is also measured (number of cases handled). The qualitative criteria are set back, in particular the rate of cancellation of judicial decisions and a wider criterion of quality improvement. The evaluation criteria are thus mainly encrypted and focused on improving the profitability of the courts and the productivity of the agents.

Evaluation is also subject to mechanisms to evaluate justice at the local level, and each court is involved. This evaluation is guided by national authorities specific to each jurisdiction.

---

74 Although a college of ethics for judges of the ordinary order, separate from the *CSM* but to which it presents an annual report, was established. See above 1.2.

75 Organic law n° 2016-1090 related to statutory guarantees, ethical duties and to the recruitment of the judges as well as the *Conseil supérieur de la magistrature* [2016] art 14.

76 See the Appendice no. 8
For administrative courts, they consist in the Permanent Mission of Inspection of Administrative Courts (Mission Permanente d’Inspection des Juridictions Administratives) and for ordinary courts in the Directorate-General for Justice (Inspection Générale de la Justice).77

These two authorities operate according to similar processes: sending questionnaires to the heads of courts, on-site visits (after a preliminary interview with the head of court for the administrative justice), interviews and verifications, discussions after sending to the heads of courts a pre-report containing recommendations and finally a final report distributed within the inspected court. For ordinary justice, this final report is also addressed to the Ministry of Justice.

At the local level, the evaluations carried out by the authorities of each ordinary court are based on a larger variety of criteria and indicators.

Concerning the MIJA, since 2010 a frame reference is used during the visits and evaluations conducted in the courts and courses. This baseline reference sets out a number of objectives that correspond to check and evaluation points in each court. They are divided into four groups and lead to a fairly precise approach of all the aspects of judicial activity ranging from its organization to the most detailed aspects of its judicial activity: objectives relating to the management (management of the judges, management of the court registry); objectives related to the administration of the court (administrative and financial management arrangements, improvement of working conditions); objectives related to litigation activity (deadlines, decision-making mechanism, stock processing, handling of specific disputes) and last but not least, objectives related to the court and to litigants (courtroom, reception of litigants and public, organization of conferences, relations with other institutions, etc.).78 The reference must be completed by the head of the court before the visit of the MIJA. The MIJA gives its evaluation and its recommendations. All the objectives are not always associated with “indicators” but only with “findings”. There is always a “comments” box.

The Inspection Générale des Services Judiciaires, recently become the Inspection générale de la justice, makes use of guidelines specific to each court (TGI, commercial court, court of appeal) and that include a list of checkpoints intended to take into account the most significant risks of dysfunctions in the courts. These criteria only describe and measure different aspects of ordinary justice: general administration and life of a court, civil justice, criminal justice, juvenile justice, access to the law).79

2.4.3. Consequences of the evaluation on the quality of justice

The purposes of the evaluation vary depending on whether the evaluation is carried out at a national or local level.

At the national level, the evaluation developed in the context of the LOLF (Legislation governing public finance, in French Loi organique relative aux lois de finances) through the setting of objectives and indicators and the presentation of annual performance projects (PAP), emphasizes the attention paid to the quality of justice. Therefore, the objective 1 of Program 166 on Ordinary Justice is entitled “Improving the quality and efficiency of justice”. However,

77 See 2.4.1.
78 See Appendix 9.
79 See appendix 7.
as mentioned above, the developed indicators are essentially quantitative, focusing on the speed of justice and the productivity of the courts. In reality, the first objective of this evaluation is the budgetary rationalization of the functioning of the courts. The courts’ evaluation is thus part of the resource allocation process, to the point of being totally integrated to it. This is a step in the budget process, which is a measure of performance in order to appreciate the financial resources to be allocated. Thus, whether for ordinary justice or for administrative justice, budgets are elaborated on the basis of the evaluation of the statistics of the activity of the courts, and are results-based. Specifically, this part of the finance law is drawn up on the basis of the annual performance report (RAP), which develops the results obtained based on the annual performance plan setting out the objectives.

This attention which is paid to the predominantly quantitative performance of courts does not entirely exclude a qualitative approach (without not losing sight of the fact that the speed of justice is one dimension of quality). But qualitative approach is not an essential lever of the implemented evaluation, neither in its criteria nor in its effects. This conclusion applies to administrative justice and, even more, to ordinary justice, since its evaluation indicators are sometimes neglected, the challenge being in fact to manage the shortage of resources and to ensure that the allocated budgets are not scaled down in a constrained general budgetary context.

However, the evaluations that have been carried out at the local level, either by the MIJA or the IGJ are based on a different logic, that is to say more freed from budgetary aspects and more attached to the proper functioning of the courts and to the improvement of the service provided to litigants. The very development of these inspection authorities is already, in itself, a guarantee of the attention paid to the quality of the public service of justice. This issue is central for their evaluation mission which is formalized by the use of the already mentioned guidelines. These analysis grids allow a complete radioscopy of the jurisdiction. The inspection missions obviously aim to appreciate the managerial qualities of the heads of courts, but also the specific needs of the staffs in terms of training, the recurring difficulties encountered in certain disputes, the problems of access of the litigant to the court, etc. After examining these various elements, these inspection authorities draw up diagnoses and make recommendations, which do not include penalties. They can also identify and disseminate some good practices. Subsequent visits would make it possible to verify that the recommendations have been followed. The assessment remains flexible in the sense that it has no direct effect on the promotion of the staffs or the allocation of additional resources. It does, however, have a certain weight for the courts, which generally strive to respect these recommendations.

2.5. Resources allocation to courts
2.5.1. Actors involved
In France, the Parliament is composed of two sections, the National Assembly and the Senate. It has a central role in terms of authorization, control and, to a lesser extent, expenditure determination. It authorizes each year the expenditure of the State by the vote of the budget. The draft budget bill (coming compulsorily from the Government) shall be sent to the National Assembly not later than the first Tuesday of October of the year preceding the

---

80 See Appendix 8.
81 According to article 34 of the Constitution, finance acts set the resources and expenses of the State. The organic law date August 1st, 2001 on finance laws (LOLF), in article 1, specifies that they set for a financial year, the nature, amount and allocation of the resources and expenses of the State as well as the resulting financial and budgetary balance.
financial year and adopted not later than forty days after by the Parliament. It may also ratify the appropriations decided during the year by the Government. This vote bears on all the credits of each Mission (about thirty missions) containing several programs corresponding to a public policy (concerning our topic: Program 166 Ordinary Justice and Program 165 Council of State and other administrative courts, the first depending on the Mission Justice and the other on the Mission State Advise and Control). At the same time, the Parliament monitors the implementation of expenditure. The finance commissions have extensive powers to ensure the proper use of public funds and to ensure the respect of the budgetary authorization given by the Parliament. The entire budget is reviewed with a vote for each of the thirty-four missions. Finally, parliamentarians can verify the effectiveness of public spending. Each year, the administration is accountable for its action, which is evaluated by way of specific guidelines. The Court of Accounts, which is the State auditor and is entrusted with the proper execution of public expenditure, holds an important role in the budget process. In particular, it shall assist it in the monitoring and evaluation by carrying out a mission to certify the State's accounts.

Once the annual law on State Budget finally passed by Parliament, the appropriations are allocated to the ministries for the following year. Ministers who receive them are responsible for the programs voted in the budget law. For their implementation, they appoint program managers who are under their authority. Most of the time, they are directors of central administrations or general secretaries. The people who are responsible for a Program operational budget (Budget opérationnel de programme, BOP) are provided with a part of the appropriations of a program to carry out part of the actions of the program within their scope of activity or geographical area. To do so, they have globalized credits allowing them to have a certain freedom of management while having to reach some objectives that are measured by performance indicators.

The Ministry of Justice is under the authority of the “Justice” mission which includes several programs of whom the Program 166. The allocation of budgetary resources is based on indicators and performance targets set by the Ministry as follows: Processing of civil proceedings, except for short proceedings; the percentage of jurisdictions exceeding the average time taken to process civil proceedings by 15%; the average time taken to process criminal proceedings; the number of civil cases handled by judges and prosecutors; the number of criminal cases handled by judges and prosecutors; the number of civil and criminal cases handled by civil officials; the rates of annulment for civil and criminal cases. These criteria that determine the allocation of the budget resources part of the overall objective of improving the quality of justice. Most of the expense is then incurred by judicial police officers and judges for judicial proceedings. The ENM which is responsible for the training of judges also receives a grant as provided for in the mission “Justice” but its board of directors votes its budget. The increase in salaries resulting from individual evaluations of judges is not included in the annual law on State budget. These decisions are let at the courts’ presidents’ discretion. The French system, by providing an individualized evaluation system directly based on the allocation of bonuses, may on this point, run up against judicial independence (see supra).

---

82 See the budget project of justice for 2017 presented by Jean-Jacques URVOAS, Minister for Justice, on September 29th, 2016.
83 They concern genetic and medical tests as well as financial, computer, ballistic tests as well as turning to courts officers or employees (bailiffs, translators, interpreters, representatives of the prosecutor, etc.).
In the “State Advise and Control” mission, the Budget Program 165 “Council of State and administrative Courts” is subdivided into four objectives: reducing the time required for judgments, keeping the same level for the quality of judicial decisions, improving the efficiency of courts and providing the effectiveness of the advisory work. More specifically, these four objectives are divided into several performance indicators. The Program is under the authority of the Vice-President of the Council of State.

Last but not least, since January 1st, 2012, the budget of the Conseil supérieur de la magistrature has become a separate program of the “Justice” mission. Its budget is placed under the responsibility of the first president of the Cour de Cassation within the program 335. If this shows a certain autonomy of the institution, it remains relative because the budget is still attached to the mission “Justice” as well as to the definition of the objectives related to it.

2.5.2. Resources allocation process
The Parliament votes annually the budget for ordinary justice and administrative justice, but the preparation of the budget falls under the exclusive competence of the government. The Parliament therefore does not intervene directly in the preparation of the budget and the text provided to the Parliament is the text intended by the Government. The Finance Committee of each assembly examines the budget proposals, but the public discussion does not have to deal with any amendments it has wanted to make. Nevertheless, the Parliament is informed during the budget preparation phase of the budgetary debate which takes place a few months before the vote.

The budget is established taking into account a performance logic on which the entire budget nomenclature relies: a strategy, general objectives and quantified indicators are associated to each program either in the “ordinary justice” program for ordinary justice and the program “Conseil d’Etat et autres juridictions administratives” for administrative justice. Program managers are administrative authorities, they are in charge of preparing the budget and then having it implemented. The Minister for Justice is responsible for ordinary justice, whereas the Vice-President of the Conseil d’Etat is responsible for the program on administrative justice. The budget process is based on two key documents: on the one hand, the annual performance program (PAP), which sets out the objectives and prospects for public action, and, on the other hand, the annual performance report (RAP) which draws up a balance sheet on the action related to the past financial year, while mentioning the results that are associated to the indicators. The resource allocation is determined on the basis of the objectives and indicators specific to each program, their direction and scope are determined by the annual performance program. These documents are public, they are provided to the parliamentarians for the debate and the vote of the budget law.

The resource allocation to the courts is implemented in the context of management dialogues or performance dialogue between the heads of courts and the program manager. The management dialogue is a process which, at the same time, allows for a sharper allocation of budgetary resources and for future requests for appropriations. The management dialogue can then provide an opportunity for a discussion on the allocated resources between the court and the Ministry of Justice or the Conseil d’Etat for Administrative Justice. The performance logic which combines determination of objectives and indicators is fundamental in this phase of the budgetary process and is also included in the expenditure chain (Decree no 2012-1246 of November 7th, 2012 on public budgetary and accounting management). Therefore, the

---

84 See Appendix 8.2.
implementation of the budget is in Program operational budgets (BOP). There is one BOP for the Courts of appeal of ordinary courts (a total of 37), whereas there is only one for the administrative justice which reports to the General Secretary of the Conseil d’État. The Administrative justice is subject to a more centralized budgetary management, but the heads of courts (Administrative tribunals and administrative courts of appeal) have the status of secondary authorizing officers. A specific pole covers the expenses of the program concerning the Conseil Supérieur de la Magistrature.

The criteria used in the preparation and voting of the budget as well as in the distribution of the resources and the implementation of the finance law are compliant with the logic of performance which is inspired by the processes of New Public Management. The criteria are formalized by a variety of indicators designed to meet categories of objectives aimed at satisfying the citizen, the user and the taxpayer. These are largely quantitative indicators which do not exclude a qualitative approach insofar as these quantitative indicators may tend to measure the satisfaction of qualitative objectives (example with the objective of improving the quality and efficiency of ordinary justice measured by indicators such as the average time taken to process a case). The efficiency of the judges is also measured. All the results and the satisfaction of the objectives must make it possible to determine the budgetary allocation for the following year. The granting of additional resources during the financial year justified by qualitative performances is not foreseen, even though readjustments are possible.

2.5.3. Consequences of resources allocation on the quality of justice

Financial resources are not equally allocated among courts insofar as that they depend on their specific situation, but they are based on the same criteria and are not dependent on any bonuses, incentives or rewards for best practices in quality.

As the conclusions of a report on “The taking into account of the notion of quality in the measure of judicial performance” puts it, regarding the French administrative justice, but it is also true of its ordinary justice, quality has many dimensions “the current performance measure only partially takes into account. Focusing on effectiveness and efficiency, the objectives and indicators adopted under the Organic Law on Finance Laws of August 1st, 2001 are mainly related to the activity and provide information only about the quantitative aspects of judicial work. All the efforts of the courts to improve the quality of the service and that of the court decision are not seen in the performance aspect”.

On the one hand, quantitative aspects of quality are mainly evaluated, including the ability of the court to reduce stocks of pending cases and quickly deal with the newly brought case flows. This efficiency largely determines the resource allocations: “the analysis of the indicators makes it possible to set the objectives and to determine the financial and human resources granted to each court”.

On the other hand, the genuinely qualitative aspects are poorly evaluated and, therefore, are little taken into account by the Government. An example is the evaluation of the quality of administrative justice. Program 165 is particularly paradoxical insofar as that it proposes to


make a distinction between productivity (objective n°1) and quality (objective n°2) of administrative justice. The juxtaposition of these two objectives is particularly ambiguous, owing to the seemingly opposing relationship between the two objectives. In addition, this second objective can be brought closer to that for ordinary justice in Program 166, and it is surprising that there is a difference in terminology: whereas it is a matter of “maintaining” the quality of the administrative judge's decisions, the ordinary judge has to “make good decisions in terms of quality”. Does this mean that, on the side of the ordinary judge, everything has to be done, whereas on the side of the administrative judge nothing should be improved? It is sufficient to compare the second objective of Program 165 with the 2012-2014 Business Plan of the Paris administrative court of appeal, the first objective of which is called “Improving the quality of decisions” and the Business Plan of the Litigation Section of the Conseil d’Etat that mentions the “Improvement of the decisions drafting”, to note the less dynamic and strategic perspective, more static and quantitative of this second objective of Program 165. As one presiding judge pointed out, the current system of target-setting and performance evaluation “has been primarily focused on quantitative targets, as it was a priority for the courts, but it still needs to evolve, improve particularly through advances in technology, in order to include in the future, more qualitative objectives as well as their evaluation”. It should also be recalled that the resources are particularly insufficient compared with the number of files, as the comparison results of the CEPEJ have consistently shown it for many years.

However, quality is not absent from the evaluation of performance by the prism of the finance law, but it remains little and poorly defined at the conceptual level, evaluated on the basis of tools and indicators that are not very relevant, and sometimes questionable at the operational level. The objectives and indicators of performance of the two programs do not appear to be adapted to the evaluation and to the promotion by France of a genuine policy of quality of justice. Furthermore, it presents a risk for the key indicators, namely the independence of the ordinary order, involving an individual judicial assessment based on criteria directly linked to the quantitative objectives defined by the annual law on State Budget, and the fair trial insofar as, in order to achieve mainly quantitative objectives, trade-offs are carried out to the benefit of performance and to the detriment of quality. To take a few examples, the rates of cancellation and reworking of decisions as indicators do not encourage judges to initiate revisions of their decisions, which seems contradictory with the principle of their independence. Procedural reforms that are justified by budgetary restrictions also reduce the procedural traditions of the courts and their qualitative purpose.

### 2.5.4. Discussions on reforms

The development of more relevant objectives and indicators seems possible, as illustrated by the recent revision of the financial courts' assessment tools in the Finance Act. However, there are no plans of the Ministry, to the best of our knowledge, for the ordinary courts and the administrative courts.

---

87 Lucie Cluzel-Métayer and al. (2015), op. cit., p. 25.
88 Lucie Cluzel-Métayer and al. (2015), op. cit., p. 25.
90 Lucie Cluzel-Métayer and al. (2015), op. cit., p. 11.
91 It is the same for example concerning the development of the replacement of decisions by prompt ordinance.
The question of giving more room for manoeuvre at the local level is also asked. Budget estimates for ordinary courts are in theory calculated on the basis of this performance dialogue with the Court of appeal, since this level of management is chosen. This mechanism should have allowed resources allocation to courts of appeal in accordance with their needs and their observance of the fixed objectives and indicators. This was not the case given the scarcity of budgetary resources, which led to the impossibility for the presidents of courts of appeal to lead a genuine quality policy in their jurisdictions. Moreover, the courts of appeal are consulting with the county courts (tribunaux de grande instance) of their jurisdiction to determine the indicators that will serve as the basis for the budget allocation, but this is not, in the institutional sense, a performance dialogue. The TGI must give explanations if the results can be increased or are problematic with regard to what was expected. Overall, it seems that courts played the game, while thinking that they would benefit from additional resources depending on their results. The budgetary and financial context did not allow that. The problem also lies in the fact that what is taken into account in these figures is average performance data, which does not take into account local specificities. The evaluation of courts does not therefore take place at a national level during the performance dialogue, nor is it done at a local level between courts of appeal and courts of first instance (tribunaux de première instance) when allocating resources. It is generally said that much more margins should be given to the heads of courts in order to let them ensure a quality policy that would be based on the evaluation of the courts of their jurisdictions. The State cannot currently afford this.

Financial independence report - A report was commissioned by the Court of Cassation to a professor of public finances, Michel Bouvier, who set up a committee of reflection. The latter submitted his report in September 2017. The main question was about the possibility of financial independence of ordinary French courts.

Indeed, the difficulty is that the fundings of these courts can be canceled during the year to allow the State to save money, which is not the case of administrative justice which enjoys greater budgetary autonomy since it can isolate its funding within a specific “program”. The report therefore proposes to isolate the fundings of the Court of Cassation, the fundings of the other ordinary courts, to associate the conferences of presidents of courts to the main budgetary orientations and to consult the High Council for the Judiciary on the main budgetary orientations. It also proposes to interest the courts in achieving budget savings through a redistribution of 30% of savings achieved, to create own resources, such as a contribution for legal aid, a right of second copy of the decisions of justice, or rents for organizations that currently accommodated in commercial courts for free.

This report has benefited from the support of lawyers who suffer the lack of resources of the courts which refuse them expert assessments during the trials. The former Senate member responsible of the Justice budget investigation also supports a large number of proposals of this report.

3. Innovative methods for quality assessment and development

One particular initiative called “Justice for the 21st Century” provided numerous innovations so as to modernize the judicial system, to make it more accessible, simple, effective and independent. The new practices it brought, using complementary an organic law, an eponymous law and decrees, are partly bottom-up development and partly Ministry of Justice initiatives. They will be addressed in the following sections with other innovative practices.

Rather local on the side of the ordinary courts, sometimes encouraged by the central administration, they are rather central on the side of the administrative courts, impelled by the Council of State, which nevertheless never discourages the initiatives of the lower administrative courts. Indeed, traditionally in France, the administration of justice is centralized which implies that all the courts enjoy very limited autonomy, at the budgetary level but not only. However, for ordinary justice, there is a recent phenomenon of taking responsibility for quality actions at the local level because there is no longer a central quality policy due to the lack of money. As for administrative justice, the Conseil d'Etat centralizes but it is never against the local initiatives that allow administrative justice to “shine” and to be exemplary.

Eventually, we can observe three trends in these innovative initiatives: renewing the administration of justice, increasing the role of applicants and opening up justice to society.

3.1. The renewal of the administration of justice
3.1.1. The search for quality in the management of courts

Here, innovative methods aim to get optimal results from the use of human and material resources. In other words, efficiency is the main objective pursued by different means.

3.1.1.1. The search for efficiency in the organization of services

Tools for improvement

The 2016 “Justice for the 21st Century” law and some related decrees provided courts with new tools aimed at optimizing the organization of their services.

The Court project. The first tool is the Court project (projet de juridiction), which could also be translated, to use a term used in some countries, by Business Plan. It can be implemented both in county courts (tribunaux de grande instance) and in courts of appeal. It was drafted by heads of courts by agreement with all the judges and staff of the court. It is a means of dialogue and cohesion. It “shall define, while taking into account the specificities of the jurisdiction, medium-term objectives aimed at improving the service provided to litigants and the working conditions in keeping with the judicial independence”. This means not only improving the quality of working conditions, while promoting the better working together aspect, but also improving the quality of the public service of justice. The court project therefore includes three or four transversal actions, the implementation of which extends over several years. Often, this medium has brought together in a single document, isolated initiatives.

It was invented for the administrative courts by the Council of State (without the intervention of the law) a few years ago.

95 COJ, art. R.312-84.
Administrative courts also draft court projects. They are laid down for a period of three years and are updated annually. A meeting between the head of the court, the chief clerk and the secretary general of the Conseil d'État first allows to identify the objectives to be reached by each court, the results to be achieved and the means to be implemented. From this general framework, a letter of orientation is sent to the heads courts by the Conseil d'État; it shall decide, for the year concerned, the budgetary and staff resources, the objectives concerning the number of cases to be dealt with, the time taken for cases to come to judgment and cases stock volume. The head of the court shall then refine the project in agreement with judges and courts clerks. He shall define, in the court project, all the objectives, by way of an exact figure or a range, of each formation or each judge, while taking into account the objectives laid down in the guidance letter. The objectives of each magistrate are discussed about during the professional assessment interview with the head of the court. The internal phase of the drafting of the court project for each court or tribunal is flexible, the court may also want to increase the scope of the court projects and take more ownership of this tool.

Focus on two courts projects

The court project of the TGI of Dax brings together all actions undertaken since 2015 and more recent actions over a three-year period. Three actions are planned:
- the first one is related to the workload and organization of services in three main areas,
- the second one is related to common projects for an open, modern and user-friendly communication,
- the third one is related to a judicial policy through the organization of a civil chain and a criminal chain.

The project gives an account of the court of which it draws the axes of management of the litigation flow, for example by defining an implementation policy of civil cases or by providing for the strengthening of the service of family affairs. It also anticipates legal developments, and more particularly the transfer of jurisdiction of Police courts. It also improves the fluidity of discussions between the various parties involved in the same legal proceeding by organizing the control of expert reports and by focusing on the signature of a charter on the liquidation of matrimonial property regimes.

At the TGI of Limoges, three transversal actions are planned in the court project:
- the decoration of the new premises of the court, in order to bring the symbols of the regal office of justice
- the development of a welcome booklet for employee newcomers
- a reflection on the tasks that can be delegated to the temporary staff of the court, which includes court assistants, legal assistants, the ENM trainees, temporary judges… The aim is to make the most of this temporary staff, in particular in order to overcome the difficulties in managing the workload due to the vacancy of certain positions. This initiative is obviously meant to draw up a list of tasks which are always ready to be entrusted to this temporary staff, enabling all available resources to be mobilized in order to guarantee the efficiency of the service of justice.

No assessment or results of this court projects could have been consulted because of their novelty. However, it should be noted that it was the positive experience of their use by administrative courts that led to their recent introduction into ordinary courts.

---

97 Divisions are a new method of organization in courts (see below).
While designing of a court project is legally binding for ordinary courts, such a legal obligation does not exist for administrative courts. Court projects of administrative courts are internal documents, but they reflect the objectives set out in the annual law on State Budget and insofar as they are part of a process management. By determining and defining the objectives that are specific to each court, court projects do solidify, first of all, the performance logic resulting from the Budget law, while being tools that can be used to define a quality approach or policy. They allow, in fact, to go beyond the essentially quantitative dimension that is part of the inherent to the finance act. Consequently, court projects have objectives that are not only quantitative, such as for example improving the welcoming of litigants or improving their understanding of proceedings. Their structure in each court allows, moreover, a “decentralized” consideration of the quality by way of a local adaptation of the expectations provided for in the finance act. Insofar as they are considered as managerial tools, court projects define a strategy for each court. Their dual dimension, both retrospective and prospective, makes them be innovative management tools for justice. Moreover, the cooperation between judges and court clerks involved in the drafting of court projects strengthens the cohesion between the staff of a court. The resulting dynamic is a vector for the cohesion of the court and a guarantee of a solidarity that can accentuate the will to provide quality service.

The coordination tools. The second tool is actually composite. Indeed, several tools which can be described as coordination tools, have been implemented in 2016 in order to allow a more structured functioning of ordinary justice: a coordination judge, the annual conference on juvenile justice and a single reception service for the litigants.

The first position to be established was a function of judge who would coordinate courts, the coordination judge. He must be appointed to coordinate and animate the activity of county courts (TGI),98 whereas the appointment of a Counselor of a court of appeal would coordinate first instance courts is optional. This judge must lead the activities of the courts of his jurisdiction and reflect on their organization as well as the judicial practices and case law in relation to the local context. He shall inform the President of the TGI or the first President of the Court of appeal of the difficulties he meets and the needs that are identified in courts, in particular for the judge who coordinates the activity of the lower courts (TI) by drawing up an annual report on their activities. The implementation of this judges has just began so that their concrete actions are not known yet.

Such a coordination has also been deepened within the courts by the establishment of judges who coordinate divisions of either the TGI or the Court of appeal as well as a judge who coordinates the services that are part of the divisions of the TGI when this service is composed of several judges. According to the heads of courts who were consulted, the added value of this new function lies in the governance of the court, which cannot be done by relying on the vice-presidents which number increased mechanically according to the age of the judge and, in accordance, has no link with the administration of the court. The coordinating judges, who can be some of the vice-presidents, must therefore be few and thus constitute privileged and identified interlocutors of the head of the court who entrusts them with specific tasks (such as the consistency of litigations). Another benefit is related to the establishment of centers in the court, which gather services and chambers of the court. Such

98 COJ, art. R.222-39.
clusters allow to give to each judge a more specific function, rather than preserving the possibility of being generalist and sharing all jurisdictional tasks which is the main situation.

Another coordination tool was implemented for the actors involved in the protection of children in order to generalize the practice of some courts of appeal. This is the annual conference on juvenile justice\textsuperscript{99} which is organized and chaired by the first president of the court of appeal and the public prosecutor. It brings together judges and public prosecutors in charge of minors in courts of first and second instance, as well as various professionals of the judicial protection of juveniles, and, optionally, representatives of prison services, child welfare services, or representatives of the bar. The aim of the conference is to bring together different actors of juvenile justice, to make their discussions be more fluid, and to define a policy, in civil or criminal matters, to lead in this area. The difficulties of communication between the institutions, the difficulties arising from heterogeneous practices and the complementarity of the actors should be overcome by a better knowledge of the role and action of each.

A final tool for improving the efficiency of the justice service is the establishment of a single reception service for the litigant (service d’accueil unique du justiciable - SAUJ)\textsuperscript{100} so as to replace the various interlocutor previously competent (clerks of the court and administrative employees). It must be the first contact for litigants who come before courts, inform them about the proceedings and provide them with the relevant documents. The SAUJ is called upon to exercise its powers notwithstanding the incompetence of the court it is physically implanted in. Any SAUJ must, in the long term, be able to inform and receive all acts related to a proceeding whatever the court before which it must be or has been introduced. The universalization of the SAUJ must thus discharge the litigant with searching for the right jurisdiction and discussions with a potentially distant court. The result is a dual practical difficulty. On the one hand, it is necessary to find a highly qualified staff, able to master the majority of the proceedings, and thus to do a work previously attributed to multiple services. In order to face this, the Ministry of Justice implemented support tools, including a reference system consisting of technical sheets describing all legal proceedings including useful information and forms, and set up training courses conducted by the ENM. Some courts implemented, in their jurisdiction, mentoring sessions for people who would integrate a SAUJ. On the other hand, the positions to be filled in SAUJ are not very attractive. Since the SAUJ is the single entry point into a court, the staff responsible for them is the most exposed to the excessive protests of the litigants with no salary increase.

For the different coordination tools, it has to be noticed that no specific method for assessment has been designed. They are used only in ordinary courts.

Last but not least, there are tools that were designed to improve the quality of justice but they produce regrettable perverse effects on the organization of services and work. Let’s mention mandatory deadlines, which are increasing, in particular, in the proceedings before administrative courts. More than two thirds of the cases brought before them must be heard within a mandatory time limit. Mechanically, this results in a crowding-out effect on other cases for which the period of non-mandatory processing shall then be extended. Although he may have thought that he was implementing a right to a fair trial by resolving this way a case management problem, the legislator actually caused a greater harm because of his lack of realism concerning the courts’ ability to handle all the cases within a reasonable time. One

\textsuperscript{99} COJ, art. R12-13.

\textsuperscript{100} COJ, art. L 123-3.
can also think that it has implicitly assumed to create a problem of case management for “less media-friendly matters”.

**Tools for detecting deficiencies**

The Ministry of Justice set up a working group led by the Directorate of judicial services and composed of judges and members of the central administration on the issue of identification and assistance to courts in situations of “fragility”, that is to say malfunctioning. The aim is to identify indicators in order to spot and even anticipate all courts that are or may be in such a situation due to a lack of resources, staff or equipment, and then provide for any difficulty and come forward with an action plan. Two detection tools are considered. First, the central administration could use data from the courts on business case management, processing delays, and stoppages. It should also take into account of the lack of attractiveness of the court extrapolated from the absence or scarcity of candidates for vacant positions. This is part of the new way of thinking of the Ministry of Justice: not only to consider that any difficulty arising from a lack of means but extend the analysis to other factors such as the lack of attractiveness of a court. Secondly, the central administration would provide the courts with questionnaires, self-analysis grids, which should make it possible to make an inventory of the courts concerned, the situation of which could then give rise to a referral to the central administration.

It is a matter of systematizing the support of the ministry to the proper functioning of the courts in reaction more particularly to the appeal made by the judges of the TGI of Bobigny, which was in a catastrophic situation due to the lack of staff and means. One of the most important TGI in France was therefore subject to a multiannual plan for improvement, which has already resulted in the assignment of judges and additional staff to a court which is still suffering. The development of the tool for detecting courts that are in vulnerability should, by anticipation, prevent this situation from renewing. However, the results of the working group which had to release its report in June 2016 remains unknown. Heads of courts who were questioned on this point do not know such a mechanism.

**Search for efficiency in the implementation of judicial missions**

This search for efficiency concerns the lower courts on the one hand, and the Cour de Cassation, on the other.

As for the lower courts, the innovation results from drafting supporting tools intended to judges. The Ministry of Justice provided the judges with an office tool, referred to as OARM that is to say as a tool to help the drafting matters for judges. Originally created in 2011 for the litigation of family affairs, it enables judges to formalize their decisions by relying on prearranged frames and motivational blocks. This software also allows judges to create frames and given parts of the justification for other litigations. Each judge can therefore set up a data bank which he can use. This is to speed up the handling of repetitive litigation. The time saved must allow judges to focus their attention on the particularities of the proceedings they have to deal with. This innovation is indirectly linked to the improvement of the drafting quality of decisions.\(^{101}\)

In the same vein, the Ministry of Justice experimented with a tool in development, called PERSEE, in Nanterre, in criminal matters. It is a fairly comprehensive tool that contains a bank of draft judgments, elements on the substance of the law, the record, which poses

---

\(^{101}\) See 3.2.2.1.
questions of legal reasoning and draws the attention of the judge on specific circumstances that might lead to the application of derogating rules. The judge can thus make a pre-judgment which would highlight the information supplied by the judge. The objective is once again to speed up the handling of mass disputes by means of a decision-making support. However, as with many experiments in the judicial system, its assessment has been the victim of the mobility of judges in the different courts as well as of the faulty communication between the courts and the central administration, and no results have been provided to us.

Apart from drafting tools, other initiatives aim to provide judges with models or examples they can rely on to make decisions faster and make quality decisions. Therefore, a working group of the ENM has been working on the design of a manual of methodology on the drafting of decisions in civil matters. Once this leaflet was laid down, it was submitted to the first presidents of Courts of appeal and to presidents of TGI for an opinion before being distributed to the students of the School as well as on the Intranet of the Ministry of Justice available to judges. The aim is to provide these audiences with a document compiling the main rules to be respected. The leaflet sets out, for each party to the decision, the legal and regulatory requirements, the clarifications provided by case-law, all elements drawn from good practice and some advice. However, it is sufficiently general to accommodate the diversity of civil litigation. The ENM intends to continue its works on this area in three specific litigations, construction law, personal injury and the right of liquidation and partition of matrimonial property regimes. It is a matter of allowing young judges and more experienced judges taking up new positions in these matters more easily. All these works thus tend to develop decision-making tools offering elements of motivation and elements of reasoning, as well as transmitting methodological sheets presenting the applicable law.

Finally, there are more localized initiatives aimed at providing judges with a role model or example of motivation. The Court of Appeal of Montpellier published on its intranet a state of its case-law regarding the appeals brought against the decisions of legal aid offices made by a law clerk. This document includes models of statements of reasons on the different points which may make difficulty with regard to legal aid. Again, the judge in charge of the litigation is thus able to deal with it more quickly and to concentrate on the particular aspects of it.

Concerning the Cour de cassation, its organization and functioning are currently subject to a great deal of thinking. The “Justice of the 21st Century” law has given it the means to improve the handling of litigation, while the Court itself has implemented a discussion on its role. Indeed, the “Justice of the 21st Century” law first provided a tool which now enables the Cour de cassation to put an end to a legal proceeding which it is called upon to judge as the sole judge of law. Previously, the Cour de cassation had to refer a case which had given rise to an annulment when it was necessary to decide again on the merits because it was only judge of the law, not on the merits. This implies that the proceeding is further extended by the time necessary for the referring court to rule. It is therefore now possible for the Cour de cassation to make a decision on merits and to put an end in advance to proceedings.

The “Justice of the 21st Century” law then introduced an improvement that has a longer-term effect on efficiency. It provides that the requests for an opinion that can be made by a lower court before the Cour de cassation on a new question of law, presenting serious difficulties

102 Drafting tools, models, do exist in administrative courts (for longer), but we decided not to speak so as to lighten the report.

103 Law no. 2016-1547 modernizing the Justice of the 21st Century [2016] art. 38
and likely to lead to numerous disputes, shall be transmitted to the competent division of the Cour de cassation, ratione materiae, instead of a specific and more formal division. The positive point of this reform is to entrust the final decisions to a specialized division rather than to a division composed of non-specialized judges. As a matter of fact, the previous system created a certain risk of discrepancy between the opinion given and the decision of the Court of Cassation’s division on appeal, so that the process for opinion no longer gives rise to disputes that it was supposed to reabsorb it. Thus the wished gain of consistency is also a gain of efficiency.

Last but not least, the Cour de cassation set up a committee for discussing its reform, whose task is, in particular, to consider the access to this court. In other words, it is a matter of examining the appropriateness of filtering appeals which would discriminate cases brought before the Cour de cassation.\textsuperscript{104} The aim would be to perpetuate and improve the policy of the Cour de cassation whose role is ensuring that appeals are processed within a reasonable time in a context where the stock of pending cases is increasing. We do not know for the moment whether this will be accepted or not.

3.1.2. The search of quality for courts staff

3.1.2.1. The failure of intervisio

Intervision (or peer-review) is defined as a method of observation and reflection on the practices of judges in order to improve the quality of justice in the ordinary judicial order.\textsuperscript{105} It is a method of quality promotion that some judges have wished to organize an individual evaluation mechanism that does not undermine their independence, contrary to the individual assessment by the head of court. The judge who submits, on her/his own initiative, takes advantage of the opinion of another judge (peer) detached from any hierarchical consideration. The criteria used by the two judges relate to what is seen (behavior, listening skills, gesture...), what is understood (pedagogy at the hearing, management of feelings, serenity during the hearing and during the intervisio, etc.) and other elements such as the management of audience time. Its main objective is not to show good practice but to allow the judge to consider her/his own practice.

The intervisio was a local initiative,\textsuperscript{106} inspired by the action plan of the Zwolle court (Netherlands), and established after the Outreau case.\textsuperscript{107} Supported by a few court presidents and based on a charter drawn up by the National School for Judges (ENM), it was not considered relevant by the Ministry of Justice. So there was very little, it was not generalized and above all there was no evaluation since it didn’t interest the central level. In addition, and despite the voluntarism of the heads of courts, the lack of funding prevents court heads from completing this initiative by recruiting an expert to oversee peers of assessed judges.

3.1.2.2. The densification of training obligations

The initial and continuing training of professional judges has been imposed for a long time.\textsuperscript{108} On the other hand, the requirement for the training of non-professional judges is more recent

\textsuperscript{104}Jean-Paul Jean, “Report of the review commission” (February 22\textsuperscript{nd}, 2017).
\textsuperscript{105}ENM, « Charte de l’intervision » [2008].
\textsuperscript{106}First experimented in the Tribunal de grande instance of Roanne (2006), it was then experimented in the Court of Appeal of Caen (2009-2010).
\textsuperscript{107}See note 31.
\textsuperscript{108}Ordinance n°58-1270 which organizes the status of the ordinary order [1958] art. 14. The organic law of August 8\textsuperscript{th}, 2016, while creating the status of honorary judge, also places them under an obligation of prior training when they were called upon to perform duties which they had not occupied before being admitted to retirement.
and certainly contributes to the improvement of the quality of justice, since competence is a source of legal security. Requiring non-professional judges to undergo an initial training started with the law of August 6th, 2015 on growth, activity and equal economic opportunities. It was then necessary to supplement the training previously provided by the trade union organizations of employees and employers’ professional organizations by an obligation of initial and ongoing training. The five days of initial training of members of employment tribunals deals with the administrative and judiciary organisation of this court, the status and ethics of its members, the trial before this court and methodology (hearing conduct and legal writings). Then, the “Justice of the 21st Century” law extended this training obligation to commercial judges, who are also non-professional judges. It is up to the regulatory authority to provide the missing details concerning the content of the formation and its duration. Members of commercial courts can also attend an optional training which was in practice given by peer professionals and supplemented with a theoretical training in regional conferences organized in partnership with the ENM or in the Centre d’études et de formation des juridictions commerciales. This training obligation is also extended to non-professional assessors integrating the divisions of the TGI which shall replace, from January 1st, 2019, the Tribunal des affaires de la sécurité sociale. The content of this last training is not known.

All these training obligations have in common that they are only partially enforced. Indeed, only the breach of the obligation of initial training prevents the person concerned from being able to work in court.

3.1.2.3. The strengthening of ethics

In 2011, a “Charter of ethics” was drawn up for all the administrative judges at the instigation of the Conseil d’Etat. The ethical principles included in the Charter are derived from or inspired by written texts, whether constitutional, international or legislative. However, the Ethics Charter is not binding, but it did not prevent it from playing a strong preventive and pedagogical role, while stimulating the affirmation of firm obligations in terms of impartiality and independence of all the administrative judges. The activity of the Ethics Board of administrative courts set up at the time of the dissemination of the Charter contributed to this awareness and showed that there was a need to construct a framework of ethics for all the members of the administrative justice. A law of April 2016 laid down specific provisions for the general administrative courts and therefore concerning the members of the CAA and TA as well as the members of the CE. The mentioned law is partly in line with the scheme created with the Charter of ethics 2011 but it innovates by requiring the prevention of conflicts of interest. In the continuity, first of all, the law reasserts the obligations of independence, dignity, impartiality, integrity and probity; it also institutionalizes the Board of Ethics, foresees its composition, organizes its functioning and defines its role and competences while remaining in the wake of what already exists. The ethical obligations, related to independence, impartiality or integrity arising from the Charter, and enlightened by

---

109 It should be specified that the jury members of the High criminal court (cour d’assises) as well as the members of agricultural land courts and labor and social security courts are not subject to it.
110 Labor code, art. L.1441-1.
111 Commercial code, art. L.722-17 of the Commercial code.
114 Law n°2016-484 related to ethics, rights and obligations of officials [2016].
115 Art. L.131-2 et seq. of the CJA for the members of the CE and L.231-1 et seq. of the CJA for the members of the TA and CAA.
the opinions of the Board of ethics thus become a binding legal norm. This legislative consecration confirms the preventive nature of the process centered on the intervention of the Board of ethics while preserving the possibility of a repressive and *a posteriori* disciplinary procedure.

The most significant contribution of the law of April 2016 is the issue related to conflicts of interests. After defining the concept of conflicts of interest, the law imposes on the members of administrative courts a declaration of interest as well as a declaration of financial position, under penalty of committing an infringement. The declaration of interests must mention any links and interests that may prevent compliance with the ethical principles of independence, impartiality and objectivity and which have been established within the five years prior to taking office. It is adapted according to whether it is a member of the CE or a lower court. The process is supplemented by an interview with the authority who receives the declaration and of a possible opinion of the Board of ethics. The asset declaration complements the information needed to take into consideration possible conflicts of interests, without being included in the record of the agent, the judge or the member of the CE. However, a coordination with the disciplinary procedure is essential. It is also a current concern of public authorities: a decree dated March 2nd, 2017 intends to clarify and update the organization and functioning of the disciplinary authority of the *Conseil d’Etat*. If highlighting ethical obligations contributes to promoting high-quality administrative justice, disciplinary proceeding cannot be dissociated from it. The most recent illustration is the establishment of the *Commission supérieure du CE* and the organization of its operation is the most recent sign.

In the ordinary order, while the *Conseil Supérieur de la Magistrature* decides on issues relating to ethics, the organic law of August 8th, 2016 established a Board of Ethics, separate from the CSM. It is tasked with, first of all, “giving opinions on any ethical issue concerning a judge”, what the CSM used to do on its own initiative. The Board of ethics shall then “review all the declarations of interests” that the judges of the judicial system must send to their superiors within two months of their taking office. It must therefore give its opinion on the existence of a conflict of interests. However, the Board of ethics does not have any sanctioning powers, but the CSM does within disciplinary proceedings against a judge. Hence its usefulness as a separate authority from the CSM is not convincing.

All judges of the ordinary order also have to, under penalty of committing an infringement, address “to the President of the High Authority for the Transparency of Public Life (Haute Autorité pour la transparence de la vie publique) an exhaustive, accurate and sincere statement of their patrimonial situation in the two months following their professional

---

116 CJA, art. L.131-3, par. 2: “Any situation of interference between a public interest and public or private interests that is likely to influence or appear to influence the independent, impartial and objective exercise of a function is constitutive of a conflict of interests.”
117 Decree n° 2017-271 on statutory provisions relating to the *Conseil d’Etat* [2017].
118 Ordinance n° 2016-1365 on statutory provisions relating to the *Conseil d’Etat* [2016].
119 Organic law n° 2016-1090 relating to statutory guarantees, ethical obligations and the recruitment of the judges as well as the *Conseil supérieur de la magistrature* [2016], art. 28. The Board of Ethics is composed of three judges of the judicial system, a judge of either the *Conseil d’Etat* or the Court of Auditors, as well as an academic.
120 Ordinance n° 58-1270 which organizes the status of the ordinary order [1958] art. 10-2, I.
121 Organic law n° 2016-1090 relating to statutory guarantees, ethical obligations and the recruitment of the judges as well as the *Conseil supérieur de la magistrature* [2016] art. 26, I.
installation and two months following the termination of their duties.” The High Authority could forward the record to the public prosecutor if there are grey areas in the patrimonial situation of a judge.

This will to increase the transparency and probity of public officials was extended to non-professional judges of the ordinary order. Commercial judges are the only non-professionals to be subject, under penalty of prosecution, to the declaration of their interests. On the other hand, they are not required to declare their patrimonial situation. A Board of ethics established by decree in 2016 and under the supervision of the National Council of Commercial Courts (Conseil national des tribunaux de commerce) is responsible for giving opinions on ethical issues concerning personally a commercial court judge as well as issuing recommendations in order to explain ethical obligations and good practices to these judges. It is unfortunate that this initiative was not followed concerning the employment tribunals since the need of ethical information is necessary for them as far as they are not professional judges and have a professional and practical experience. Let’s mention that concerning them, ethical requirements have made little progress. It is true that a decree of 2016 provides for the compilation of a code of ethics for them drafted by the Conseil supérieur de la prud’homme. However, there is no authority in charge of issuing ethical opinions on a particular situation.

3.1.2.4 The search of well-being in court

The search of well-being at work, which is, once more, a local initiative, is a tool for the administration of justice that has a direct impact on the quality of the work handled by the staff according to our interviews but also on the way the workload of each person is experienced.

This search for well-being starts first of all with the improvement of working conditions. For example, the TGI of Dax included in its court project the repairing of the existing patio and its fitting-out, the purchase of a coffee machine for external speakers and participants in the various meetings taking place in the court, as well as the purchase of fans and mobile air conditioners to regulate the excessive temperature. At the TGI of Limoges, the court project is mainly dedicated to the conviviality of the premises. As the premises of the judicial building are new, the walls are immaculate. The staff was therefore requested to propose decorative elements. Anonymous questionnaires shall be made available to staff of the Court of appeal of Angers. They shall focus on targeted topics related to the prevention of psychosocial risks. This will be in addition to the existing unit for monitoring psychosocial risks. At the Court of appeal of Montpellier, questionnaires are more generally aimed at the satisfaction of judges and officials. They were available online through the intranet of the court with a relative success since the response rate was 60%. However, there is still a need to respond to the considerable and growing emotional burden implied by the judicial functions and which is essentially a question of mutual assistance between judges, who may possibly rely on preventive medicine.

The search for welfare is also through welcoming newcomers to the courts (judge, court clerks and staff employee) apart from the solemn hearing where the judges and court clerks are officially settled in the court. Many courts organize a meeting to welcome new staff,

122 Ordinance n° 58-1270 which organizes the status of the ordinary order [1958] art.7-3.-I.
123 Decree n° 2016-514 on the judicial organization, alternative methods of settling disputes and ethics of commercial judges [2016] art. 17.
124 Decree n° 2016-1948 related to the ethics and discipline of the members of employment tribunals [2016].
introduce them to the court, its environment, as well as to the relevant actors and useful details. Their tutoring or patronage by another member of the staff of the court is also fairly common, even systematic, as is the case at the Court of appeal of Montpellier. Sometimes, a welcome booklet collecting useful information about the court and its functioning is given to these newcomers. In the same vein, job descriptions are prepared in order to facilitate the taking of office. Finally, the Court of appeal of Angers implemented a gallery of all judges on its intranet which, coupled with the already available organizational charts, facilitates interpersonal relationships.

3.2. The revaluation of the role of litigants
3.2.1. New legal tools provided to the litigants

3.2.1.1. The “contractualization” of dispute settlements\textsuperscript{125} and the growing subsidiarity of the recourse to judges

The subsidiarity of the recourse to the judge must be understood as the obligation of the parties to at least try to resolve their dispute amicably before bringing the matter before the ordinary judge. It is different from de-judicialization (déjudiciarisation) which excludes, either totally or temporarily, from judicial missions some issues such as divorce by mutual consent or the recovery of small claims which are within the competence from now on of a legal professional (lawyers, notaries and bailiffs). Consensual solutions could a clue of a quality justice because they are agreed upon by parties who tend to perform them spontaneously. Moreover, the increasing number of amicable resolutions of disputes shall reduce the workload of the courts.

Initially, a decree of March 11\textsuperscript{th}, 2015 require the parties to mention in the document instituting the proceedings in civil matters (ordinary justice) “the due diligence undertaken with a view to reaching an amicable resolution of the dispute”,\textsuperscript{126} except for a legitimate reason relating to the emergency or the concerned issue. This hypothesis includes proceedings that integrate an attempt to reconcile the parties as is the case with divorce. However, this favour for the amicable settlement of disputes, which is supposed to contribute to facilitate access to courts, is not sanctioned by the inadmissibility of the application made without any prior attempt to resolve the dispute amicably. It is merely provided that, in the absence of the aforesaid mention in the document instituting the proceedings, the judge may simply “propose to the parties a measure of conciliation or mediation”. Subsidiarity is therefore only very limited in scope, since it is only an incentive.

The law “Justice of the 21\textsuperscript{st} Century” increased the trend in 2016. Concerning the disputes of less than 4,000 euros, the referral to the TI by declaration to the registry of the court is now inadmissible if it is not preceded by a conciliation attempt led by a judicial conciliator.\textsuperscript{127} Judicial decisions agree with this. The Cour de cassation stated that the breach of the mandatory prior conciliation clause inserted in a contract makes the action be inadmissible.\textsuperscript{128} However, compelling the parties to follow a process led by an intervening third party is likely

\textsuperscript{125} The concept of contractualization is used in France to recall the new administrative trend consisting in negotiating rather than imposing unilateral decisions.

\textsuperscript{126} Art. 56 and 58 of the CPC.

\textsuperscript{127} Law no. 2016-1547 modernizing the Justice of the 21\textsuperscript{st} Century” [2016] art. 4. The document instituting the proceeding is inadmissible except if he confirms the agreement of the parties, except if there is a reasonable cause and except if the parties justify the diligence undertaken with a view to reaching an amicable resolution of their dispute. See also on the experiment of the attempt of compulsory family mediation, Law no. 2016-1547 modernizing the Justice of the 21\textsuperscript{st} Century” [2016] art. 7 appointing the courts entitled to experiment the attempt of compulsory family mediation prior to going before the family court.

\textsuperscript{128} Civ. 3\textsuperscript{rd}, May 19\textsuperscript{th}, 2016, n° 15-14.464.
to be counterproductive insofar as an amicable settlement of disputes implies an agreement to both the process and the solution. There is a risk that the objectives shall not be met as suggested by the low success rate (7%) of mandatory prior conciliation before the conciliation board of employment tribunals.\textsuperscript{129}

Moreover, the law “Justice of the 21st Century” extends the idea that it is always possible to find an amicable agreement, even during court proceedings.\textsuperscript{130} It thus removed the obstacle to the negotiation of a “participatory procedure convention” (in French, \textit{convention de procedure participative})\textsuperscript{131} that resulted from the referral of a judge. As a result, such negotiations may happen during the proceedings and thus prevent the judge from settling the dispute if the parties reach an agreement before he gives a decision.

The law on the modernization of the justice of the 21\textsuperscript{st} Century of November 18\textsuperscript{th}, 2016 greatly extends the scope of application of the mediation before the administrative judge and clarifies its legal structure.\textsuperscript{132} The extension of mediation to the entire administrative action shall allow disputes to be settled more quickly, more efficiently and more flexibly. The active participation of the litigant in the elaboration of the solution of his dispute will make him choose this process, which shall help to lessen the administrative courts' workload. The vice-president of the \textit{Conseil d'Etat} also specifies that it shall participate, in general, in the promotion of harmony and social peace.\textsuperscript{133} The question arises whether it would not be appropriate to make the mediation compulsory before any referral to the administrative judge. For the moment, the Law of November 18\textsuperscript{th}, 2016 provides a compulsory pre-mediation system, on an experimental basis and for a period of four years, before any judicial remedy in two areas: disputes relating to the personal situation of public officials and appeals concerning assistance or social action, housing or workers who lost their jobs.\textsuperscript{134} At the same time the legislator clarified its legal structure. Mediation existed on an ad hoc basis before 2016, and there was no harmonization of processes, although some principles were beginning to emerge in practice. A need for institutionalization was felt in order to ensure a minimum of guarantees for the parties. The legislator therefore clarified the legal structure of mediation. The law of November 18\textsuperscript{th}, 2016 thus defines a number of procedural rules which ensure the protection of the rights of the litigants without, however, establishing the equivalent of a compulsory administrative proceeding which is necessarily rigid and binding. A balance seems to have been found between the flexibility inherent in mediation and the guarantee of the rights of the parties.

The Vice-President of the \textit{Conseil d'Etat} expressed his will to go beyond and spread “a true

\begin{itemize}
  \item \textsuperscript{129} Christophe Mollard-Courtou, “\textit{La tentative de conciliation obligatoire préalable à la saisine du tribunal d’instance adoptée par le Parlement : enjeux et limites}” \textit{LPA} (November 28\textsuperscript{th}, 2016) 12.
  \item \textsuperscript{130} See already, art. 128 of the CPC “Parties may reconcile, on their initiative or upon that of the judge, throughout the proceeding”.
  \item \textsuperscript{131} “An agreement of participatory procedure is an agreement by which the parties to a dispute, not yet before a judge or an arbitrator, commit to work together and in good faith to resolve their dispute amicably.” (Civil code, art. 2062).
  \item \textsuperscript{132} Law n°2016-1547 and its implementing decree n° 2016-1480 [2016] modifying the Code of administrative justice, \textit{JO} November 4\textsuperscript{th}, 2016.
  \item \textsuperscript{133} Jean-Marc Sauvé, Intervention of November 24\textsuperscript{th}, 2016 at the \textit{Maison du Barreau}.
  \item \textsuperscript{134} Law no. 2016-1547 modernizing the Justice of the 21\textsuperscript{st} Century” [2016] art. 5. These provisions were declared in conformity with the constitution: \textit{CC} 2016-739 \textit{DC} dated November 17\textsuperscript{th}, 2016, paragraphs 15 to 20. Some legal documents related to the individual situation of some State officials have already been the subject to a compulsory preliminary administrative appeal by way of an experiment that had not been followed up: decree n° 2012-765, May 10\textsuperscript{th}, 2012.
\end{itemize}
culture of mediation”. In this sense, he wishes to involve the main actors that is to say lawyers, judges, by the appointment of mediation referents in each administrative court, by signing framework agreements between administrative courts and the National Bar Council to go towards an external contracting strategy. A Board called “Administrative Courts and Mediation” (Juriction administrative et Médiation) has just been set up; its main task is the elaboration of a guide to mediation and the definition of training activities for judges and court clerks. One of the problems facing this reform is the creation of a pool of mediators.

3.2.1.2 The recognition of new rights

Collective action

The generalization of the scope of application of collective action has not yet resulted. This means that it is not yet possible to undertake a group action in any matter. However, the law “Justice of the 21st Century” has dually contributed to the general application of collective action. Indeed, both before the ordinary judge and before the administrative court, it has, on the one hand, established an ordinary law related to group action and, on the other hand, established new collective actions.

The increasing number of group actions facilitates access to justice for victims of acts in breach of legal or contractual requirements, which would have caused only minor damages to each, subject to the existence of multiple victims. Indeed, the action is taken by an association which bears the costs, except if they are charged to the defendant when he loses the trial or agrees to assume them at the end of a mediation, and takes the complexity of litigations. However, there will be a certain period of time before associations can take ownership of these new mechanisms. Group actions may ease the workload of the courts. This will not necessarily be the case if the victim can initiate an individual action if he considers that the compensation offered is less than that expected. Moreover, the judge must approve the agreements, which adds a constraint even if it is essential to preserve the interests of the members of the group. Finally, in spite of the increasing number of group actions, they remain sectoral. The effectiveness of access to justice thus remains perfectible.

The specific action in recognition of rights before the administrative judge

The action in recognition of rights was instituted before the administrative court by the law of November 18th 2016. The aim was to improve the service provided to litigants, but also to seek greater effectiveness in the handling of serial litigation. Such a specific action was only possible in the areas of environment and fight against discrimination. The new law thus opens up a general action for the recognition of rights: it allows “to a duly declared association or a regularly constituted professional union to bring an action for the recognition of individual rights resulting from the application of the Law or regulation in favor of an indeterminate group of persons having the same interest, provided that their statutory purpose

---

135 Jean-Marc Sauvé, op. cit.
136 See in this connection the Piérart report, Réflexions pour la juridiction administrative de demain, November 2015.
140 Environmental code, art. L. 413-2.
141 CJA, art. R. 779-9.
includes the defense of the mentioned interest”. The purpose of this action is therefore to deal with serial litigations brought against pecuniary decisions; the purpose is to be able to benefit from a legally due amount or to be discharged from an illegally claimed amount. Once the declaratory judgment is rendered and becomes final, any person who fulfills the conditions may rely on the rights thus recognized before the administrative or judicial authorities. Recognition remains subject to the personal action of each person concerned before the administration and, if necessary, before the judge.

This new action is undoubtedly a useful method to settle serial litigations. It allows to reduce the flow and contributes to the case law quality control.

3.2.2. New accessibility tools provided to the litigants

3.2.2.1. The improvement of the drafting quality of decisions

The following paragraphs deal with both ordinary courts and administrative. Both are interested in and working to improve the drafting of their decision so as to make its more accessible to litigants.

The development of statements of reasons

Inspired, in particular, by a significant evolution of the case-law of the European Court of Human Rights, the demand of a statement of reasons is changing, gradually, in France, by taking a more pedagogical turn. The idea then is that the litigant understands the decision, that he even accepts it, beyond the mere conformity to the law, of the decision of the judge. This European case-law illustrates the transition from a strictly deductive statement of reasons to a more persuasive one. French courts then developed their traditional methods of drafting. Beyond the seemingly questioning of these methods, it is the very way of conceiving justice - no longer as an authority but rather as a public service - which is changing. The idea is not dedicating a global approach to appeals but an experimental approach.

The Cour de cassation, in several decisions, has thus engaged in an experimental deepening of statements of reasons in breach with the imperatori brevitas which traditionally characterizes it, in order to make its decisions comprehensible and to ensure a better dissemination. When doing a proportionality review inspired by the European Courts of Human Rights or previous decisions, the Cour de Cassation enriches its statement of reasons by mentioning the former decisions and explicitly explaining the decisive reason for the position taken. However, the simultaneous publication by this High Court of an explanatory note relating to the mentioned decision is an admission that there is still a lot to be done in order that a decision becomes understandable and persuasive.

The evolution of the drafting style

Administrative justice has in fact converted to this new acceptance of the requirement of statement of reasons. That is what the Conseil d’Etat is doing with caution and progressivity. In support of a number of proposals, it intends to contribute to a better understanding of judicial decisions by reshaping the literary construction of them: lightening the first parts of decisions, a more homogeneous first part to present more simply the proceeding, providing more complete reasons for the decision in order to include the

142 CJA, art. 77-12-1.
143 Taxquet Vs Belgium, app. no.926/05 (ECHR, November 16th 2010); study by Laurent Berthier and Anne-Blandine Cai [2009] RFDA 677.
arguments of the parties by providing a full and analytical rendering of the reasoning chosen, a possible inclusion of case-law references that are necessary to make the decision, creation of a conclusive paragraph allowing to the judge to do a pedagogical work and thus to explain the meaning of the decision.\footnote{146}

More formally, the Conseil d'Etat wishes to put an end to the traditional structure of the decision which was divided in “Considering” (in French, “Considérant”). He also abandons the “unique sentence” (in French, la phrase unique). In the end, the sentences will follow a much more didactic model divided into short sentences and paragraphs. The outdated style should also give way to a more “vulgarized” style, necessarily more accessible to the reader.

This new way of modeling judicial decisions is still being tested in administrative courts that have wished to play the game of experimentation. The logic started moreover in the Conseil d'Etat and was subsequently extended to administrative tribunals and administrative courts of appeal. The first results seem encouraging, since the Conseil d'Etat has recently decided to retain a clearer drafting of the first parts of its decisions for all types of cases, all sub-sections combined. Other tests and evaluations are in progress which could, if they were conclusive,\footnote{147} lead to a generalization of the system.

Taking advantage of the opportunity given by administrative justice, the current President of the Conseil constitutionnel started a similar reflection on the need to modernize the drafting of the decisions of this authority.\footnote{148} The objectives then displayed by the President of the Conseil constitutionnel are the simplification of the reading of its decisions and the deepening of their statements of reason.\footnote{149}

The Cour de cassation is on this point late. Still very attached to the unique sentence which confers to its decisions a singular style, the exchange committee on its reform contemplates, by its own admission, only “modifications of reasonable forms”\footnote{150}. It is basically to incorporate subtitles to materialize the subdivisions of the decision, to number the paragraphs, and to mention the previous decisions. There are two bold proposals: the use of direct style for opinions alone and not for the decisions of the Cour de cassation, as well as the deletion of the arguments, which introduce each paragraph of the decisions it makes. These changes in form are not reasonable, they are still too timid to hope that they will make decisions more accessible to litigants.

3.2.2.2. The judicial digitization

Innovative methods relate to digitalization of reports to justice concerns both ordinary and administrative justice.

\footnote{146} This proposal then closely follows the approach taken by the case-law of the European Court of Human Rights.

\footnote{147} With the question to know if the opinion of the litigant shall be taken into account.

\footnote{148} Decisions 2016-539 QPC (priority preliminary ruling on constitutionality) and 2016-540 QPC of May 10th, 2016.

\footnote{149} Release of Laurent Fabius, President of the Conseil constitutionnel, May 10th, 2016.

\footnote{150} Jean-Paul Jean, Report of the reviewing commission on the reform of the Cour de cassation (February 22nd, 2017).17.
The digitization of the exchanges

In the ordinary system, digitization in civil matters is the most developed. An exchange between courts and lawyers is made possible by way of interconnection of the virtual private network of lawyers (réseau privé virtuel des avocats - RPVA) and the virtual private network of justice (réseau privé virtuel de la justice - RPVJ) insofar as the reliability of the identification of the parties to the communication, the integrity of the transmitted documents, the security and confidentiality of the exchanges and the certain establishment of the date of sending and receiving are guaranteed. The added value is not only to be able to exchange in a dematerialized way. The lawyer is also made able to come to all the events relating to a case he is handling on his own, without asking the registry office.

This systematization has also been imposed to the courts of appeal of the ordinary system. The electronic communication then concerns all proceeding documents in order to speed up the processing of cases and to “remove distances”. Exchanges are made by way of RPVA and RPVJ. The Cour de cassation has provided it on its own initiative, so that now almost all appeals are sent electronically by lawyers with an electronic certificate of authentication. The filing of the appeal automatically leads to the creation of a virtual file of the proceeding which allows the lawyer to follow the case, to the litigant to have access to a summary of the proceeding, and to the judges of the Court to have an access to the proceeding documents from their virtual office and even to electronically sign the decisions. The Court considers that it can thus “better fulfill its tasks of regulation, control and enactment of standards, and improve the quality of judgment provided to users”.

In addition, the use of electronic communication has been extended in 2015 to specific channels of communication which do not necessarily meet the above requirements, subject to the consent of the addressees. Indeed, it is now allowed that the sending of the court’s notices, previously sent by simple letter, may be made by any means, in particular “by e-mail or by written message, as the case may be, to the e-mail address or telephone number [which the addressee] has previously declared to the court for that purpose”. Notices to attend the hearing may be “sent by e-mail under conditions ensuring the confidentiality of the information transmitted” instead of the simple letter or letter with acknowledgement of receipt. On this point, civil and criminal matters come together, since it is now permitted in the latter, subject to the express consent of the addressee, to send notices, notices to attend the

---

151 Significantly, the Code of Criminal Procedure (code de procédure pénale) provides for an exhaustive list of requests for documents or notifications which may be transmitted by electronic means of telecommunication (D.591 of the CPP), of which there is no equivalent in civil matters. Partial access to the file digitized by the courts is, however, open to lawyers (article 4 of the order of January 16th, 2008 implementing an automated processing of personal data called “digitization of criminal proceedings”).

152 CPC, art. 748-1.

153 Order relating to electronic communication in the courts of first instance [2009]; see also, for commercial courts, the order providing electronic communication between lawyers and between lawyers and the court in proceedings before commercial courts [2013].

154 CPC, art. 748-6.


156 Its access is significantly facilitated through a link “follow your case” on the homepage of the website of the Cour de cassation.


158 CPC, art. 748-8.

159 CPC, art. 748-9.
hearing or documents which may be transmitted by any means, through a means of electronic communication,\(^{160}\) including e-mails and shortmessages.

Concerning administrative courts, this digitization of exchanges is concretized with the use of a computer application called Télérecours. The application was first experimented and later widely used in all litigation proceedings for lawyers and administrations (understood as legal entities under public law and private law organizations in charge of permanent management of a public service, such as the Social Security Funds). Since January 1\(^{st}\), 2017, Télérecours has become mandatory for them. Compliance with this obligation is prescribed on penalty of inadmissibility of the application\(^{161}\) or “exclusion from the debates”,\(^{162}\) after invitation to regularize via Télérecours. Concretely, Télérecours is a web-based tool providing a shared space for exchanges between a lawyer or an administrative authority and administrative courts, in order to exchange all proceeding documents (petitions, submissions, letters, etc.) in a dematerialized form. To be able to use this application, lawyers and administrations must register in a national directory, knowing that lawyers can connect to Telerecours via the virtual private network (RPV\(^{A}\)) used in civil courts. This registration allows the use of this shared space in secure conditions. The application also provides for the timestamping of requests and documents filed or transmitted. This application cannot be used by a litigant wishing to take legal action without a lawyer's office. However, the decree of November 2\(^{nd}\), 2016 provides the implementation of a secure site which will allow him to obtain in a dematerialized manner the communication of a request introduced in this form. On the other hand, there is no question for the time being to open to the litigants the possibility to refer to a judge online.

The digitization of the information provided to the litigant

Two great flows must be mentioned here.

The first one results from a Decree of December 8\(^{th}\), 2010 on the creation of an automated processing of personal data known as the “Portal for public access to justice” (Portail d'accès grand public à la justice) and which is now in line with the law of November 18\(^{th}\), 2016 on the modernization of the justice of the 21\(^{st}\) Century. The Portalis project is a global project of complete dematerialization of the judicial processes. It aims to combine in a single computerized system the management of proceedings before all French civil courts and to allow litigants and lawyers to follow the evolution of their proceedings by accessing an Internet portal. The project must be developed over several years, with a progressive deployment until 2021.

A first step in this project was to set up an information portal for the litigant via the website justice.fr. This portal aims to be the reference site for litigants, by offering reliable, free information available 24 hours a day on legal proceedings. Specifically, this site provides information on legal proceedings, explanatory notes and the possibility of downloading the documents to be filled in, information on the competent court, or calculating rights to legal aid through a simulator. A second stage is planned for the end of 2017, in order to allow litigants to follow their civil or criminal proceeding online. In the long term, the portal should also offer the possibility of bringing a case before a court online, filing an application for legal aid and receiving by mail all documents related to their proceeding.

\(^{160}\) CPP, art. 803-1, II.

\(^{161}\) CJA, art. R. 414-1, par 1.

\(^{162}\) CJA, art. R. 611-8-2, par. 5.
It must be noted that in administrative courts, the possibility of following the proceeding is already available to litigants through an application called “Sagace”. With a confidential code mentioned in the letters by the court services, parties can thus consult a summary of the information relating to their record, the events relating to the progress of the investigation and the conclusions of the “public rapporteur” before the hearing.

The second step is the result of an effort of transparency and modernization of public life but also of support for economy. Therefore, articles 20 and 21 of the Law for a Digital Republic\(^{163}\) (loi pour une République numérique) have opened up to the growing movement of open data of legal decisions. French law now provides that they must be made available to the public free of charge with respect for the privacy of the persons concerned, that is to say once the decisions have been anonymized, they can no longer give rise to re-identification of the litigants. The decree which will permit its application is still awaited. The law has responded in this respect to the wish of some judges to see the whole case law available to as many persons as possible. The first President of the Cour de cassation sees it as a means for judges and lawyers “to see the trends of case law”, a factor of “consistency of decisions and legal reasoning” that shall reduce disparities, as well as an instrument for informing and increasing the confidence of litigants in the judicial authority as long as their decisions are more predictable.\(^{164}\) Practically, and for example, let’s mention the database accessible to the public on the website Légifrance, which currently contains 500,000 legal ordinary decisions in free access. The availability of judicial decisions to the public shall lead to the publication of 1.5 million decisions of courts of appeals per year.\(^{165}\)

Is it not illusory to believe that such an influx of decisions can allow the litigant, and even legal professionals to find their way?\(^{166}\) The most disturbing consequence of the open data of court decisions is to pave the way for predictive justice. The fact that algorithms can predict the outcome of future decisions in comparison with past decisions, leads to interesting as well as worrisome prospects. The prospect that the duration of the trial may be foreseeable or that the compensatory allowances paid to victims of personal injury may be harmonized is positive. On the other hand, knowing your chances of success is a double-edged sword, since if this can be a valuable piece of information to decide to take a legal action, it can also be a means of exerting pressure on the party with the lowest chances of success during an amicable resolution process. On the other hand, these data processing services, unlike the dissemination of decisions, shall certainly not be free. It is all the more uncertain because it can be seen as an instrument for improving the quality of justice that the anonymization of judges who make the decision is not envisaged, which shall not exclude the fact that the analysis of their decisions can be exploited for strategic purposes by litigants and court officials, especially in the area of mass litigation requiring a single judge.

\(^{163}\) Law n° 2016-1321 for a digital Republic [2016].

\(^{164}\) Le point (April 6\(^{th}\), 2016).


\(^{166}\) By way of comparison, the Council of Europe recommended the selection of judicial decisions to be made available to the public (Recommendation n° R (95) 11 of the Committee of Ministers to member States related to the selection, processing and archiving of court decisions in automated legal documentation systems).
3.3. The opening of justice to the society

3.3.1. The search of mutual understanding

3.3.1.1. The role of amicus curiae

The *Amicus curiae* is an invitation addressed by a court of law to professionals to provide their general observations in the case, when the question is new or difficult, and requires the judge to be informed of the ethical, economic, societal, environmental and other consequences that prevail. The objective is to facilitate decision-making through a better knowledge of the context. The process is not entirely new, since courts, like the *Conseil constitutionnel*, have been able to use it informally for many years. For example, in its first decisions concerning surrogate motherhood, the *Cour de cassation*, in the absence of a legislative position, asked the opinion of the chairman of the National Advisory Committee on Ethics in Life Sciences and health before deciding (Comité consultatif national d'éthique pour les sciences de la vie et de la santé).

The innovation lies in the spread and in the search for transparency in institutionalizing the use of the amicus curiae. Administrative justice was the first concerned in 2010. The opinion that is given to administrative courts is in writing and communicated to the parties or oral and brought before the court by the parties duly convened. The institutionalization of the *amicus curiae* before ordinary courts occurred later (2016) and concerns only the *Cour de cassation*, but no text yet specifies how (written or oral) comments are made and brought to the attention of the parties.

3.3.1.2. The added value of court councils

The Court Council (in French, conseil de juridiction) is a recent tool that allows courts to open up to legal actors but also to local actors, thus constituting an opening of justice to society. It is mentioned in the regulatory part of the code of the judicial organization (code de l'organisation judiciaire) which specifies, concerning county courts (tribunal de grande instance), in article R. 212-64, and concerning courts of appeal, in article R.312-85: “The Court Council, co-chaired by the [heads of the courts], is a place of exchange and communication between the court and the city. It meets at least once a year. […] The Court Council is composed of judges and officials of the court […] and, […] in particular: 1° Representatives of the prison administration and the judicial protection of youth; 2 ° Local representatives of the State; 3 ° Representatives of local and regional authorities and elected parliamentarians in the jurisdiction; 4 ° persons carrying out a public service mission to the courts; 5. Representatives of the professions of the law; 6. Representatives of associations. This authority has no control over the judicial activity or the organization of the court, nor does it refer to the individual cases before the court”.

The implementation of court councils is one of the 15 actions for the daily justice as provided for during the works on the justice of the 21st Century. It has been tested by the Judicial Services Directorate since January 2015 in three Courts of Appeal (Chambéry, Limoges and Metz) and seventeen county courts (tribunaux de grande instance) (Agen, Bar-le-Duc, Beauvais, Bonneville, Dax, Evry, Lyon, Metz, Narbonne, Paris, Perpignan, Roanne, Rodez, Sarreguemines, Thionville, Thonon-les-Bains and Troyes). In the court of Rodez, for example, a first meeting in March 2015 of the Court council of Aveyron highlighted that the theme of accessibility was at the heart of the concerns and needs of the department.

---

168 CJA, art. R.625-3.
169 COJ, art. L.431-3-1.
When the project of Court councils was mentioned, the union of judges USM, was afraid that the meetings in this Board would only be “completely useless masses intended solely for a political posting”. On the contrary, according to the report on “Court project” (or Courts Business Plan), the Court council appears to be “a forum for dialogue, exchanges and sharing of analyzes, outside the jurisdictional sphere, with partners of justice and Civil society. As such, the content of the court project could be enriched by the information gathered during the proceedings of the court. This could facilitate the collection of information on the situation of the territory, its dynamics and its burdens (state of the housing market, state of over-indebtedness, plans for dismissal, etc.). These are all elements that could allow the organization of a service or require a transversal reflection on a dispute. In its implementation phase, the court project which is also a tool for communication, can be a means of enhancing the activities carried out and envisaged by the court”.\textsuperscript{170} It has even been thought that “the court project might be presented to the members of the court council which moreover may, for some of its actions, be associated with its implementation”.\textsuperscript{171} This seems risky however for the independence of justice have raised some of our contacts during the interviews.

In practice, the added value of court councils lies in the discussions they allow with interlocutors that the preexisting commissions or meetings did not allow to meet, first among which the local elected representatives. They can also be used to strengthen the link with the associations by inviting a wider number of people than usually met in other forums. The court council is an opportunity for the court to make known the context in which it performs its functions and for its interlocutors to provide information on the social, economic or demographic developments observable or to come in the jurisdiction. The court is therefore better informed about the context in which it intervenes, but is also able to anticipate changes such as, in Limoges, the aging of the population, which implies strengthening the service of the guardianship judge. In addition, if the court council is only provided for at the level of the TGI and the Court of Appeal, certain TGIs have joined these meetings, in addition to the courts that must do so such as the Tribunal d’instance or employment tribunals, commercial courts or any other court of first instance. There is still a difficulty left, keeping an interest to this court council which would distinguish it from the many other opportunities for exchange, especially when the headquarters of the TGI is the same than for a court of appeal. This implies a coordination of the two courts in order to avoid one of their boards being depreciated as perceived as a repetition of the other. Finally, although the first court councils were not organized around a specific theme, the choice of these themes became a general trend in order to focus debates on a major issue for the jurisdiction and avoid a discussion that would be too general and unfocused. The chosen themes are generally similar for each court (conciliation, family mediation, reform of divorce by mutual consent, assistance to victims, etc.). There is also a risk for certain heads of courts that in the long term the subjects will be exhausted and that these meetings will lose their interest. However, the main difficulty arises from the invitation of persons on the basis of their qualifications (elected representatives, associative representatives, etc.) even though they may be challenged in a case which is handled by the host court.

Related to the above, the holding of a court council in administrative courts seems impossible in so far as it would not be possible to put the persons concerned in those courts at the same

\textsuperscript{170} Report of the working group chaired by Chantal ARENS, first president of the Court of appeal of Paris, on the “Court project” (2015) 17.

\textsuperscript{171} Page. 23.
table. The obstacle is essentially ethical. However, during major reforms, the administrative courts organize informal meetings with institutional litigants, such as with associations for the defense of foreigners’ rights.

3.3.2. The search of satisfaction of the society
3.3.2.1. Measuring the quality of reception
The quality of reception is mainly implemented by following the requirement of the “Charte Marianne” and the ISO 9001 certification.

The “Charte Marianne” is a charter of commitment for a better welcome in public services; it concerns all the services of the State, including judicial and administrative courts. The “Charte Marianne”, which entered into force on January 3rd, 2005, is open out (as of September 1st, 2016) in 44% of the courts (TI, TGI, employment tribunals and courts of appeal) and commits the court which solicits it in a certification process. The Court of appeal of Amiens and the single point for court services have been labeled, since October 29th, 2010; this label has been awarded by an independent authority after it has been found to be effective in order to respond clearly and systematically to the users requesting justice. The framework was completely revised in September 2016, with new commitments, particularly in the digital field; the courthouse of Amiens implemented an evaluation of the system; as a matter of fact, in order to measure performance and to perpetuate the process of continuous improvement of the reception, a satisfaction survey was carried out in January 2017. Thus, 79% of the users believe that the telephone reception is very satisfactory. 62% rated the service orientation as “very easy” and 32% ”fairly easy”. 72% describe their visit to the courthouse of Amiens as “very satisfactory”.

Focus

The administrative court of Lyon was labeled “Marianne”. The aim is to provide easier access to services (the litigant is put in contact with the secretariat of the Chamber which is dealing with the request, the file may be consulted at the central registry, access to the premises of the administrative courthouse is facilitated; hosting people with disabilities is specific, with a reception agent available to wheelchair users, a careful and polite hosting (informing the litigant in simple and understandable terms; giving the name of the interlocutor; facilitating the preparation of files; available place for a litigant who would like to have a discussion with his/her lawyer confidentially; limiting the waiting time for the hearings by dividing them in time slots), a comprehensible response to requests in an announced deadline (legibility and clarity of forms and letters, information on the progress of the request, information on the deadlines on the estimated rulings of the court on a dedicated space on the website, answers to the letters in a maximum deadline of one month, a systematic answer to all claims (in a maximum period of one month), attentive listening to progress in the quality of the hosting reception (annual questioning on the expectations and the satisfaction of the litigants with an online questionnaire, information on the results of the evaluations).

Other example: the administrative Court of Appeal of Nantes, from 2010, extended its opening hours to accommodate more public in compliance with the Charte Marianne.
The first court in France to have been awarded ISO 9001 certification is the commercial court of Thonon-les-Bains, for all its functions but with a special mention in the environmental field, in May 2015. Other courts were awarded ISO 9001 certification for their main assignments (Lyon, Paris Commercial Court in 2009), but not in the field of prevention of financial difficulties. This is particularly important, since the aim is to prevent companies from falling into collective proceedings. The objective of Thonon's court was really to help companies, giving them standardized and reliable processes to benefit of and *ad hoc* agent or conciliation. The ISO 9001 certification is used in courts, but it only concerns the management of courts, without paying too much interest to the work of judges, in a context of independence of the judges.

Once this famous label is granted, an evaluation is made annually for the authority to keep it.

### 3.3.2.2. The development of experimentation

Through its testing function, experimentation allows the public authorities to convince citizens of the necessity or relevance of their choices before they are perpetuated and generalized. In recent years, administrative justice has undertaken vast reform projects, but with caution, using the process of experimentation on a recurring basis. It has experimented a reform consisting in giving more importance to oral proceedings: some courts have tried the reversal of the speech at the hearing between the parties and the “public rapporteur” in order to evaluate whether a more developed speaking of the parties after the conclusions of the public rapporteur could be conciliated with the written character of the proceedings and the potentially time-consuming nature of the pleadings of lawyers. New drafting of decisions have also been implemented after experimentation (see above). An experiment with the direct style of decisions was then implemented in the *Conseil d’Etat* and then in others courts. But it is mainly in the field of digitization of discussions that experimentation was used. The *Télérecours* process allowing the transmission of documents in administrative litigations was set up in accordance with an experimentation authorized by the Decree of March 10th, 2005 (*JO* March 11th, 2005), and then generalized by the Decree of December 21st, 2012 (*JO* December 23rd, 2012) to lawyers, administrations and private law authorities entrusted with the management of a public service.

This process of experimentation is nevertheless controversial because some reforms are not subject to this process, which is often regretted by the unions, who do not understand the logic of experimentations. The law on the simplification and improvement of the quality of the law of May 17th, 2011 allowed the president of the court division to exempt the public rapporteur from giving conclusions, on his proposal. Unions did not understand why a reform of such magnitude from the point of view of the history of administrative justice and of its quality had not been experimented.

Whereas experimentation is known in criminal matters, and is even older than in administrative justice, it seems to have grown in recent years. In this respect, it should be pointed out that experimentation on citizen participation to the functioning of the criminal justice system, which created the criminal tribunal (*tribunal correctionnel*) in a formation

---

172 It specifies requirements for a quality management system.

173 “it will be necessary to wait until the 1950s to see the experimental process used in the legal and administrative field”: Laurent Dauphin *Collectivités territoriales et experimentation* (Thesis University of Limoges, 2008) 15.
specific to citizenship rapidly ended after it revealed that the tested system involved an important workload for the courts and was too expensive. More generally, experiments were not decided by the legislator but by the Ministry of Justice or the courts themselves. Thus, the single reception service for the litigant, which concerns both civil and criminal courts, has been tested from 2014 in several courts in France. In view of the positive results of the experimentation, its generalization was decided by the law “Justice of the 21st Century”. More in line with criminal matters, an experiment was launched at the end of 2009 by the Ministry of Justice with the Paris Children's Court. It concerns the initiative already followed by some courts that had put in place a single judicial file gathering all the elements of personality concerning a minor. The conclusive results of the experimentation on the sanitary and psychological follow-up of minors in court proceedings led the legislator to generalize the use of the single personality record. These experiments may also be decided by the courts. Let’s mention for example the initiative of the TGI of Lyon concerning restorative justice.

It stands out from the other courts by a reflection on this restorative justice involving judges, lawyers and associations of aid to the victims. This led to the creation of an independent association, working closely with victim support associations, and whose members - honorary lawyers – shall intervene before the final decision in cases which have given rise to a preliminary investigation and in which the facts are recognized. Through the involvement of the parties, this process would not only improve mutual understanding but also enable the victim to recover better, the offender to avoid recidivism and society to see inter-individual relations calmed. The experimentation took place in 2016. The results are still expected.

This is one of the key limitations of these innovative methods of quality promotion. Involving the central level less than in the past, through lack of interest or lack of means, they lack relevant evaluation tools. Many actions could only be implemented through informal interventions by presidents of the courts who lobbied the central authorities.

Government plans - The Government announced in October 2017 a plan that includes five priorities: digital transformation, improvement and simplification of the criminal procedure, improvement and simplification of the civil procedure, adaptation of the Territorial organization, meaning and effectiveness of sentences. Each of these "Chantiers de la Justice" (Justice construction sites) will be coordinated by two personalities who will conduct a consultation before returning their proposals to the custody of the Seals from January 15, 2018 in the context of the law for programming for justice to be presented in the spring 2018 to Parliament. This implies future developments in the quality of justice.

174 Law n° 2011-939 on the participation of citizens to the functioning of criminal justice and on minors’ proceedings [2011].
Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice
The evaluation and development of the quality of justice in Hungary

Mátyás Bencze: Professor, University of Debrecen, Dept. of Legal Theory and Sociology of Law, Research fellow at the Hungarian Academy of Sciences, Centre for Social Sciences Institute for Legal Studies
Ágnes Kovács: Lecturer, University of Debrecen, Dept. of Legal Theory and Sociology of Law
Zsolt Ződi: Associate Professor, Corvinus Business School, Dept. of Infocommunication, Corvinus University of Budapest. Research Fellow, Institute for Legal Studies, Centre for Social Sciences, Hungarian Academy of Sciences

1. The institutional context
1.1. Judicial structure overview

In Hungary a four-level judicial system operates. The system is unitary, i.e. there are no courts (specialized courts) outside of the courts hierarchy described below. However, there is a horizontal division of labor amongst judges in each court (a judge has to deal with cases only from a given branch of the law). The main dividing line is between judges who adjudicate in criminal cases and those who deal with non-criminal cases (civil, economic, and administrative and labor cases). This kind of division of the labor (specialization on the level of individual judges) is reflected in the horizontal organization of the judicial administration: in higher courts criminal, civil, economic as well as administrative and labor judicial departments (sections) operate. The sections organize and support judges adjudicating in one of the before-mentioned branches of the law.

On the lowest level of the hierarchy the district courts and the administrative and labor courts take place.¹ There are 112 district courts in Hungary. The district courts proceed only as first instance courts. Separated from the general district courts there are 20 specialized courts in the first level of court hierarchy: they are administrative and labor courts located in the seat of regional courts. District courts and administrative and labor courts are led by a president. These courts are not legal entities; however they have some limited autonomy in their external relationship under the control of the president of the regional court they belong to. As for the general administration of district courts presidents and judicial councils of the regional courts play a central role.

Regional courts constitute the second level of the courts, there is one in each of the 19 counties of Hungary and one in Budapest. The regional courts operate as first instance courts in some types of cases of greater significance, and decide in appeal cases lodged against the decisions of district courts and administrative and labor courts. Regional courts are led by a president, and these courts are legal entities.

Regional courts of appeal are at the third level. Regional courts of appeal decide as a second or third instance only in appeal cases submitted against the decisions of regional courts. Regional courts of appeal are led by a president, and they are also legal entities.

The Curia of Hungary (Supreme Court) is the highest judicial authority in Hungary. Horizontally, it is divided into three departments: criminal, civil, and administrative and labor law departments. The Curia decides appeals submitted against the decisions of the regional courts and the regional courts of appeal in certain types of cases and reviews final decisions of lower courts if these are challenged through an extraordinary remedy.

¹http://birosag.hu/en/information/hungarian-judicial-system

F. Contini (ed.) Handle with Care: assessing and designing methods for evaluation and development of the quality of justice. IRSIG-CNR. Bologna Available at www.lut.fi/hwc
As a ‘little constitutional court’ one panel of the Curia delivers judgments in cases where a local government decree is challenged on the ground of violation of law or where a local government fails to create regulation. The Curia has no right to select the cases to be dealt with (a certiorari). That is why the number of the judges at the Curia is relatively high: currently more than 80 judges are working at this court. Many of the three-member panels are specialized to a given field of law (mostly within the civil law department).

Figure 1: Organigram of the Hungarian court hierarchy

It is worth mentioning here that the Curia has (besides publishing edited and unedited judgments) some specific means in order to guarantee the coherence of the judicial practice. First, unlike supreme courts in Western European countries the Curia can deliver decisions on the correct interpretation of the law that are binding for all courts (uniformity decisions). Second, departments of the Curia can issue “general opinions” which also revolve around questions of interpretation and application of the law. The specificity of both guiding tools is that they are not necessarily judgments delivered in a particular case. They reflect problems arising in the judicial practice in a mid-abstract level (in between the abstraction level of text of the law and that of the reasoning of a judicial decision). That is why their drafting style is somehow similar to those of the legislated law.

---

2 The new civil procedural law (entering into force on 1 January 2018) narrows the scope of cases where the parties can turn to the Curia for extraordinary legal remedy. In order to mitigate this restriction the law authorizes the Curia to give permission to bring a case before the court if it has serious legal or social implications.

3 The Venice Commission repeatedly expressed its concerns about the means guaranteed in the Hungarian legal system to ensure the uniformity of the jurisprudence. The Commission highlighted that “the uniformity procedure and its system of supervision by the court presidents might have a chilling effect on the independence of the individual judge (paragraph 73) and that a uniformity procedure may only be acceptable if it does not have a negative influence on the career of the judges (paragraph 74).” See Venice Commission, Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD (2012)001 on Hungary. Strasbourg, 15 October 2012, 683/2012, CDL-AD (2012)020, paragraph 52.
Although the constitutional status of these “quasi-laws” is problematic, because judges who write them rather “make” than “apply” the law, these decisions are very popular amongst judges. They cite and apply them as if they were “hard law”. This is because general opinions by providing detailed guiding rules make the sometimes too abstractly drafted legislated law “consumable” for every-day use.  

A drawback of this system of unification of judicial practice is that the published guiding decisions do not embrace all the relevant difficulties and uncertainties of the judicial practice. The Curia tends to deliver and publish guiding decisions in cases where they have to decide as a forum of legal remedy. Many difficult and widely present practical issues simply do not reach the Curia (there are only a restricted number of causes that entitle the losing party to bring the case before the Curia). The table below compiled in 2012 concerning criminal cases shows this situation:

<table>
<thead>
<tr>
<th>Type of delict</th>
<th>Examined period: 1980-85, 1990-95 and 2006-11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder (Curia ordinary forum of appeal)</td>
<td>21.8%</td>
</tr>
<tr>
<td>Theft (Curia only extra-ordinary remedy forum)</td>
<td>13.0%</td>
</tr>
<tr>
<td>Fraud (Curia only extra-ordinary remedy forum)</td>
<td>5.8%</td>
</tr>
<tr>
<td>Robbery (Curia only extra-ordinary remedy forum)</td>
<td>7.4%</td>
</tr>
</tbody>
</table>

It may be that this weakness motivated the legislation when in 2012 it established the institution of the so-called ‘jurisprudence-analysis groups’ within the Curia to address the most controversial issues of the Hungarian judicial practice. These working groups typically consist of judges, law professors, other representatives of the legal profession, and at times other external experts as well. The subject-matters are determined every year by the President of the Curia on the proposals of the departments of the Curia, but heads of the departments on lower courts, and other representatives of the legal profession and legal scholar may also make proposals to this agenda. The groups can analyze the practice of lower level courts and can identify and resolve (on a theoretical level) legal problems which not necessary reach the Curia in the ordinary way of appeal. In their published final report the groups can make recommendations in order to improve the quality of adjudication in a certain field.

---


5 Article 29 and 30 of the Act CLXI of 2011 on the Organization and Administration of Courts (hereinafter AOAC).
The publication of the judicial decisions is a starting point of all efforts to reach legal unity. In this respect the situation in Hungary is quite controversial. We have to differentiate between three types of document (or decision) groups, where accessibility and searchability is quite different.

1. In the case of the first group of documents (cca. 50-60 documents per year), the overall situation is quite good. These documents are accessible for free, in the form of a searchable database on the website of the Curia. This group of documents comprises uniformity decisions, departments’ general opinions, reports of the jurisprudence analysis groups, and some 10% of the edited (‘headnoted’) leading cases.

2. The second group of documents, the vast majority of the edited decisions (cca. 400 documents per year) are not accessible for free. The publication right (copyright) of these decisions had been transferred at the beginning of the 90’s to a private publishing company which is publishing these decisions in a journal called ‘Kúria Döntések’ (Decisions of the Curia). The publisher has also the exclusive right of giving re-publishing rights to other publishing companies, including the most popular database publisher.

3. The third group of decisions are the un-edited (anonymized) decisions (some 10,000 decisions per year). These documents are accessible in a searchable format on the website of the NOJ. Though there is a search engine on the site, there are ongoing complaints concerning the user friendliness of the site. No wonder that bigger database publishers are all offering paying services, where these documents are published with a user friendly search engine.

Hungarian judiciary includes judges only, prosecution office is a separate branch of the justice system. Thus, prosecutors are recruited separately from judges and they have a different career line. Nonetheless, there is an opportunity for any legal practitioner (including prosecutors) to apply for judgeship as the Bar Exam in Hungary is exactly the same for every legal profession.

The following tables show the change of numbers of court staff in Hungary in the past few years.

### Table 2: Number of judges in Hungary (based on the information provided by the president of the NOJ)

<table>
<thead>
<tr>
<th></th>
<th>Approved status</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>2.937</td>
<td>2.889</td>
</tr>
<tr>
<td>2012</td>
<td>2.897</td>
<td>2.782</td>
</tr>
<tr>
<td>2013</td>
<td>3.024</td>
<td>2.914</td>
</tr>
<tr>
<td>2014</td>
<td>2.929</td>
<td>2.839</td>
</tr>
<tr>
<td>2015</td>
<td>2.932</td>
<td>2.840</td>
</tr>
<tr>
<td>2016</td>
<td>2.937</td>
<td>2.846</td>
</tr>
</tbody>
</table>

---

6 [http://www.lb.hu/hu/jogegysegihatarozatok](http://www.lb.hu/hu/jogegysegihatarozatok)  
7 [http://www.lb.hu/hu/kollivel](http://www.lb.hu/hu/kollivel)  
10 HVG-ORAC, [http://www.hygorac.hu/](http://www.hygorac.hu/)  
11 [http://hygorac.hu/folyoiratok_csoport/kuriai_dontesek_kiadvany](http://hygorac.hu/folyoiratok_csoport/kuriai_dontesek_kiadvany)  
12 Wolters Kluwer’s Jogtár product: [https://uj.jogtar.hu/](https://uj.jogtar.hu/)  
14 The Bar Exam consists of one written exam (resolving a case which includes a legal problem), and three oral exams, one in each major branch of law. The oral exams are focused on the examinee’s knowledge about the substance of the laws and not on her legal skills and competences.
Table 3: Number of administrative employees in Hungary (based on the information provided by the president of the NOJ)

<table>
<thead>
<tr>
<th>Number of court clerks</th>
<th>Approved</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>614</td>
<td>605</td>
</tr>
<tr>
<td>2012</td>
<td>794</td>
<td>736</td>
</tr>
<tr>
<td>2013</td>
<td>793</td>
<td>783</td>
</tr>
<tr>
<td>2014</td>
<td>817</td>
<td>798</td>
</tr>
<tr>
<td>2015</td>
<td>861</td>
<td>833</td>
</tr>
<tr>
<td>2016</td>
<td>887</td>
<td>851</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number of judge trainees</th>
<th>Approved</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>359</td>
<td>256</td>
</tr>
<tr>
<td>2012</td>
<td>359</td>
<td>239</td>
</tr>
<tr>
<td>2013</td>
<td>359</td>
<td>239</td>
</tr>
<tr>
<td>2014</td>
<td>359</td>
<td>260</td>
</tr>
<tr>
<td>2015</td>
<td>283</td>
<td>237</td>
</tr>
<tr>
<td>2016</td>
<td>254</td>
<td>218</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number of other administrative court employees</th>
<th>Approved</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>6.902</td>
<td>6.786</td>
</tr>
<tr>
<td>2012</td>
<td>7.016</td>
<td>6.920</td>
</tr>
<tr>
<td>2013</td>
<td>7.091</td>
<td>6.963</td>
</tr>
<tr>
<td>2014</td>
<td>7.261</td>
<td>7.167</td>
</tr>
<tr>
<td>2015</td>
<td>7.298</td>
<td>7.141</td>
</tr>
<tr>
<td>2016</td>
<td>7.326</td>
<td>7.189</td>
</tr>
</tbody>
</table>

One can see that while the number of the judges and judge trainees has not changed significantly, there has been a remarkable increase in the number of clerks and administrative staff.

Usually the first step to become a judge is to work as a judge trainee within the judicial system. Theoretically, every person who passed the Bar Exam can apply for judgeship, but (as we later discuss it) the figures show that the vast majority of successful applicants starts his/her judicial career as a judge trainee. Trainees cannot make decisions, they can prepare draft-resolutions, can give advice to court users who cannot hire a lawyer and they attend trials in order to learn the work of a judge.

A judge trainee who has already passed the Bar Exam can be appointed to a court-clerk. Clerks can take decisions in cases of less importance (minor offences, some decisions in the company registration procedure etc.) under their own name. Besides, they can also prepare draft-resolutions and provide assistance for judges. In the Hungarian judicial system working as a clerk is generally considered as a necessary step before the application for judgeship. After a minimum one year of clerkship a person can apply for judgeship.15

15 According to the law, a person who passed the Bar Exam and after that has been working as lawyer for one year can also apply for judgeship. In spite of this possibility, the typical applicant comes from the judicial system.
The annual budget of the court system in 2017 is cca. 321 millions of euros which is 0.67 percent of the annual state budget. Though in the last few years there has been a slight increase in the amount of the budget of the court system (see at sub-section 2.5) budgetary support for Hungarian courts is rather low compared to the general European level. Expenditure on courts per inhabitant ranks Hungary merely at the 23\textsuperscript{th} place among EU Member States.\textsuperscript{16}

1.2. Key functions in the administration of justice

The model of judicial self-government in court management was introduced in Hungary when the National Judicial Council (Országos Igazságszolgáltatási Tanács) was set up in 1997 as the central organ of court administration. The council consisted of 15 members, of which two-thirds were

\textsuperscript{16} Based on data acquired from EU Justice Scoreboard 2017. Its data from the year 2015.
judges: 9 were elected by the college of judicial delegates, and the President of the Supreme Court ex officio was at the same time the president of the NJC. The remaining one-third of the council were ‘external members’, representing other legal professions and the political branch. The NJC was for the first time clearly separated from the executive; the one single institutional link between the two branches was constituted by the Minister of Justice who was a member of the judicial council, but the minister had no genuine influence on the functioning of the justice system. As many members of the NJC were at the same time court presidents charged with important administrative tasks (at times even 7 from the 9 judges were court managers), the operation of the NJC was influenced by strong corporate interest, so the council was not interested in the strict control over the performance of courts. Or as it was regularly stated, within this framework, members of the NJC who were court presidents at the same time were not interested in the appropriate control of the court leaders’ work. As a result, under the guise of independence, the judiciary lacked any meaningful democratic control, transparency and accountability. Consequently, the judicial branch had to face numerous difficulties which to a large extent stemmed from the failures of the central administration.

In 2012 the National Judicial Council was disbanded, and since then the administrative government of the judiciary has exercised by the President of the National Office for the Judiciary (NOJ) under the supervision of a new body called National Committee of Justices (NCJ). The president of the NOJ is elected by the Parliament by the two-third majority of the MPs for 9 years while the members of the NCJ are elected by the members of the judiciary.

According to the relevant statute, the President of the NOJ carries out the functions of central administration of the courts. She is responsible for strategic planning of court administration and in some areas can adopt binding guidelines and ‘soft’ recommendation for the courts. One of her most important competences is to appoint and supervise the presidents of regional courts of appeal and regional courts.

The NCJ functions as the supervisory body over the activity of the President of the NOJ. In addition to its supervisory tasks, NCJ also takes part in the management of courts. The NCJ is composed of 15 members. One of them is the President of the Curia ex officio, the other 14 judge members of the NCJ are elected in a secret ballot by majority vote at the meeting of the delegated judges.

The most important rights and duties of the NCJ are:

- determining the principles to be applied by the President of the NOJ and the President of the Curia when they select the successful applicant for judgeship and in some cases the NCJ has

20 The President of the NOJ was a former court leader who has a close family tie with one of the prominent representatives of the governmental party.
21 This name is from the translation of the AOAC. This organ, however, calls itself National Judicial Council in its English website (see http://birosag.hu/en/njc/national-judicial-council). In order to clearly distinguish it from the disbanded Országos Igazságszolgáltatási Tanács, we use the name above.
22 For the full list of competences see Annex
23 For the full list of the competences see Annex
the right to veto the appointment for judgeship of an applicant picked by the President of the NOJ or the President of the Curia (see details under subsection 2.2).

- exercising the right of consent regarding the appointment of court leaders who did not receive the approval of the competent judicial body,
- deciding on the approval to the renew the appointments of presidents and deputy presidents of the regional courts of appeal, regional courts, administrative and labor courts and district courts if the president or the deputy president has already served two terms of office in the same position.\(^{24}\)
- appointing the President and members of the service court.

Nonetheless the ‘checks and balances’ power of NCJ provided by the law is weak as:
- it does not have separate administration from the NOJ, preparatory works of the meetings is organized by the NOJ;
- it does not have a strong president (the presidential position of the NCJ operates on a rotational basis; members shall rotate every 6 months);
- the administrative superior of all members of the NCJ (with the exception of the president of the Curia) is the President of the NOJ;
- it has the right to approval in some cases of court leaders’ appointment, but it is not entitled to decide autonomously in crucial HR questions.

According to the published memos, the vast majority of motions of the President of NOJ are approved by the NCJ. However, a recent article has leaked that there are bitter debates between some members of the NCJ and the President of the NOJ.\(^{25}\)

As for the quality of courts’ activity, a declaration published by the NCJ on the 23rd of March 2012 emphasizes that its members “want to meet the requirements of the society represented by the legislative power.” They declared as follow:

“We consider as an elemental [elementary] obligation – besides the protection of the judicial independence – to help the work of the National Office for the Judiciary with our proposals, observations, assuring the mutual interests of the efficient and timely jurisdiction.”

The functioning of the new system has also been heavily criticized. The Venice Commission actively monitored the reform of the judiciary and the transformation of court administration. The Commission objected particularly to the lack of judicial self-government: the new model established a long term of office of the President of the NOJ with extremely wide competences, without meaningful control over her activities as it provided only a negligible role for the NCJ and lacked sufficient means for accountability. The Commission found the composition of the NCJ (it is composed of judges exclusively) problematic too, “with respect to its uniformity, which can easily lead to mere introspection and a lack of both public accountability and understanding of external needs and demands, especially those of the “users” of the judicial system (advocates, civil society) or representatives of the academia.”\(^{26}\) These criticisms were slightly addressed by the Hungarian legislator.

\(^{24}\) As a general rule, in order to prevent the excessive influence of a certain person on the administration of a given court, one person can be appointed to a court president only twice in a row.

\(^{25}\) See Erika Pálmai: ‘Közbenső ítélő’ [Interim judgment] HVG, 29/06/2017 pp. 16-18

Beside the NCJ and the President of the NOJ, there are some other players within the court system that can more or less influence – in a formal or informal way – the functioning of the administration of justice.

The President of the Curia – apart from his membership in the NCJ – does not exercise administrative competencies over the court system. Nonetheless, the Curia has relative autonomy in its own court administration, therefore the President of the Curia provides for the personnel and material conditions for the operation of the Curia from the funding available. The President directs the financial and economic activities of the Curia, and exercises the employer’s rights conferred upon him by law. One of the most remarkable aspects of his autonomy is that he is entitled to hire the judicial and administrative staff without the consent of the President of the NOJ.

The National Bar Association does not fulfil any function in the governance of the administration of justice. The Bar Exam is organized by the Ministry of Justice. The members of exam panels are selected from the experienced representatives of all legal professions.

The State Audit Office of Hungary checks annually the fiscal management of the court system and decides on whether the accounts of the courts are true and fair.

Outside the organs described above there is no other body which plays a role in the functioning of the judicial system in Hungary. Nonetheless, judges have some non-governmental organizations. The most significant is the Association of Hungarian Judges. Its main goal is to represent and enforce the interest of the judiciary. Besides, its Charter declares as a goal to “improve the quality of adjudication” and it has an ethical committee which issues ethical statements in the field of judicial behavior in particular cases (without names). It is worth mentioning that female judges and lay assessors also have their associations. The latter one is the only one amongst all judicial organizations that criticizes the current state of affairs in the Hungarian judicial system.

Beside the central judicial administration, two kinds of local self-governing bodies exist in each regional court, each regional court of appeal and in the Curia. The plenary session of judges consists of all judges who work at the given court, while the member of the Local Judicial Council is elected by the plenary session of judges. Both organs have some competences in providing opinions and have the right to initiate inspection against local court leaders. In addition, the Local Judicial Council plays an influential role in the process of judicial recruitment (see below).

1.3. Current issues in the administration of justice
As for the current issues, there is an "evergreen" problem, namely the timeliness of the administration of justice and the case-backlog accumulated before 2012. A similar problem is that

Before 2012, the President of the Supreme Court was also the president of the NJC. The two competences (judicial and administrative) were separated as a result of the 2011 judicial reform, and this change provided one of the reasons for the government to terminate the mandate of the then President of the Supreme Court three and a half years before the end of his term of office. Later, the European Court of Human Rights found that the removal of the President from his office violated his right to freedom of expression as his mandate was terminated after his publicly expressed criticism of legislative reforms related to the judiciary. See Case of Baka v. Hungary, no. 20261/12, Grand Chamber, 23 June 2016.

In Hungary lay participation in adjudication is realized through lay assessors who are elected by the general assembly of local governments. Lay assessors are not part of the court staff. Before trial courts in cases of greater significance they adjudicate together with a professional judge as a panel. According to the law, in the trial process they generally have the same rights and duties as the professional judge. Nonetheless, as sociological studies clearly show it, their impact on the outcome of the procedure is almost zero. See Mátvás Benecke, Attila Badó, Reforming the Hungarian Lay Justice System. In: Cserne Péter, H Szilágyi István, Könczöl Miklós, Paksy Máté, Takács Péter, Tattay Szilárd (eds.), Theatrum Legale Mundi: symbola Cs. Varga oblati. Budapest:Szent István Társulat,2007.pp. 1-13.

See ulnokok.hu (available only in Hungarian)
there have been regions in the country (Budapest and the Central Region of Hungary) which have been tackling a disproportionately high workload. The situation was worsened in 2012 when the relevant law suddenly lowered the retirement age for judges from 70 to 62 years and therefore forced to retire almost 300 senior judges (around 10% of the total number of judges).  

The NOJ concentrates its effort on reducing the backlog and the time which is required to finish a case as well as leveling the workload amongst courts. In the past few years the NOJ initiated some amendments to the law in force and organizational changes aiming at speeding up the court procedure. As many figures shows this effort has proven to be successful. What is a challenge here is to reconcile the efficiency of the court system with the fair trial requirement and access to justice.

There is also too much administrative burden on judges that induce a permanent need to increase the number of the competent assistance personnel. There would be a demand from the side of judges to employ legal consultants who could prepare the case for trial (including the collection of the relevant case law, academic publications, foreign legal solutions etc.).

A further challenge is the devaluation of the judicial (and other court employees’) salary. In the past 10 years their salary lost 30-40 percent of its purchasing power. It is no coincidence that in the 2012 CEPEJ rating the Hungarian gross judicial average salary remains the second lowest among EU Member States. Although a three-staged pay raise has begun from 2016 (5 percent raise in each stage), the threat has remained present that brightest law students choose job options other than judicial career.

Departing from the “internal issues” there are some “external” demands towards the courts. Decisions taken in sensitive cases (politically-laden or celebrities’ cases) attract the attention of the public, and after a decision taken in these kinds of cases heated public debates usually start about the impartiality and professional competence of judges. That is why the leadership of the Curia and the other courts as well as the NOJ dedicate extraordinary energy to explain the important court decisions in an understandable language through their website and the media. The goal of enhancing public trust in courts also dominates the communication of the NOJ for this reason.

2. Classical judicial evaluation arrangements

2.1. Introduction

One of the strategic purposes of the President of the NOJ is to guarantee timely and high-quality justice. As the excellence of the judges is considered as a crucial factor in the quality of justice, the legislature and the President of the NOJ have regulated the recruitment and evaluation procedure for judges and judge-trainees in a very detailed manner in the past few years. They mostly concentrated on the objectiveness of the selection and evaluation process as the appointment system has been criticized for a long time because it made the arbitrary selection possible.

As for the quality of judicial work, the predominant conception in Hungary is that only the peers (judges) are competent to decide on the quality of the work of a judge, a judge-trainee or on the eligibility of a judge-candidate. That is why the evaluation and recruitment procedure focuses on the ‘internal (professional) values’ of the judicial activity while the perspective of court users remains almost unreflected and the system is not sensitive enough to the needs and opinions of the members of the society.

---

30 The CJEU and the Hungarian Constitutional Court later declared that this legislation had been a violation of EU law and the Fundamental Law. After that, however, in practice most of the judges remained in retirement and those who came back were not reinstated to their court leader positions. See http://jog.tk.mta.hu/uploads/files/14_Bencze_Matyas_Bado_Atila.pdf
2.2. Recruitment and initial evaluation of judges

2.2.1. Selection bodies

In case of application for a position of a judge, the **Local Judicial Council** of the affected regional court\(^{32}\) interviews the applicant and ranks her/him on the basis of the result of the interview and of some aspects provided by the relevant law. Members of the Local Judicial Council are exclusively judges from the court which is affected by the vacant position, and they have the biggest impact on the outcome of the selection procedure. In case of applications to a higher judicial position (regional court, regional court of appeal and Curia) it is compulsory to get and to take into consideration the opinion of the **competent department** (civil law, criminal law or administrative and labor law) of the affected court on the applicants.

Nonetheless there is a professional aptitude test carried out by a **body of forensic experts**(one general practitioner, one psychiatrist and one psychologist) designated by the minister in charge of the judicial administration, in agreement with the President of the NOJ.

The **president** of the affected court on the basis of his/her own considerations may deviate from the ranking of the Local Judicial Council, and may recommend the appointment of the second or third placed applicant (in this case reasons of re-ranking shall be given in writing). Besides, in the last phase of the selection procedure the **President of the NOJ** may also deviate from the ranking of the Local Judicial Council on the basis of the guidelines adopted by the NCJ\(^{33}\) and may recommend the appointment of the second or third placed applicant. In this case, the NCJ has to approve the deviation.

2.2.2. Selection process

Application for the position of a judge is open to any jurist who passed the Bar Exam and meets some criteria listed in the relevant law (such as no criminal record, at least 30 years of age, Hungarian citizenship, at least one year work experience after the Bar Exam etc.).

Therefore, the **selection procedure is uniform** for any applicants regardless of their professional background. Nonetheless, according to the relevant law, in the evaluation of the previous job experience the assessment aspects are different for internal and external applicants. In addition during the interview the different professional background also can be taken into consideration.

There is **no written or oral examination** on legal expertise for prospective judges. After the deadline for applications expires, the Local Judicial Council of the court where there is a vacancy **interviews** the applicants and, based on the findings of the interview and some other statutory criteria\(^{34}\) listed below it determines the ranking of applicants. The minister in charge of the judicial system issued the **number of points** to be awarded for each of the criterion. The higher the points awarded the higher the rank of the applicant. There is also a recommendation issued by the NCJ (1/2012. (X. 15.) OBT) which interprets the activities that are assessed and scored by the Local Judicial Council. The list of criteria are as follow:

- result of the job evaluation made on the applicant’s previous activity within the administration of justice (such as judge trainee, court clerk etc.);
- the previous employer’s assessment for applicants with no judiciary background;

\(^{32}\) Or the affected regional court of appeal, or the Curia if the position is vacant in those courts.

\(^{33}\) The president of the NOJ may deviate, for example, if the second or third placed applicant has more work experience that may guarantee the more efficient reduction of the case backlog in an overburdened court. Nonetheless, the guidelines emphasize the possibility of the 'free choice' of the president. (http://birosag.hu/sites/default/files/allomanyok/obt_dokumentumok/3_2013.pdf)

\(^{34}\)Par. 4 of Section 14 of Act CLXII of 2011.
- duration of practical experience or service time after passing the Bar Exam;
- the opinion of the competent department of the affected court (in case of applications to a higher judicial position);
- result of the professional aptitude test;
- result of the Bar Exam;
- the academic degree;
- any certificate to practice law in a specific jurisdiction or other secondary certificate (for a specific field of discipline);
- any study trip abroad made in a specific field of discipline after receiving the law degree;
- language skills;
- any publication relating to legal issues;
- grade in compulsory education arranged for practicing law in a specific jurisdiction for which a Bar Exam is required, and participation in facultative trainings;
- any extra-curricular activities that may be taken into consideration for judgeship;
- the findings of the interview by the Local Judicial Council (this is generally considered as a subjective criterion);
- the opinion of the president of the district court or administrative and labor court where the post is available.

In the case of applicants for a higher judicial office, the first and third criteria of the list shall be given priority in the process of evaluation (this is because of the assumption that those persons can be eligible for filling higher judicial position who have previous judicial work experience). Otherwise, there are no priority criteria, the number of points is decisive in the ranking. Where several applicants have the same number of points, their ranking shall be decided based on the conclusions made by the Local Judicial Council following the interview. If the applicants are given the same scores after being interviewed by the judicial council, their ranking shall be decided by a reasoned decision of the judicial council adopted by simple majority, in writing. There is a possibility for both the court president and the president of the NOJ to deviate from the ranking established by the Local Judicial Council, and may recommend the appointment of the second or third placed applicant. In that case she shall give reason for the decision. If the president of the NOJ deviates from the ranking she need to obtain the consent of NCJ.

Table 4: Proportion of approved deviations from the original ranking

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of appointments</th>
<th>Number of deviations from the original ranking</th>
<th>Number of deviations approved by the NCJ</th>
<th>Number of deviations disapproved by the NCJ</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>105</td>
<td>14</td>
<td>14</td>
<td>0</td>
</tr>
<tr>
<td>2015</td>
<td>99</td>
<td>5</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>2016</td>
<td>94</td>
<td>6</td>
<td>6</td>
<td>0</td>
</tr>
</tbody>
</table>

A recent development has been that the government redesigned the recruitment system for administrative judges: previous professional experience in the public administration is rewarded with extra points in the judicial application process while the points awarded by Local Judicial Councils are halved. That means a huge advantage for candidates coming from the public administration. Critics, accusing the government with a ‘Polish-style court packing’ (to which the Hungarian Constitutional Court fell victim after 2012), point to a threatening consequence of the new regime: Through this reform the government can fill the vacant administrative judicial positions with ex-governmental officers who are loyal to the political orientation of the government.
currently in office. The relevance of the criticism is supported by a fact following from a reform of the court procedure in administrative review cases: from 1 January 2018, administrative courts need to hire approximately 200 new judges.\textsuperscript{35}

For candidates, it is compulsory to undergo a professional aptitude test which include medical and physical examination, as well as \textbf{psychological assessment}. The examinations shall cover all mental and health considerations that may preclude or severely impair the judge’s performance,\textsuperscript{36} and shall assess the judge’s intelligence and personality. The test shall provide an assessment of the candidate’s personality from the perspective of his/her suitability for being a judge. The list of faculties to be tested as follow:

1. decision-making ability,
2. ability to cooperate,
3. analytical thinking,
4. foresight,
5. discipline,
6. responsibility,
7. determination,
8. careful attention,
9. integrity,
10. communication skills,
11. conflict-solving skills,
12. creativity,
13. self-assurance, confidence,
14. independence,
15. problem analysis and observation skills,
16. problem solving skills,
17. ability to use professional knowledge in practice,
18. organization and planning skills,
19. communication skills verbally and in writing,
20. objectivity.

However, according to the ministerial decree which provides the detailed rules of the test only an exploring conversation (exploratio), and Rorschach, MMPI as well as RAVEN tests are compulsory to conduct. If necessary some complementing tests may be added such as MAWI (IQ test), Szondi and CPI. It is not clear how these basic examinations can assess properly the faculties above. There is no dispute on the reliability and usefulness of the applied psychological tests. An author, however, says that this psychological test was a simple reception of the aptitude test applied to navy seal candidates in the USA. The reason for that was that lawmakers did not find an adequate model for assessing judicial faculties at the time of the birth of this decree.\textsuperscript{37}

\textsuperscript{35} https://444.hu/2017/11/15/eddig-nem-engedtek-be-a-kormany-embereit-az-igazsagszolgaltatasba-de-most-felretoltak-az-utbol-az-akadekoskodo-birakat

\textsuperscript{36} There is no regulation or professional protocol in order to determine the physical disabilities which prevent judge candidates from conducting judicial activity. Nonetheless, according to a competent court leader, there is a consensus amongst medical experts that challenges in movement are not such disabilities. However complete deafness and blindness prevent the candidates performing a court hearing that is why such persons are not eligible for judgeship. It must be emphasized that in lack of official regulation, the standpoint above is the mere opinion of medical experts. In Hungary there has not yet been assessed a candidate judge with complete blindness of deafness.

\textsuperscript{37} Hack, Péter, Bevezetés, In: Hack Péter, Garai Borbála (eds.), Az igazságsgoláltatásba-de-most-felretoltak-az-utbol-az-akadekoskodo-birakat

Hack, Péter, Bevezetés, In: Hack Péter, Garai Borbála (eds.), Az igazságsgoláltatásba-de-most-felretoltak-az-utbol-az-akadekoskodo-birakat

Nonetheless, during the interview some of the abovementioned faculties can be evaluated. Besides, the job evaluation made on the applicant’s previous activity may contain some hints that can be informative on legal competence, treatment of parties, capacity to work efficiency and capacity to work in team. These are important sources of information as the vast majority (with insignificant exceptions) of newly appointed judges come from the pool of court clerks who previously worked as judge trainees for years (at least three years). During the training period, the trainee has the opportunity to observe the practical judicial work, and can gain the adequate professional knowledge with conscious and systematic preparation for the Bar Exam. Judge-trainees are continuously evaluated by their instructor judges, and the members of the Local Judicial Council who determine the ranking of applicants are aware of the result of this evaluation.

A very recent development was that in 2016 the rules of the selection procedure for judge trainees were redesigned in order to be reasonably meritocratic (previously a permanent criticism headed toward judicial administration because the selection process was prone to nepotism). The reform is of utmost importance because of the very high proportion of successful candidates come from within the judicial system. That is why it is worth-while to summarize the rules of the selection process of judge-trainees.

The aim of the reform of the judge trainee selection was to measure the essential qualities to serve as a judge in the future (competence-based test). In the exam skills of communication, the technique of legal writing and general knowledge of the candidate are equally examined. That means that skills of application of substantive and procedural legal rules plays an important part of the admission test, but logical abilities, technique of legal writing, the ability to determine what is essential, empathic capability and creative thinking are also examined. The underlying assumption behind the creation of this system was that the best way of maintaining, even increasing the quality of adjudication is the recruitment of judge trainees who already have the necessary capabilities to become a judge. Their competence can further be developed in the time of the internship. That is why verbal expression as well as capability of managing conflicts and acting decisively are assessed during the admission test.

First the applicant must submit an application (according to the actual application standards within deadline) with a letter of motivation and with all necessary attachments such as certificate of negative criminal record and a curriculum vitae. The application form allows setting a list of preferences amongst the vacant judge trainee positions. The applicant must pass a centrally organized written and an oral competition exam at the Hungarian Academy of Justice (Magyar Igazságügyi Akadémia) which is, otherwise, the center of professional training for judges under the supervision of the President of the NOJ in Budapest.

Test questions are determined on a yearly basis and the exams evaluated by the Entrance Exam and Internal Competition Committee appointed by the President of the NOJ. It can be 120 points to score maximum in the exam. In the written part of exam, the general and legal knowledge, basic legal institutions and procedural models are in focus, and sometimes, even detailed legal provisions are asked (that means that candidates have to know the text of important laws by heart). All applicants do the test in an anonymous way with a personal code number assigned to them. In the oral part of the exam the applicant talks about his/her motives, professional background then she must solve a fictive legal case, a personal situation and a workplace affair before a three-member panel.

38 The president of the court of appeal could decide alone and without binding guidelines on hiring someone to a judge-trainee position. Under these circumstances children, other relatives and friends of judges of the affected court enjoyed a huge advantage in the recruitment process. See Badó, Attila, Bóka, János, Európa kapujában [In the Gate of Europe], Bibor Kiadó, Miskolc, 2002, pp. 159-160
The applicant can get 30 extra points, which are allocated to the qualification of the law degree (summa cum laude, cum laude), study trip abroad, distinguished rank in national student research competition and foreign language skills. If the application is unsuccessful, the applicant is put on the waiting list so she can apply for the position of a trainee judge within a year after the exam. In this case she can request a revaluation of his/her application on the basis of the results of the passed exam.

Applicants are ranked by their points and the president of the affected court can choose from them on a discretionary basis and hear them personally. But there is a limit to this discretion: if there are applicants who obtained more than 90% of the maximum points (that is more than 135 points), the president must not choose an applicant with lower points. This means that the new system is more objective, because previously the scores of the applicants were not decisive: the president could choose anyone according to his/her subjective consideration. The very purpose of the introduction of the new system is to ensure the professional excellence of the hired applicant. Subjective considerations currently can play a role in the oral part of the exam and the personal hearing, where the evaluation of empathic capability and creative thinking can depend on personal impressions.

As we were informed there is another way to be court employee with law degree. Court presidents can employ administrative staff members without conducting the above-mentioned application and selection process. It is not prohibited to hire a person for this job with law degree. That person works within the system and can take the Bar Exam like the judge-trainees. After the Bar Exam she is eligible to be appointed to court-clerk and after one year she can apply for the position of a judge. So, there is a loophole in the system by which the objective and transparent Entrance Exam can be skipped.

2.2.3. Selected candidates

Though according to the relevant law, the application is open for any qualified person, the 2013 figures show that applicants come mostly from within the court system (the total number of applicants was 588 out of which 497 were court employee). After 2015, there are no data available concerning the proportion of external and internal applicants, however, demographic composition of newly appointed judges is published. These figures show that the overwhelming majority of successful candidates was court clerk previously. We have no reason to assume that the proportion of external and internal applicants has changed in the last two years (Table 5). This raises again the issue of the opportunity to skip the Entrance Exam because, considering the overwhelming majority of successful internal applicants, it weakens the effectiveness of the judge trainee selection reform. Though we do not have exact data on the proportion of court administrators with law degree it is a telling figure that while from 2015 to 2016 the number of judge trainees decreased by 19 persons, the number of court administrators with higher education degree increased by 20 persons.39

39 See Table 2 and the annual report of the President of the NOJ from 2015 and 2016 (http://birosag.hu/obh/elnoki-beszamolok/feleves-eves-beszamolok?tid=All). It must be emphasized that we do not know whether all (or any) of the newly hired court administrators have a law degree or not.
Table 5: Proportion of successful external/internal candidates

<table>
<thead>
<tr>
<th>Year</th>
<th>Total number of applicants</th>
<th>Number of newly appointed judges</th>
<th>Number of successful “internal” candidates</th>
<th>Number of successful “external” candidates</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>588</td>
<td>43</td>
<td>40</td>
<td>3</td>
</tr>
<tr>
<td>2014</td>
<td>508</td>
<td>67</td>
<td>66</td>
<td>1</td>
</tr>
<tr>
<td>2015</td>
<td>554</td>
<td>57</td>
<td>56</td>
<td>1</td>
</tr>
<tr>
<td>2016</td>
<td>559</td>
<td>59</td>
<td>59</td>
<td>0</td>
</tr>
</tbody>
</table>

As far as we know gender balance and minority representation is not a point of interest in the selection process either in the selection of judges or judge-trainees. Nonetheless, 69 percent of all judges are female. It may be because the working time of judges are more calculable than that of the advocates and thus being a judge can be more attractive for women who have to take care of children, household, and they can also be satisfied with lower salary (see below).\(^{40}\) It is worth mentioning that in the upper levels of the hierarchy the proportion of genders changes significantly. The data below are from 2012. Since then there have been no data broken down by court levels. The aggregated gender data, however, have not changed significantly since 2012.

Table 6: Proportion of female and male judges (information provided by the president of the NOJ)

<table>
<thead>
<tr>
<th>Court levels/gender proportion</th>
<th>Female judges</th>
<th>Male judges</th>
</tr>
</thead>
<tbody>
<tr>
<td>District courts</td>
<td>71,7%</td>
<td>28,3%</td>
</tr>
<tr>
<td>Administrative and labor courts</td>
<td>72%</td>
<td>28%</td>
</tr>
<tr>
<td>Regional courts</td>
<td>66,9%</td>
<td>33,1%</td>
</tr>
<tr>
<td>Regional courts of appeal</td>
<td>61,9%</td>
<td>38,1%</td>
</tr>
<tr>
<td>Curia</td>
<td>50,6%</td>
<td>49,4%</td>
</tr>
</tbody>
</table>

As the prestige and the salary of a judge increases more significantly with positions of higher courts it may be not risky to say that these numbers suggest that a weak ‘glass-ceiling’ effect is present in the Hungarian judiciary. Besides, it is a problem for court leaders to re-allocate the work of many female judges who are absent longer time because of parental leave or caring a sick child. The lack of proper handling of this kind of absence may have a detrimental effect on the efficiency of the judicial system.

As far as we know there is no policy in the judicial administration on guaranteeing any kind of minority representation and there is no debate about that either. It is worth noting that the proportion of the biggest ethnic minority (Romanies) is only a little more than 3 percent in the whole population.\(^{41}\)

2.2.4. Training and internship of apprentice judges

There is a practice-oriented compulsory training for court clerks and apprentice judges organized by the Hungarian Academy of Justice at national level. Each takes five days (40 hours). Courses given to clerks and junior judges focus on general knowledge and abilities a judge needs, such as ethics, proper judicial behavior, managing court hearings, judicial writing etc. There are no exams at the end of the courses.

\(^{40}\) See fn. 19 p. 144-145

\(^{41}\) [http://www.ksh.hu/nepszamlalas/tablak_nemzetiseg](http://www.ksh.hu/nepszamlalas/tablak_nemzetiseg)
Training courses do not differ by the professional background of the newly appointed judges. The only difference between judges with and without previous work experience within the court system is that the latter ones have to take part in courses focusing on administrative aspects (mostly case management) of the judicial work. The lack of customized trainings is, however, not a fatal problem considering the very homogenous professional experience of apprentice judges (see above).

Furthermore, each apprentice judge has an “instructor” judge (just like judge trainees have) who supervises her/his work. The apprentice judge can consult with her, the instructor may attend the hearings held by the apprentice judge, she reads through the decisions of the judge and gives her advices. The instructors shall respect the judicial independence of the supervised judge. The period of supervision takes at least one year and it can be prolonged if it is necessary. The supervising activity ends with a report on the supervised judge made by the supervisor.

Apprentice judges learn judicial writing during the compulsory training (one day, 8 hours). This training aims at improving their writing skills. Judge trainees and court clerks also have trainings courses focusing on judicial writing. Moreover, a judge trainee (and court clerk) is preparing 4-500 draft decisions for their instructor judge by the time she is appointed judge.

As the subjects (the main branches of the Hungarian legal system such as civil law, criminal law, administrative law etc.) of the Bar Exam in Hungary are uniform for all lawyers, many judges (almost half of them) have obtained a postgraduate diploma in the legal field she intended to specialize. These postgraduate courses are offered and organised by law schools and take one or two years.

2.3. Continuous evaluation of judges

2.3.1. Evaluation bodies

Pursuant to the statute in effect, as a general rule, judges are assessed firstly in the third and secondly in the sixth years from their appointment and after that in every eighth year.42 The first evaluation is of great importance because junior judges are appointed for a determined three years “probationary” period. If a judge proves to be incompetent at the first evaluation her judgship ceased automatically.43 Apart from this regular inspection, an extraordinary evaluation can be carried out in specific situations/circumstances (signs of professional incompetence, skipping compulsory trainings, more than two years undue delay in a tried case and if the judge herself asks for it for some reason). During both types of assessment (regular and extraordinary), the head of the affected department (or other experienced judge appointed by her) assesses the quality of the judge’s work including the observation of substantive and procedural laws and case managerial regulations. Her trial conduct practice is also evaluated.

2.3.2. Evaluation process

This subsection also contains an issue which should be originally discussed under subtitle “Focus on the evaluation of judgements and legal writings”. This is so because in the process of the evaluation these issues are intertwined.

42 For specific provisions see Sections 71 to 77 of the Act CLXII of 2011 on the Status of the Judiciary
43 This regulation can be criticized on the ground that the temporary nature of the first appointment maximizes the pressure on the judge to align with the judicial practice of the closest court of appeal. As the judges of the courts of appeal (generally regional courts) evaluate the junior judge, she can achieve a permanent post if she meet the expectations of the upper court judges. This situation may discourage the independent judicial thinking and thus may threat the personal independence of the judge. See also the opinion of the Venice Commission: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)028-e
An order of the President of the NOJ contains a very detailed list on the assessment criteria (NOJ No 8 of 2015) for both types of assessment. The assessment has three aspects: a quantitative and a qualitative aspect of the judicial work as well as the evaluation of judicial skills. They are as follow:

Table 7: Aspects of judicial evaluation

<table>
<thead>
<tr>
<th>Quantitative (based on data from the last year before the assessment)</th>
<th>Qualitative</th>
<th>Judicial skills</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of trial days</td>
<td>Preparation for the trial</td>
<td>Focused thinking</td>
</tr>
<tr>
<td>Number of trials</td>
<td>Trial conduct</td>
<td>Ability to make decisions</td>
</tr>
<tr>
<td>Number of finished cases</td>
<td>Evidencing, practice of postponing trials</td>
<td>Thoroughness</td>
</tr>
<tr>
<td>Effectiveness of time management of trial days</td>
<td>Judicial writing</td>
<td>Handling with parties in a proper manner</td>
</tr>
<tr>
<td></td>
<td>Legal competence</td>
<td>Organizational skills</td>
</tr>
<tr>
<td></td>
<td>Administrative competence</td>
<td>Working capacity</td>
</tr>
<tr>
<td></td>
<td>Complying with deadlines</td>
<td>Quality of verbal and written communication</td>
</tr>
</tbody>
</table>

As for the quantitative evaluation, the activity of the judges is assessed in a statement based on caseload and activity-related data as well as second instance and review decisions, which shall be taken into consideration during the overall assessment.

The qualitative part of the evaluation and checking the ‘judicial skills’ are conducted by the same methods. A certain number of judgments (that became final in the first instance) rendered by the judge are examined. Furthermore, ‘panel justice notes’ prepared in the examined period are considered during the assessment. (Justice panel notes are memos made by the chief justices of the appellate panels when reviewing appeals. Regarding to quality-check it is useful because they contain remarks on writing and argumentative style of the judge which are typically not mentioned in appellate judgments.)

As part of the qualitative assessment, the persuasive force of the oral and written justifications provided by the assessed judge has to be evaluated as well. The opinion of the head of the department competent in the legal area (if that person is different from the person conducting the examination) is also taken into consideration. The assessor judge shall examine the files of cases in which parties submitted complaint for undue delays or other reasons. According to the relevant law and regulation the proportion of the quashed/changed judgments of the assessed judge is not a quality indicator, but in practice it may have an impact on the outcome of the evaluation. The number of successful compensation claims against the judge for faulty professional activity does not play a role in the evaluation either (partly because this number is very low). As a uniform and compulsory writing manual for judges has not yet been adopted in Hungary (see details under subsection 3.3) its observation cannot be taken into consideration in the evaluating process.

44 In 2016 only about 10 judgments were delivered at the national level in which the court declared faulty judicial activity. (http://birosag.hu/sites/default/files/allomanyok/obh/elnoki-beszamolok/elnoki_beszamolo_2016_online.pdf)
The assessed judge has the opportunity to comment on the report made by the assessor judge. The result of the evaluation can be the following: incompetent, competent, highly competent, and highly competent for a higher judicial position (between 2012 and 2016 four judges proved to be ‘incompetent’, their incompetence was revealed in their first assessment). If the assessed judge finds the result unfair, she has the right to seek legal remedy before the service court.45

The result of the evaluation does not affect the salary of the assessed judge, however, if she applies for higher judicial position, the result is taken into consideration in the promotion process. It would be also useful if the system of the compulsory trainings and the evaluation mechanism were connected (e.g. the assessor would point to judicial skills of the assessed judges that should be improved by trainings).

As one might notice, the judge’s professional activity is assessed by her immediate professional superior who knows her personally as well as on whom their professional career is decisively dependent. This situation raises the problem that apart from the detailed assessment criteria the assessor’s personal opinion on the examined judge may play a role in the assessment. Therefore, judges of lower courts are generally encouraged to align their judicial activity predominantly to the viewpoint of the reviewing second instance panel as well as to its judicial style, regardless of her opposing professional convictions. This situation affects judicial independence even if the reasonable uniformity of the practice of lower courts is also desirable.

This assessment method may just as easily lead to the fragmentation of judicial practice including the quality of judicial opinions. Since only very few cases at district court level are reviewed by the Curia, the direction of legal practice conducted in the majority of cases is preponderantly determined by the legal thinking of the specific judges working at courts of second instance (regional courts). The assessor and the assessed judge are from the same county, judges from other counties are never involved in the assessing process; therefore, the judicial qualification mechanism may promote divergence of court of law practice by counties. This is especially true for questions of judicial activity that are typically not subject to review by the Curia (e.g. trial conduct and reasoning style, evidence practice or even sentencing).46

2.3.3. Consequences of judicial evaluation on the appointment to managerial positions

Although regular evaluation of judges has some components from which one can draw conclusions on the managerial skills of the judge (the report has to reflect the administrative and managerial activity, organizational skills of the judge, and her handling with parties and working capacity), it is designed fundamentally to check the judicial skills and competencies and not the managerial ones. In the Hungarian judicial system, there are basically two kinds of court leaders: professional and administrative. Chairs of judicial panels in appellate courts belong to the former group (they are leaders of their panels in a professional sense without administrative competences) while all the other court leaders exercise administrative competences. Within the latter group there are leaders who are responsible primarily for the professional quality of adjudication. They are the heads of departments (civil law, criminal law, and administrative and labor law) and leaders of groups (groups are also organized by the major fields of law at some district courts). The other type of

45 The service court is a judicial body that consists of judges appointed by the NCJ. The service court decides on disciplinary proceedings against judges and disputes arising from the evaluation of the judicial work. The service court is organized centrally at national level. (http://birosag.hu/en/njc/service-court)

46 For the latter see Badó, Attila, Bencze, Mátyás: Területi eltérések a büntetéskiszabási gyakorlat szigorúságát illetően Magyarországon 2003 és 2005 között. [Disparity in sentencing in Hungary between 2003 and 2005] In: Fleck, Zoltán (ed.): Igazságszolgáltatás a tudomány tükörében. ELTE Eötvös Kiadó, (ELTE Jogi Kari Tudomány 6.) 2010. p 125-147. It is also a good indicator of the seriousness of the jurisprudential differences that the President of the Curia in 2016 set up a working group in order to analyze the disparity in sentencing and to elaborate some kind of ‘sentencing guidelines’.
administrative leaders is court presidents and deputy presidents who take primarily the task of **running the court organization** they preside (managerial and administrative issues).

All court leaders in the judiciary must be a judge (with the exception of the deputy president of the NOJ who can be other court employee). There are **no professional managers** amongst court leaders, but managerial trainings are organized for court leaders at the Hungarian Academy of Justice. Trainings for leaders on management competences are prioritized within the annual training plan of the judiciary.

According to the relevant statute, **higher court leaders** are appointed by the President of the NOJ or the President of the Curia, while the presidents of the regional courts of appeal and presidents of regional courts appoint **lower court leaders**. If the appointing person is other than the president of the court affected by the appointment, a recommendation from the president of the court where the appointment is made has to be obtained.

As a general rule the positions of court leader are filled by way of an application procedure. A project proposal attached to the application has to contain the **applicant’s long-term plans** concerning the operation of the court, the department or group (only in case of applications to positions of department/group leader), as applicable, covering also the timetable for the implementation of such plans. The competent judicial body (hereinafter: opinionating body) of the court (most frequently the plenary session of judges of the affected court or the members of the affected department) where the applicant intended to be a court leader shall express its opinion on the applicants by way of **secret ballot**. The opinionating body shall present its **recommendation** in the sequence of the result of the vote.

The appointing person conducts an **interview** with the applicants. She makes her decision taking into consideration the recommendation of the opinionating body. The appointing person **is not bound by the recommendation** of the opinionating body, however, if the decision is contradictory to the recommendation the reasons must be detailed in writing. In case that the president of the NOJ or the President of the Curia intends to appoint an applicant who was not supported by the majority of the assessment body, they have to obtain the prior opinion of the NCJ on the applicant. The applicant in question may be appointed if the NCJ gives its consent.

As it can be seen, in the selection of court leaders the possibility of the enforcement of both the **professional and the democratic** aspects are guaranteed by the law. We did not find detailed regulations on **substantive criteria** which must be considered in the process of appointing judges to managerial positions. Presumably, the appointing person knows the applicants personally and/or she can be informed of her skills from the letter attached to the application and from the result of the ballot of the competent judicial body. In case the applicant has been a court leader prior to the application, the quality of her managerial work is taken into consideration. The applicant’s compatibility with the strategic goals of the NOJ is also a factor in her evaluation.

In the absence of detailed criteria, the selection mechanism can be **flexible enough**, but at the same time subjective factors (personal sympathy/antipathy of the appointing person towards the applicant) may also influence the application process. The rules of the selection procedure are clear and detailed, but the substantive part of the selection i.e. the principles, criteria which guide the decision are **not transparent**. Nonetheless, figures from 2012 show that in 29 percent of the calls more than one applicants applied. This suggests that there is a real competition for leadership positions and the application process is not pre-arranged. It is also interesting but not necessarily a
positive phenomenon that a great proportion of application procedures were declared unsuccessful (in 2015 almost 20%, in 2016 36% of all calls).47

There is no legal obligation to guarantee the gender balance amongst court leaders. However, Hungary, as we mentioned above, is a special case as 70 percent of the judges are female. Nonetheless, the higher the rank of the court leaders the bigger the proportion of the males:

Table 8. Number of female and male court leaders

<table>
<thead>
<tr>
<th></th>
<th>Female president</th>
<th>Male president</th>
<th>Female deputy president</th>
<th>Male deputy president</th>
<th>Total number (female)</th>
<th>Total number (male)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regional courts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>of appeal</td>
<td>1</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Regional courts</td>
<td>12</td>
<td>8</td>
<td>9</td>
<td>12</td>
<td>21</td>
<td>20</td>
</tr>
<tr>
<td>District courts/</td>
<td>88</td>
<td>58</td>
<td>34</td>
<td>16</td>
<td>122</td>
<td>74</td>
</tr>
<tr>
<td>Administrative</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>and labor</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>courts/Company</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>registration</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>courts</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2.3.4. In-service judicial trainings

The idea of establishing a central institution dedicated to judicial trainings was born in 2000 and a few years later, in 2006 the Hungarian Judicial Academy (Magyar Bíróképző Akadémia) started to provide courses and training for judges. It is currently functioning under the name of the Hungarian Academy of Justice, and is organisationally integrated into the NOJ.

According to Article 76 (7) of the AOAC the President of the NOJ is in charge of determining the tasks regarding judicial trainings at national level and she is responsible for monitoring the execution of educational programs. Within her capacity, the President shall develop an annual program for trainings in which the topics that are prioritized in the given year are clearly indicated. The NCJ can participate in this process by making its own initiative or providing opinion on the trainings plan. The President of the NOJ is also responsible for defining the tasks at regional level.

In 2012, when the first President of the newly established NOJ announced her program, the improvement of the existing scheme of judicial trainings was among the main objectives of the judicial administration.

The President of the NOJ acknowledged in her report that the previous system for trainings was ineffective since local and regional trainings were not coordinated at all. While the law had made judicial trainings compulsory before 2012, only trainees and clerks were in fact obliged to participate in trainings. As a result, voluntary training was the norm with regard to judges, and only junior judges had to attend compulsory training – a so-called initial training (see 2.2.4 above.)

The Act of CLXII of 2011 on the Legal Status and Remuneration of Judges (hereinafter: Status Act) also prescribes compulsory trainings for judges on a regular basis, but it does not determine the exact time (hours or days) judges have to spent on compulsory trainings in a given year (Article 45.)

---

47Annual report of the president of the NOJ from 2015 and 2016. For the internal criticism of this practice see https://444.hu/2017/10/16/elvileg-johet-hando-tundencel-is-rosszabb-vezeto-de-ezt-belulrol-most-nehez-elkepzelni andhttp://index.hu/belfold/2017/10/05/az_a_biro_esett_handonak_akit_korabban_o_tuntetett_ki/
In 2012 the new training system was not yet established, and in 2013, Hungary still lacked general compulsory training for judges. Nevertheless, the number of the available trainings has increased significantly in recent years and by now, the compulsory in-service training for professional judges has also been introduced. Judges have to attend some compulsory trainings each year. The main topics are determined by the central judicial administration yearly in the annual training plan, on the proposals of judges or courts. Trainings are coordinated at the central level by the Hungarian Academy of Justice, but then organized and held primarily at the regional and local level.

The trainings are held mostly by the so-called ‘trainers’ who are actually senior judges of appellate courts. A judge can be qualified as a ‘trainer’ after having attended courses which are held by the Hungarian Academy of Justice and called ‘the trainers’ training’. Sometimes, external experts are also invited to speak, but lectures are held most of the times by judges. In 2017, for instance, judges serving in the civil branch were obliged to participate in an eight-day long training on the newly adopted act on civil procedure. Apart from division-specific trainings, general trainings are also held. In 2017, a one-day compulsory training was organized around the comprehensibility and understandability of judgments and this training must be attended by each judge. (The year 2017 is officially dedicated to comprehensibility in the justice system.)

Judges can choose from a great variety of voluntary trainings which concern typically the subject-matters of newly enacted laws just as the basic and advanced skills and competences needed for judges.

If a judge fails to participate in the compulsory trainings due to her fault, she must be subjected to extraordinary supervision and the judge is not allowed to apply for a higher judicial position.

Since 2012 managerial trainings for court presidents have been organized at the Hungarian Academy of Justice. These trainings target primarily the development of managerial skills and competences and to some extent promoting business and economic education among court presidents.

Currently, a new system for registering judicial trainings is being developed in order to gain easily accessible information on which trainings individual judges attend. This initiative is intended to provide a unified registration system in this field.

**2.3.5. Consequences of the judicial evaluation on the quality of justice**

Judicial evaluation in Hungary combines three aspects (quantitative, qualitative and judicial skills) and the evaluative criteria are determined in detail. This makes the work of the assessor easier and the system of assessment more objective. The quality criteria and judicial skills to be assessed are relevant for the evaluation of the judicial activity. However, there is no methodological guidelines for the assessor judges (for example what are the evaluating standards of ‘careful attention’, analytical thinking’ or ‘foresight’ and what the hierarchy between these faculties is), thus the substantive part of the evaluation is not uniform in the country.

It is hard to judge the impact of the assessment on the quality of justice. Firstly, because the current regime is quite a new one (even if it has not transformed fundamentally the previous one). Secondly, because, as opposed to the quantitative evaluation, there are no clear and measurable indicators of quality of justice. In general, it can only be said that the concept of quality of justice in Hungary is understood as meeting the requirement set by the higher courts. If a judge’s activity satisfies appellate judges then the quality of her work is considered high. That attitude is reflected in the current evaluation system where the opinion of court users does not matter at all (although, for
example, extraordinary and continuously high proportion of appeals against judgments of a given judge can reliably indicate a problem with her professional competence).

Apart from these problems, the new system of evaluation in which each of the above-listed quality criteria and judicial skills are marked separately by the assessor can help judges improve their judicial performance in the fields where it is needed. Nonetheless, it seems that quality improvement of complex intellectual activities such as judicial reasoning or evaluation of evidence needs more effort than regular assessment of judges.\(^{48}\)

It is also worth noting that an implicit assumption is reflected in the current evaluation system: for a Hungarian judge, a good judicial career is equal to an appointment to a higher court (higher prestige, higher salary etc.). That is why the most ambitious judges focus their effort to achieve an appointment to a higher court. (It is not a coincidence that the best outcome of the regular assessment is “competent for higher judicial position”.) Consequently, the most excellent and most experienced judges are appointed to higher (appellate) courts while at the district court – where the vast majority of cases starts and finishes – judges with less experience adjudicate. It is a reasonable demand, however, from the public that first instance court should operate at the same quality as higher courts.

2.3.6. Debate on possible reforms

2.3.6.1. Evaluation of judges

For the sake of excluding prejudice and exacting a uniform application of the law, the evaluation of the judicial activity should be carried out on the basis of the system that is used during the quality examination of scientific publications. Therefore, assessment of judgments rendered by a judge could be trusted to professionally renowned fellow justices functioning at other regional courts of law, who would give their opinion on the particular judge’s work based on anonymized decisions and case files (‘blind peer-review’). This way, disparities of legal practice and reasoning style within the country may be brought to the surface more easily apart from the objective assessment of the particular judge. This kind of blind peer-review system could bring awareness to dispensing justice.\(^{49}\)

2.3.6.2. Homogenous professional background of judges

A pitfall of the professional homogeneity (judge-trainees, court clerks) of the selected judges may be that the vast majority of the judges has never seen the reality of the “other side” of court cases. For example, as for the fact-finding in the Hungarian criminal procedure the crucial period is the police investigation. Judges mostly base the factual ground of their decisions on testimonies and other evidence recorded and collected during the investigation.\(^{50}\) Attorneys often complain that judges have no clue whether the pieces of evidence gathered by the police are really reliable or not, nonetheless, they accept them even if evidence revealed before the court points to the opposite direction. Judges may be more sensitive to this problem with previous work experience as an attorney, or a longer internship at the police or at the prosecution office.\(^{51}\)

\(^{48}\) For a recent quality project that has addressed judicial writing see sub-section 3.3. In relation with the evaluation of evidence (confirmed by judges) our experience is that a ’copy-paste’ method is spreading across Hungarian criminal courts. This means that the judge copies the testimonies of witnesses, experts and defendants from the records then pastes them in the judgment while ignores to explain her reasons to accept or refuse the relevant pieces of evidence.

\(^{49}\) See http://jog.tk.mta.hu/uploads/files/14_Bencze_Matyas_Bado_Attila.pdf

\(^{50}\) According to a research conducted by the Hungarian Helsinki Committee, a very high number of convicted persons complained about illegal (physical or psychological) pressure from the side of the police in order to get confession from them. See Kádár, András: A vétkesség vélelme, [Presumption of Guilt] Magyar Helsinki Bizottság, Budapest, 2004, pp. 53–78

\(^{51}\) See Bencze, Mátyás, „Nincs űség, ahol nincsen tüz” [Where There Is Smoke, There Is Fire], Gondolat Kiadó, Budapest, 2016, p. 178.
2.4. The evaluation of courts activities

2.4.1. Actors involved

Court evaluation is managed by the central judicial administration, especially by the NOJ through strategies and indicators that are determined almost exclusively at national level. Local initiatives are underdeveloped, but we can find some promising projects at this level as well. One of these projects is the so-called “Debrecen model”. This will be briefly presented in section 3.4, under the heading “innovative practices”. External actors such as representatives of other legal professions or the Ministry of Justice do not participate in this process. Nevertheless, the NOJ is making efforts to involve court users in this exercise by encouraging courts to conduct customer satisfaction surveys. However, this latter initiative, as we will see below, is also in its infancy.

2.4.2. Evaluation process

According to the AOAC, the President of the NOJ determines and annually updates the agenda of judicial administration which encompasses the long-term objectives of the Hungarian judiciary and the conditions for fulfilling these aims. Within her capacity, in 2012, the President of the NOJ has established the fundamental strategic objectives of the Hungarian judiciary. These goals include (1) an independent judiciary administering high-quality and timely justice; (2) the optimal allocation and utilization of human and (3) material resources; (4) the integrity of the judicial organization, and a transparent adjudication and judicial administration, the latter being also predictable and controlled; (5) easy access to courts and finally, (6) the improvement of the training system and cooperation with other legal professions. Among these objectives, the first one – the quality and timeliness of justice provided by independent judges – is of crucial importance concerning the constitutional role of the courts, and all the other aims may serve as means to achieve the first and most important objective. The former six goals are still in place in 2017 and available at the website of the NOJ. The objectives set out by the President of the NOJ can be reference points in establishing the criteria of assessing courts’ activities.

The President of the NOJ has to submit an annual report to the Parliament on the actual situation and performance of the judiciary. The President also reports on these issues to the parliamentary committee on justice once a year. The findings of these reports contain data on the performance of the courts, so we rely mainly on these reports and the background statistical data when seeking to collect the existing methods for assessing the courts’ performance in Hungary.

In 2012, the new head of judicial administration took office, and in her first report she made some general observations concerning the performance of the Hungarian judiciary. The report of the President of the NOJ pointed out that the excessive workload of the judges had made it difficult to achieve the goals of quality and efficiency simultaneously. The report highlighted huge differences in the workload of individual judges and various courts in the last 11 years. There were courts where judges had to deal with over two and the half times more incoming cases than judges serving at other courts. These differences were even higher with regard to the total number of pending cases and the rate of the cases pending over 2 years before courts, and the central region produced the worst figure in this regard. The President’s report pointed out further deficiencies in administering justice in Hungary, namely the lack of coherence in judicial practice and the issue of timeliness.

---

52 Article 76 (1) of the AOAC
A judge confirmed that in the last few years, the judicial system had to tackle with huge workload imbalances that originated in the pre-2010 period.
which also resulted in significant differences across courts. The report stated that these defects stemmed to a large extent from the **failures of the previous model of judicial administration**. Therefore, the primary task of the judicial administration in the early 2010s was to reduce the enormous workload of the judges in order to provide them with sufficient time for deciding every single case on the merit. Fewer cases per judges would improve the timeliness of the proceedings which are intimately intertwined with human rights claims, such as access to justice or fair trial. Furthermore, if human resources are properly allocated within the judicial system, the quality of judicial activity would likely be improved. Finally, the administrative burden on judges was considered extremely high which could have a negative impact on the timeliness of justice as well. Hence, in 2012 the central administration aimed also at reducing the administrative tasks of the individual judges in the short run, primarily by increasing the number of the administrative staff of the judiciary. (However, in 2017 one judge still finds the administrative tasks enormous and burdensome and his staff too small and underqualified. He has named this difficulty first within those factors that hinder high-quality and effective adjudication. Nevertheless, a judge working at a smaller court has not complained about the huge administrative burden.)

### 2.4.2.1. Performance indicators

In Hungary, the day-to-day activity of the individual judges and courts is subject to monitoring and evaluation on a regular basis. **Performance indicators exist**, and the benchmarks can be found in the annual report of the President of the NOJ. We were told that more or less the same indicators (see below) have been applied for a long time (more than 20 years) by the Hungarian judicial administration to monitor the performance of the courts. The indicators were established in the office of the central judicial administration, particularly at the **statistical department** by expert statisticians, based on popular statistical methods and on those databases which contain information conveyed by individual judges. Currently, we have no further information on whether any other actors had participated in the process of determining the methods of evaluation.

It is important to note at the outset, that the comprehensive reform of the management system after 2011 which institutionalized a highly centralized judicial administration led by a single person, has been carried out with the aim of improving the quality and efficiency of administering justice in Hungary. As we will see, the **new administration put a great emphasis on the clearly visible “numbers” in terms of the performance of the justice system which constitute only one aspect of quality.**

The **performance indicators**, according to the annual reports of the President of the NOJ, encompass (1) incoming cases, (2) resolved cases (3) backlog, (4) timeliness (length of proceedings) (5) workload (6) appeal ratio. These items provide easily quantifiable results concerning the performance of the Hungarian courts.

**Incoming cases**
The central judicial administration keeps a record of and publishes each year the total number of incoming cases. This data itself provides little information about the performance of the judiciary. However, this figure is relevant if it is compared to the number of resolved cases in the same year, as the two can highlight the so-called “clearance rate” which is a telling figure of the effectiveness of the justice system. Furthermore, registering the total number of incoming cases is important since it allows to assess if the current judicial staff can deal with the caseload. Consequently, we can draw inferences from this figure on the suitability of human and material resources. The Hungarian judiciary traditionally deals with a **huge caseload**. In the last few years the number of incoming cases has significantly exceeded a million on an annual basis. In 2016, 1,411,569 cases were filed
with the Hungarian courts. This, however, shows a slow decline compared to previous years’ figures.55

Resolved cases
The number of resolved cases is also published in the reports of the President of the NOJ. This data is important with regard to the “clearance rate” of the Hungarian judiciary. As to clearance rate, Hungary performed very well in the early 2010’s56, but today, it does not rank so high among Member States according to the EU Justice Scoreboard 2017.57 But as we lack basic information on the reasons for the changes in the ranking, we cannot provide a plausible interpretation on this issue.58 Nevertheless, this indicator can hardly be seen as a reliable one unless the term “resolved case” is clearly defined. For instance, for the performance of the courts it is significant how decisions are counted: namely, if decisions transferring a case to the competent court or joining two or more cases are relevant for the category of final cases, or only judgments on the merits are counted in this regard. The lack of a clear definition on “final or resolved cases” decreases the validity of this figure and makes the comparison between Member States difficult.

Backlog
In Hungary, the backlog of the courts is monitored and measured at all court instances and concerning all case-types. According to the annual report of the President of the NOJ, between 2013 and 2015 the backlog of the courts dropped year by year. All court levels – except the Curia – were able to reduce the number of pending cases in almost all types of cases (in litigious and non-litigious cases, in cases of minor offences and concerning business entities etc.). In the last few years, special efforts were made by the courts to cut the massive backlog, in particular the number of “old” cases. The courts were very successful in this respect. We will discuss below the special projects that have been dedicated to reducing the backlog of the courts.

Timeliness (Length of Proceedings)
Timely adjudication is a crucial issue for the central judicial administration which is reflected in the fact that recently, numerous distinctive programs have been explicitly dedicated to reducing the number of cases pending before Hungarian courts for a long time. Here, we present some general figures regarding the timeliness of adjudication in Hungary. According to the annual reports, in 2014, 77% of the proceedings finished within 1 year. This figure raised to 87% in 2015 which shows an improvement on the part of the courts in this regard. In Hungary, those cases that have not been solved within 2 years are considered ‘old’ ones. The presidents of the courts and the head of departments pay special attention to these old cases. Judges must report on a monthly basis on the measures that have been taken to complete those cases pending more than 2 years. Since 2014, judges must be subject to extraordinary evaluation if a case has not been resolved in 2 years due to the fault of the judge.59

In 2015 an online “warning system” was introduced which notifies the judge on the important deadlines she must meet in a given proceeding (“határidő-figyelő”). Judges receive notice if, for instance, the deadline for taking the first action after the assignment of the case, for making a

58 The Hungarian media have recently reported that some judges sitting on the Budapest Capital Administrative and Labor Court received a letter from their administrative superior in which they were called to give evidence on why they had failed to resolve at least ten cases in February 2017. (See http://hvg.hu/itthon/20170327_Hando_birosag_teljesitmeny_autonomia_munkajog. Last access: 4 April 2017)
59 Article 69. c) of the Status Act
written record of the hearing or for making the written form of the judgment is expiring or has already expired.

**Workload**
The central judicial administration puts a heavy emphasis on the goal of ensuring a balanced workload for judges. In this regard, the NOJ’s proposal stated that the differences should ideally be less than 15% compared to the average workload. According to figures from 2011 the courts of central Hungary and Budapest had an excessive workload: the number of pending cases judges had to deal with was 140% of the average workload. By the end of 2015, this number dropped significantly in the central region, and the figure was only slightly above the average which also decreased considerably, from 112 to 78.

Figure 3: Workload of the judges in different district courts by regions in criminal cases (case/judge)

By now, the **workload has thus become much more balanced**, but, as the Hungarian social, economic and political life is heavily capital-oriented, the courts in the central region remain the most vulnerable to a massive caseload. In Hungary, Budapest – the most densely populated city – has nearly ten times more inhabitants than other big cities in the country which intrinsically implies a huge caseload compared to other areas. Furthermore, as political and business life are largely concentrated in the capital, courts in this region have to deal with the most complex and difficult cases which may also result in an excessive workload. For this reason, the situation of the central region attracts the most attention from the central administration.

Later, we will return to the issue of judicial workload in order to present the recent developments in this field. As reducing workload imbalances constitutes a strategic goal of the central judicial administration, new methods for workload measurement have been established to receive more reliable and comparable data on this issue.

**Appeal ratio**
Data on the appeal ratio has been published since 2011. In the annual report of the President of the NOJ these data are presented under the heading “**the soundness of adjudication**”. Until 2014, the judicial register did not make it possible to obtain data directly and explicitly on the appeal rates, so the figures were based on all types of judicial decisions and were calculated in a way that the

---

incoming appellate cases of regional courts in a given year were compared to the resolved cases of the previous year at district courts. Now, in order to get the appeal rate, the number of the resolved cases at first instance is compared to the incoming new cases at second instance in the period considered. Certainly, the many ways of calculating appeal rate make the comparison of the annual figures difficult. Nevertheless, one can see the endeavors of the judicial administration to establish more sophisticated methods for obtaining reliable data on the performance of the courts in this regard.

As to appeal rate, we find this quality benchmark relevant since it represents an external perspective, namely the opinion of court users. If one of the parties of the proceeding is not satisfied with the court’s decision she can appeal against it to a higher court. Our assumption is that in courts which produced significantly higher appellate rate year by year than others something went wrong.

According to the annual report of the NOJ, the appeal rate reflects the quality of verdicts in terms of their soundness. The Hungarian figures from 2014, 2015 and 2016 show that approximately 80 percent of the decisions are not subject to appeal and therefore, become final right at first instance in district courts’ civil, administrative and labor proceedings. The appeal ratio varies considerably within the country according to the data from 2016, approximately between 14% and 29%, so the highest rate is more than double of the lowest. It is the district courts belonging to the jurisdiction of the Budapest Capital Regional Court that have the highest appeal rate.

Data on appeal ratio in criminal cases in the years 2015 and 2016 also reveals huge differences between courts. The average appeal rate was 21,5% and 21,2% in the respective years, but the rates varied from 12,3% to 35% in 2015, and from 14,5% to 32,2% in 2016. The following table shows the exact figures broken down to regional courts.

Figure 4: Appeal ratio in criminal cases in 2015 and 2016

The 2016 detailed report on the caseload and activity of the judiciary also indicates the rate of quashed decisions of district courts in civil and criminal matters: the figures vary from 0,27% to 1,27% in civil, and from 0,62% to 2,53% in criminal cases.

Figure 4: Quashed decisions in criminal cases - 2016

We find it an important development in terms of quality assessment that a more sophisticated method has been established to determine appeal ratio, and more detailed data on quashed decisions are also available now.

2.4.2.2. Performance targets

Today, some performance targets are set for judges at national level. At court level, the president of the court or the head of the department can determine minimal standards for ensuring the productivity and effectiveness of administration of justice. Performance targets can be set for each individual judge. As far as we know, general standards are not specified to courts, goals for productivity are defined mostly in temporary projects (see below). Nevertheless, courts have to establish annual work plans in which goals in terms of productivity could be set in advance. In addition, the project proposals of the presidents submitted in their application for the positions of court president serve as institutional strategies of the courts since the main medium-term objectives at court level are set within that.

Performance targets for judges encompass some minimum standards such as hearing days per week (a judge adjudicates at a court of first instance must hold hearings on two days a week) or the productivity of hearing days. This latter objective is defined by law: Article 54 of the Status Act requires judges to hold hearings on hearing days in a way that makes effective use of the time spending with hearings and facilitates the handling of cases within a reasonable time frame. Presidents of the courts can also determine performance targets at court level. The standards defined by the presidents do not necessarily coincide with those that are determined at national level. Presidential resolutions or local regulations for the organization and operation of the courts may

contain lower and higher standards as well, for instance concerning the number of hearing days. As we have already indicated above, according to media coverage, at the Budapest Capital Administrative and Labor Court two judges were required to give reasons for failing to resolve at least 10 cases per months. The president of the court probably expected a minimum standard of productivity from the judges in terms of the number of resolved cases. The Budapest Capital Regional Court (and lower courts belong to it) traditionally deals with a heavy workload and the president might have found it important for timely adjudication to exert a tough control over the backlog in that way.

If these above standards are not met by the individual judge in the long run, the president, first, may check the administrative record of the judge, and if these data prove to be insufficient to substantiate the poor performance of the judge, the president may ask the judge to provide a report on the reasons for his failing to comply with the expected standards. As we indicated above, if a tried case is not finished within two years, this fact is a reason for extraordinary evaluation of a judge.

In 2014, some courts carried out self-assessment process based on CAF 2013 to reveal the strengths and weaknesses of the organization. These courts then proposed action plans based on the findings of the evaluation procedure. The NOJ and the Curia also participated in this project and applied the CAF. This quality management tool has not been introduced within the judiciary (it is not a mandatory instrument) but courts that carried out self-assessment with the help of this framework emphasized their commitment to regularly apply CAF in the future. Some courts published their reports on the assessment procedure and these are available on the internet. The Eger Regional Court identified the existing reward scheme as an improvement area: a more transparent and objective system would be needed to better motivate judges and reward excellent performance. The Budapest Environs Regional Court presented the huge administrative burden and the great deal of old cases as problems that should also be handled.

2.4.2.3. Data for the assessment
According to Article 76 (4) (e) of the AOAC, the President of the NOJ is in charge of developing and reviewing the methods and datasheets for measuring judicial workload. The President has to monitor the workload and the caseload of the courts and it is her duty to determine the general annual workload for each judicial instance broken down to different case-types.

In the early 2010s the central judicial administration found the former system for data collection deficient and insufficient, and indicated that the scope of the information needed for the inquiry had to be broadened. There was thus a pressing need for establishing novel means to gather information that can serve as a basis for performance assessment of the judiciary.

In Hungary, very detailed statistics are produced with regard to the activity of the judicial system. The President of the NOJ is responsible for collecting statistical data, and this process is carried out mainly within the framework of a national program called OSAP (Országos Statisztikai Adatgyűjtési Program) as the NOJ is an integral part of the Official Statistical Service. Some additional information is known from the online registers of the courts.

---

64 The CAF (Common Assessment Framework) is a tool to assist public-sector organizations across Europe in using quality management techniques to improve their performance. See http://www.eipa.eu/en/topic/show/67tid=191
66 http://budapestkornyekotorvenyszek.birosag.hu/sites/default/files/field_attachment/caf_ertekeles.pdf
Individual judges are obliged to provide data on their judicial activity on a regular basis. Methods for recording data vary from court to court. All judges must keep a ‘hearing book’ in which each phases of the trial and all the other details of the case must be registered. At some courts, these data must be supplied by the judges on paper, while at other courts via the internal IT system of the judiciary. Ultimately, all relevant information is included into an electronic register to which the central judicial administration has access.

Courts are obliged to provide information on a monthly basis concerning the activities of individual judges. The scope of the datasheets has not changed considerably in recent times, even if the report of the President of the NOJ from 2012 emphasized the need for improvement in data collection. It seems to us, that a long-standing and well-established practice exists for recording the workload and other activities of individual judges.

Besides, presidents of courts have to make annual reports in which the NOJ must be informed about the performance of the court. In the process of collecting and conveying data and compiling the annual report of the president, the statistician of the court plays a crucial role and she relies primarily on the court’s register. The head of departments are also involved in this process of data collection as they also exert administrative control over the performance of the adjudicative panels. The NOJ examines the provided data and makes publicly available reports upon these data on the functioning of the courts on an annual and semi-annual basis.

2.4.2.4. Tools for eliminating workload imbalances

As we have already stated above, workload imbalances have been a long-standing issue of the functioning of the Hungarian judiciary. Since 2012, it is a primary objective and strategic goal of the central judicial administration to make the highly uneven workload of individual judges more balanced. In an oral evidence before the Constitutional Court, the President of the NOJ marked the imbalances of judicial workload as being the most pressing and serious issue of judicial administration since the 1989 democratic transition. So far, various attempts have been made to mitigate or eliminate the huge workload differences between judges. Beside deploying transitional solutions such as (1) judicial secondment, (2) the short-lived system of case transfer, and (3) establishing positions for “mobile judges”, the central administration has taken important steps to develop the adequate method for workload measurement. Three projects have already been dedicated to this objective, two of which have been implemented at an initial stage: these are (4) the “case registry” based on weights allocated to case-types and (5) the “ratio tables”. In the following section, we will provide a brief overview on these devices.

Judicial secondment

Within the Hungarian judiciary, in order to ensure a balanced workload among individual judges and to accomplish the goal of administering justice in a timely fashion, the means of seconding judges is extensively used by the presidents of the courts. It is the president of the regional court who can decide on judicial secondment within the jurisdiction of the regional court, and the President of the NOJ can assign judges from one regional court or regional court of appeal to another and from or to the Curia as well. Generally, judges must give their consent to their secondment, especially if they keep on adjudicating in their original venue in the meantime. However, judges can be assigned to another venue without their consent in every three-year time for a maximum of one year. The figures show that in 2014, 739 judges were seconded by the presidents of regional courts, and 303 judges by the President of the NOJ. In 2015, the numbers peaked at 1264 and 406, and then dropped to 834 and 394 in 2016. The remarkably high numbers of the year 2015 are explained by the President of the NOJ in part by the surge in asylum seekers. The figures, nevertheless, reflect that judicial secondment constitutes the most frequently applied temporary remedy for caseload imbalances.
The system of transferring cases – a failed attempt

In order to reach a significant improvement in the timeliness of justice in the short run, from 2012 the President of the NOJ had been entrusted with the power to transfer a case from the competent court to another one if the former had an enormous workload which was likely to compromise the timely resolution of the case in question. This new competence of the central judicial administration was justified by the goal of an effective time management in administration of justice and was not an unprecedented instrument in this regard in Hungary. Case transfer as a possible remedy for the massive backlog and delays within the Hungarian judiciary was originally introduced in 2011 and it was the Supreme Court that could decide, on the proposal of the President of the National Judicial Council, on reallocating cases from one court to another. The presidents of the regional courts and regional courts of appeal could initiate this procedure. Later, also in 2011 the Act on Criminal Procedure was amended, and the Chief Prosecutor was given the power of case transfer in “cases of great importance”: the competent public prosecutor could institute a criminal proceeding before non-competent courts upon the decision of the Chief Prosecutor with regard to the reasonable time frame requirement. It was this latter provision that was first struck down by the Constitutional Court at the end of 2011. Nevertheless, case transfer was preserved in 2012 and the government made several attempts to establish the constitutional grounds of this institution: it was incorporated into the Transitional Provisions of the Fundamental Law and then into its Fourth Amendment, after the former was found unconstitutional by the Constitutional Court. It is also telling that the President of the NOJ invoked foreign countries inter alia the Netherlands as an example where the same practice existed.

The system of the transfer of cases was subjected to fierce criticism from its inception in Hungary and abroad. It was considered to be capable of undermining the principle of fair trial (among them the right to a lawful judge, judicial impartiality or the principle of the equality of arms) by being used in cases of great political importance. The huge controversy was triggered mainly by the failures of the relevant legal framework to provide sufficient guarantees against the arbitrary decision of the President of the NOJ. As Hungary was put under international pressure in this regard, the government finally retreated, and the system was repealed by the legislature in 2013. Shortly afterwards, the Constitutional Court also declared the relevant legal rules which were not in effect anymore but on which proceedings were still pending, unconstitutional.

However, this sort of threat was not fully eliminated, since the system of designating judges to cases that originally belong to the competence of other courts is still in place, and in most instances, it is not the judges but rather the cases that are in fact transferred from one court to another. For instance, if a judge or a court is designated to adjudicate a case or a group of cases pending before another court, the designated judge or court in fact sits within its original venue and hears the given case there. Even the President of the NOJ acknowledged in oral evidence given to the Constitutional Court that the established practice of judicial secondment was de facto tantamount to transferring cases to newly designated courts due to the above-mentioned reasons. A recent report of a famous Hungarian weekly “HVG” has also emphasized that in the name of judicial secondment, many times, it is not the judge but the case files that are moving from one court to another. The threat that judicial independence can also be compromised by seconding judges to certain cases lies in the fact that the case-assignment system is not fully automatic in every court (see below), thus the judge

68 Decision of the Hungarian Constitutional Court no. 166/2011. (XII. 20.)
69 http://public.mkab.hu/dev/dontesek.nsf/0/c89e70bd4e261a16c1257ada00524d2f/$FILE/Jegyzokonyv_szemelyes_meg hallgatas_2013_aprilis_23.pdf
71 Decision of the Hungarian Constitutional Court no. 36/2013. (XII. 5.)
72 Erika Pálmai: 'Közbenső ítéllet' [Interim judgment] HVG, 29/06/2017 pp. 16-18
who is responsible for assignment can decide alone on allocating cases to the designated judge/judicial panel.

“Mobile judges”
In Hungary, under Article 33 of the Status Act, judges can be appointed to positions for a 3-year term (initial appointment) which imply a changing venue for administering justice. The instrument of the so-called “mobile judge” (“mozgóbíró”) is typically deployed if there are huge imbalances in the caseload among district courts belonging to the jurisdiction of a given regional court. The position itself indicates that the judge can be assigned to various venues to administer justice without giving her consent to it each and every time. In 2015, 13 positions of that kind were called for by the President of the NOJ, while in 2016 only 7 statuses for “mobile judges” were established. These figures suggest that judicial secondment as an alternative to establishing positions to changing venues is a more established practice in Hungary to ensure a balanced workload for individual judges and the timeliness of administering justice.

Case weights and the ‘case registry’ – a new scheme for classifying cases
In Hungary courts have to make annual plans for case allocation which is determined primarily by the president of the court. The departments and the Local Judicial Council express their opinions on the annual plan. Case allocation can also be determined by other judges appointed to this task by the president. As a result, in principle, cases are not automatically assigned to judges. Although Articles 9-11 of the AOAC lay down the fundamental principles of case allocation, they allow a broad discretion for presidents. Since these annual plans are open for the public, it is evident that many of them institutionalize an essentially automatic allocation system which takes into consideration the subject-matter and the date of receipt of the case. However, we can also find case allocation plans which state only laconically the following: it is the president who decides on this issue.

In 2012, the central administration of the Hungarian judiciary announced the plan of developing a new scheme called “case registry” (ügykataszter) for classifying incoming cases on the basis of their types and difficulty level. The process was launched in the hope that the new registry would contribute to a more sophisticated system of case allocation and would provide a firm ground for ensuring a balanced workload for judges. The new registry was also expected to facilitate access to more reliable statistical data on the performance of individual judges and courts. The “case registry” was developed by the NOJ between 2012-2014, and by now, it is being applied in criminal and civil cases. The most important element of the registry is the system of case weights (súlyszám-rendszer). While the general weights attached to particular case-types have been developed within the NOJ, the head of the departments and individual judges were also involved in the process.

A recent order of the President of the NOJ [no. 18/2016. (XII. 30.)] provides a definition of „case registry” which reads as follows: it is a current list of cases which indicates the type of the case (the specific subject-matter of the case), the code number and the weight assigned to each type.

Due to the establishment of case weights, today, case allocation depends not on sheer numbers, as it was the case before, when the practice of distributing cases among judges on an equal basis was based on the orthodox view that judicial workload would be balanced in the long run anyway. By now, a much more refined system has been introduced which takes into consideration the case-type (primarily the subject-matter) and the complexity of the case (in criminal cases, for instance, the number of the accused persons within the proceeding, the length of the indictment, or if foreign law needs to be applied etc.). At first, cases were given a weight from 1 to 5 based on the subject matter; from 2017, for practical purposes, the scale ranges from 10 to 50. These weights are adjusted to the complexity of the cases. For instance, if the number of the parties in civil or administrative cases is above 6, the weight of the case increases by 20%, or the same degree of diversion is applied if the
length of the application exceeds 10 pages. In criminal matters, if more than 3 people are accused in one proceeding, the weight of the given case increases by 40%, and the weights also rise if the number of witnesses or experts is high.

The new system was generally welcomed by judges as it provides an objective system for case allocation, therefore serves as an important check on the administrative practice in this regard. Due to case weights, the workload of the judges can be compared and balanced much easier, and we can obtain more reliable data on the performance of individual judges. The registry is subjected to an ongoing supervision for making it more refined. The major problem lies in the fact, that the weight is assigned to the case at the very beginning of the trial (initial weight), and the complexity of the case can change in the meanwhile. This problem is relevant primarily in civil matters. Judicial complaints have targeted this latter difficulty, and all these challenges have been taken seriously and assessed thoroughly. As a response to these challenges, the District Court of Debrecen, for instance, introduced the system of “post-weighing” of cases in civil matters to obtain a more reliable calculation of judicial workload, but this method is used only if the weight of the case increases during the proceeding.

Case weights have been determined in all fields: in civil, criminal, administrative and labor cases as well. However, as we have been informed, small district courts with a very few judges have not implemented the system and preserved the traditional case allocation system in which each judge receives the same number of cases.

It is widely held by judges, that case weights allow the comparison of individual judges’ workload only within one particular court and amongst judges who deal with similar case-types, as in the process of determining the initial weight of a given case, many subjective components can have a bearing, and a lot depends on the individual assessment of the judge charged with case allocation. This latter observation and the fact that case weights have not been introduced in every court have led to the development of another tool which enables the comparison of the courts’ workload at national level. This instrument which will be presented in the next section is called “ratio tables”.

“Ratio Tables” (Aránytáblák)
In 2015 a project was launched by the NOJ in order to develop an adequate method for measuring judicial workload. The project has resulted in the establishment of tables on the ratios of the incoming cases and the authorized judicial staff which provide comparable data on the workload of courts broken down to case-types and judicial instances.

The concept of establishing the tables was grounded on the idea that judicial secondment is only a temporary solution, so the balanced workload across courts as well as timely adjudication can be provided in the long run by creating new positions at those courts where it is needed due to the huge workload.

These tables are primarily utilized in the process of filling vacancies, since the figures can show if the vacancy needs to be filled at the court concerned, or the position must rather be transferred from one court to another or must be abolished. The tables can also be used when a decision on the temporary secondment of a judge must be made. Consequently, the tables can contribute to making well-established and justified decisions in the field of human resources management. The tables which build on the data of the last 12 months are updated on a monthly basis.

Apart from the tables on the ratios of incoming cases and judicial positions, the number of the resolved and pending cases per judges in each case-type and at every court level is also recorded by the NOJ in order that the average workload of an individual judge to be determined at national level.
The President of the NOJ shall publish on a semi-annual basis these data on the intranet of the judiciary. Presidents of regional courts and regional courts of appeal also participate in the process of workload measurement and shall take the necessary steps if long-standing and significant discrepancies in the workload of the judges occur. Presidents are responsible for the continuous monitoring of the number of incoming cases and the development of the judicial staff within the court that works under their leadership, and they also have to determine and publish quarterly the average number of incoming cases per judges and the average workload of the judges taking into account the weights assigned to the cases.

While some judges during informal talks have found the introduction of the tables a very successful initiative, the report of the HVG have provided a much more pessimistic picture on this issue. Referring to internal information and undisclosed documents, the article stressed that some judges in the central region have recently resigned due to the enormous workload they should have tackled, and some others have criticized heavily the President of the NOJ in the sitting of the NCJ as they found the policy of the central administration on filling vacancies and balancing the workload differences non-transparent and a failed attempt. As we were not permitted to conduct any interview with judges who are members of the NCJ, and the records of the sittings of the NCJ is not accessible to the public (only available for judges via the intranet system), we cannot give greater details on this debate.

It is interesting though that while the annual reports of the President of the NOJ have indicated a significant improvement in ensuring a much more balanced workload among judges, according to the report of the HVG, the huge disparities in the courts’ workload have not been eliminated or mitigated.

**2.4.2.5. Temporary national projects targeting timeliness**

In the present subsection, we set out two programs which have been developed at national level and targeted various issues relating to court activities. The main objective of the projects was to increase public confidence in courts. Within this general aim, a strong emphasis was put on handling delays and reducing the number of cases that had not been resolved within a two-year time. Both projects have attached consequences (awards) to the results that have been achieved by courts.

In 2015, the President of the NOJ has launched a ten-point program called “Courts as Providers of Service” (A szolgáltató bíróságért!) which aimed, inter alia, to improve public trust and customer satisfaction regarding the judiciary and to enhance the timeliness and efficiency of the administration of justice. According to media reports, the President of the NOJ, when announcing the program publicly, stressed that to a certain extent, it was the increasing number of attacks on the judiciary, which had given rise to the initiative. However, we have no information about what the President of the NOJ exactly referred to. (In a few sensitive cases, some politicians – some of them being high-ranking government officials – have criticized the judiciary heavily, putting somewhat political pressure on the courts. Also, judges were exposed to criticism from the media and the general public occasionally. Most of these challenges were unsubstantiated and lacked any well-founded legal arguments, but we do not know exactly if the President of the NOJ actually hinted at these attacks).

The program targeted all segments of the administration of justice (court presidents just as individual judges, the legal profession as such, the government, public prosecutors and parties as

---

73 Erika Pálmai: ‘Közbenső ítélés’ [Interim judgment] HVG, 29/06/2017 pp. 16-18  
74 http://nepszava.hu/cikk/1061270-zero-tolercia-johet-a-birosagi-ugyek-halogatasa-ellen  
well) to contribute to this joint enterprise of enhancing social respect of courts. Within this framework, the presidents of the courts were encouraged to develop action plans in order to promote the aim of **timeliness**. All regional and regional courts of appeal joined the agenda to achieve a radical drop (at least 20 %) in the number of cases pending over 2 years before courts. It was a clearly identifiable performance target set by the central judicial administration to which courts were subjected.

The program was completed by the end of March 2016, and proved highly successful. Within the ten-month time frame, courts were able to reduce the overall number of cases pending excessively long (more than 2 years) by **more than 25%**. This means that the performance target was met. Nevertheless, we have only little information about how the other objectives of the program have been fulfilled. For that reason, it seems that the principal goal was to improve the figures on timeliness.

Right after the end of this program, a new project called ‘**Sustainable Development**’ was announced by the central administration to maintain the results and the level of progress that have been achieved within the previous project. Timeliness and reducing delays were once again brought to the forefront in the action plans of the courts. If courts made commitments in their action plans to introduce other innovative measures (e.g. developing staff satisfaction surveys or number dispenser for customers) they were given extra scores within the project which increased the financial bonuses a court could receive. Those courts that performed well and met the targets and commitments they had made were rewarded by **extra financial resources** which were then distributed among individual judges at court level. The bonuses were paid to the judges according to their individual contribution to the overall performance of a given court.

2.4.2.6. **Customer satisfaction surveys**

The opinion of court users is of crucial importance in terms of the quality of justice. Consequently, the level of customer satisfaction can be a reliable indicator of the performance of the Hungarian judiciary. This indicator fits into the current objectives of judicial administration which aims to create a **customer-friendly environment** providing easy access for the users to the services of the courts. In the order no. 10/2012 (VI. 15.) the President of the NOJ issued a **questionnaire** through which the opinions and the feedbacks of the users can be collected.

This questionnaire is not too ambitious in its original form as it includes only **seven questions** which can be measured on a five-grade scale. These questions focus on the topics of courthouse facilities (entrance system, security services etc.), access to information in court buildings, quality and timeliness of the services provided by the administrative staff, the measures taken for providing equal opportunities for users.

While many courts use the original questionnaire developed by the NOJ, some have improved it to some extent and for instance, made it more detailed by breaking down the original questions to further elements. We have also found questionnaires that include questions on the performance of the judges, particularly on how judges communicate with the parties, or whether their instructions or judgments are comprehensible, and if they act in an impartial and objective manner. Some refined questionnaires also allow customers to make their own free comments to the respective questions. Some judges, nevertheless, raised their doubts whether customers’ opinions on the work of the judges can be seen as reliable feedbacks and called for caution when assessing such opinions.

---

The results of some surveys are available on the internet and they provide information on the measures that have been taken to improve customer satisfaction.\textsuperscript{78}

The NOJ have also examined the findings of the surveys and announced very favorable results. According to the 2015 annual report of the President of the NOJ, the users were satisfied with the services provided by courts up to 90%.

However, we find only little information about how customers’ opinions have been channeled into the process of making administrative decisions at the regional and national level. Furthermore, it is striking that most of the standardized questionnaire do not contain questions concerning the trials and hearings. As a result, in most cases court users are not able to evaluate the very performance of the judges within this framework which makes the surveys less relevant in terms of the quality of justice. By judicial performance, we seek to refer here to those aspects of judicial behavior which are not subject to appeal (e. g. politeness, understandability etc.).

Beside the questionnaire, courts have developed “Users’ Charter” in which they have laid down a few fundamental principles as minimum standards of the operation of courts. These principles concern mostly the issues that are raised in the satisfaction surveys and they are formulated in a very abstract language. Further undertakings involve, for instance, child-friendly operation of the court, more publicity on the work of the court, providing special hearing rooms for minor witnesses etc. Courts make a commitment to ensure the implementation of these standards, however, it is open to question if the Charter remains mere declaration, or entails real consequences on the functioning of the judiciary.

2.4.2.7. Integrity and independence

In 2016, the President of the NOJ issued an order aiming to ensure and strengthen the integrity of the judicial system.\textsuperscript{79} The new regulation seeks to establish an intra-institutional control mechanism within the judiciary which can contribute to reducing the risk of corruption and preventing those incidents which may compromise the independence of the judiciary. The regulation defines those situations in which the integrity and the independence of the judges can be undermined. (For instance, when judges have a second job, engage in political activity or receive gifts.) Nevertheless, many instances of “integrity-violation” are also handled within already existing criminal and disciplinary regulations which calls into question the necessity of issuing the “integrity regulation”.\textsuperscript{80}

The regulation has notably been enacted with regard to the need to enhance public trust in the judicial system. As to the rate of the citizens’ trust in the justice system, we lack any recent general domestic survey, so in this regard, we should rely on the surveys of the Eurobarometer and the World Economic Forum (WEF) which examined the perception of the general public and business entities on judicial independence. The Eurobarometer survey shows that in 2017 a little less than 50% of the citizens have a positive opinion on courts (48% saying that the independence of courts

\textsuperscript{78} See the detailed report of the Regional Court of Eger which was invoked as a ’best practice’ in the 2014 annual report of the NOJ: http://egritorvenyszek.birosag.hu/sites/egritorvenyszek.birosag.hu/files/field_attachment/ugyfelelegedettseg_egyben.pdf

\textsuperscript{79} http://birosag.hu/sites/default/files/allomanyok/obh/dokumentumok/6_2016_integritas_szab_2016.07.01_0.pdf

\textsuperscript{80} The President of the NOJ has recently stressed in a written statement in the proceeding before the Constitutional Court that the integrity regulation only collects and consolidates those rights and obligations of judges that are already laid down in other laws concerning judicial integrity and independence, so it does not create new duties and establish autonomous sanctions. See: http://public.mmakab.hu/dev/dontesek.nsf/0/b8b4a549c5c37b1fc1257ff0005876c0/$FILE/IV_1259_8_2016_OBH_allasfoglalas_anonimiz%C3%A9lt.pdf
and judges is “very good” or “fairly good”) which is quite close to the EU average (55%) and ranks Hungary at the twentieth place among EU Member States, according to the 2017 EU Justice Scoreboard.\(^8\) More or less the same figure applies to the opinion of the companies on judicial independence in 2017; however, it is much better than the last year’s result, and closer to the EU average, therefore places Hungary sixteenth on the 2017 Scoreboard. According to the survey of the WEF, businesses gave a score of 3.1 in a 1 to 7 scale which fits into a downward trend.\(^8\)

However, in the previous years, criminal proceedings against judges which can compromise the integrity of the justice system were rarely initiated. This fact also casts some doubts on whether there have been well-established grounds for introducing the integrity regulation.\(^8\) The “integrity regulation” has been publicly criticized by some judges, since it says, inter alia, that the regulation aims to ensure the implementation of those values that are determined by the President of the NOJ in her capacity as the head of judicial administration. For some judges, this latter objective raises great concerns and may threaten the independence of the judicial branch, as it allows judicial behavior to be subjected to expectations determined unilaterally by the President of the NOJ. Therefore, judges have challenged the regulation before the Hungarian Constitutional Court and the European Court of Human Rights.\(^8\) In a recent decision rendered by the Constitutional Court, some provisions of the integrity regulation have been found unconstitutional.\(^8\)

2.4.2.8. The jurisprudence of the European Court of Human Rights (ECtHR)
The practice of national and international human rights courts may also serve as a check on the quality of administration of justice in Hungary. These courts can supervise the performance of ordinary courts under the “fair trial” principle since constitutive elements of this principle such as “the length of proceedings” and the “reasoned judgment” criteria are closely related to the quality of adjudication. The ECtHR has found on several occasions that Hungary violated Article 6 of the European Convention on Human Rights as the length of the judicial proceedings were not compatible with the ‘reasonable time’ requirement.\(^8\) The case-law of the ECtHR is likely to be a major factor in recent aspirations of the central judicial administration to improve the timeliness of adjudication. The annual reports of the NOJ explicitly mention the ECtHR jurisprudence relating to the “timeliness” standard and propose a more closer scrutiny of the practice of the Strasbourg tribunal in order that the findings of the ECtHR will be effectively incorporated into the administrative decisions and the operation of the Hungarian judiciary.\(^8\) As to the “reasoned judgment” criterion, we have no information if the jurisprudence of the ECtHR has ever been scrutinized in this regard by the judicial administration.

2.4.3. Consequences of the evaluation of quality of justice at court level
Currently, we have only little information about whether the evaluation process has any direct consequences on the courts budget or on the president of the court. If a court fails to comply with the fundamental requirements of the central administration, and serious shortcomings and malfunctions are revealed (huge backlog, delays etc.), the president of the court in question can be subjected to disciplinary proceedings, and disciplinary sanctions can be imposed on her. The

---

\(^8\) The annual reports of the president of the NOJ contain information on criminal proceedings against judges.
\(^8\) http://hvg.hu/itthon/20170309_hando_tunde_obh_integratisz_szabalyzat_strasbourg_alkotmanybirosag_birok
\(^8\) Decision of the Hungarian Constitutional Court no. 33/2017. (XII. 6.)
\(^8\) See the findings of the case Gazsó v. Hungary (no. 48322/12) 16 July 2015
\(^8\) 2014 annual report of the NOJ, p. 89.
most serious sanction (removal) is not used as presidents are more likely to resign than being dismissed.

Well-performing courts can be rewarded by allocating additional resources to them. This was the case when courts were particularly successful in reducing backlog, primarily the number of old cases within some temporary projects that run in the previous years. Also, we can add to the list of consequences the symbolic rewards: for instance, when courts are named explicitly in the media or in the annual report of the NOJ as pioneers of “best practices”.

2.4.4. Debate on possible reforms
So far, the quality of adjudication has attracted only little theoretical interest in Hungary, so the issue has not been thoroughly studied by the academic community. Currently, a research group has been established at the University of Debrecen to map the so-called “Debrecen model”. We hope that this inquiry will boost research in this field.

We have no information about any upcoming reform or other initiative that has been tabled by the Ministry of Justice.

2.5. Resources allocation to courts
2.5.1. Actors involved
2.5.1.1. Legal background and main actors defined in laws
Because of the special Hungarian institutional design (the judiciary is not connected to the Ministry of Justice, its administration is done by the NOJ), the budget of the courts is a separate chapter (Chapter VI.) within the state budget. Thus, formally the allocation of the budget is finally made by the decision of the Parliament, as a part of the law on State Budget (recently, for 2017 the Act XC of 2016).

This process, and the actors are described in Article 76 (3) of the AOAC:

(3) The President of the NOJ in his function related to the budget of courts:
   a) shall prepare a proposal for the budget for courts following consultation with the NCJ on the court chapter of the act regarding the central budget and the NOJ, and with the President of the Curia regarding the Curia, include a presentation of their opinion, and drafting a report for the implementation thereof; the Government shall present this proposal to Parliament unaltered, as part of the bill on the act on the central budget and the bill on the act for the implementation thereof;
   b) shall be invited to participate in the Government meetings and meetings of the Parliament Budget Committee debating the budget chapter (…)

According to this text, besides the Parliament, the other three players in the formation of the budget are:
   - the President of the NOJ, who is preparing the budget proposal,
   - the President of the Curia, who is consulted on the budget of the Curia,
   - the NCJ which has a general consultation right.

Among these actors, the President of the NOJ plays by far the most important role.

The NCJ, which is the “control body of the central administration of courts” de iure has great power on the budget control, (as on everything). According to the law:

---

88 Section 4 of the AOAC states: “(t)he courts shall comprise an independent budget chapter in the act on the central budget. Within that chapter the Curia shall have its own title.”
89 AOC Section 88
(2) In the field of budget planning, NCJ:
   a) shall assess the proposal for the budget of courts and the report on the implementation thereof;
   b) shall monitor the financial management of the courts; and
   c) shall assess the detailed conditions for and the amount of other benefits.⁹⁰

**De facto**, however, the NCJ’s role is quite formal. For example, from the 130 resolutions that were made by the council in 2016 only 3 were dealing with budgetary issues, and all three are one sentence long: namely, the body formally accepts the reports of the President of the NOJ.⁹¹

### 2.5.1.2. Informal participants and actors

There are also three other actors, not mentioned by the text of the law, but who are involved informally in the process:

- The **Ministry of Justice**. It has been mentioned both by the Minister and the President of the NOJ several times that the Minister himself, and the Ministry is giving a strong support and arguments, when the lobbying process during the budget formulation is going on.
- The practical, technical planning, budgeting process is done by the **National Ministry of Economy, where the Department of Budgeting** (which was previously the Ministry of Finance) is the key player.
- Finally and most importantly, the final decision on the budget of the judiciary is made by the **Prime Minister**.⁹²

### 2.5.1.3. The budget of the court system in the context of the whole state budget

**Table 9**: Court budget in Hungary per year

<table>
<thead>
<tr>
<th>Year</th>
<th>In € Mil CC</th>
<th>State budget (total yearly public expenditure)</th>
<th>Courts' budget total</th>
<th>Increase / decrease YoY</th>
<th>Budget support</th>
<th>Own revenue</th>
<th>Personnel cost and taxes</th>
<th>Personnel cost increase / decrease YoY</th>
<th>Other costs</th>
<th>Personnel cost in the ratio of total budget</th>
<th>Courts' budget as a percentage of public expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>29 182</td>
<td>234</td>
<td>217</td>
<td>17</td>
<td>193</td>
<td>41</td>
<td>82%</td>
<td>0,80%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>29 000</td>
<td>234</td>
<td>216</td>
<td>18</td>
<td>196</td>
<td>38</td>
<td>84%</td>
<td>0,81%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010*</td>
<td>44 107</td>
<td>228</td>
<td>-2,67%</td>
<td>210</td>
<td>18</td>
<td>189</td>
<td>-3,64%</td>
<td>39</td>
<td>83%</td>
<td>0,52%</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>47 092</td>
<td>242</td>
<td>6,24%</td>
<td>224</td>
<td>18</td>
<td>197</td>
<td>4,12%</td>
<td>45</td>
<td>81%</td>
<td>0,51%</td>
<td></td>
</tr>
<tr>
<td>2012</td>
<td>48 896</td>
<td>258</td>
<td>6,65%</td>
<td>251</td>
<td>7</td>
<td>211</td>
<td>7,12%</td>
<td>48</td>
<td>82%</td>
<td>0,53%</td>
<td></td>
</tr>
<tr>
<td>2013</td>
<td>52 284</td>
<td>279</td>
<td>8,09%</td>
<td>272</td>
<td>7</td>
<td>207</td>
<td>-1,80%</td>
<td>72</td>
<td>74%</td>
<td>0,53%</td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td>55 454</td>
<td>289</td>
<td>3,48%</td>
<td>282</td>
<td>7</td>
<td>209</td>
<td>0,89%</td>
<td>80</td>
<td>72%</td>
<td>0,52%</td>
<td></td>
</tr>
<tr>
<td>2015</td>
<td>56 110</td>
<td>291</td>
<td>0,60%</td>
<td>283</td>
<td>7</td>
<td>206</td>
<td>-1,39%</td>
<td>85</td>
<td>71%</td>
<td>0,52%</td>
<td></td>
</tr>
<tr>
<td>2016</td>
<td>54 963</td>
<td>300</td>
<td>3,31%</td>
<td>293</td>
<td>7</td>
<td>217</td>
<td>5,43%</td>
<td>83</td>
<td>72%</td>
<td>0,55%</td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>47 644</td>
<td>321</td>
<td>6,81%</td>
<td>313</td>
<td>7</td>
<td>239</td>
<td>10,10%</td>
<td>82</td>
<td>75%</td>
<td>0,67%</td>
<td></td>
</tr>
</tbody>
</table>

⁹⁰ AOC Section 103 (2)
⁹¹ Website of the decisions of the NCJ: [http://birosag.hu/obt-dokumentumai-dontesek](http://birosag.hu/obt-dokumentumai-dontesek)
⁹² It is widely known, that the Prime Minister and the President of the NOJ were mates in the Bibó István College during their university years, though we have no information about how close this relationship is nowadays. Other sources are also supporting this information. Tünde Handó (President of the NOJ) stated in an interview, that the salary raise of the judges became possible after the Prime Minister’s „very nice speech” where he stated, that „it is very important that our salaries are fair and just, and as the country can step ahead, we can be sure that we can move ahead too” (“Inforádió” radio station, “Arena” program, “Vendégünk Handó Tünde…” episode [“Our guest is TündeHandó”] 2016. 11.10.) [http://inforadio.hu/arena/2016/11/10/vendegunk_hando_tunde_a_orszagbirosagi_birovatal_elnoke/](http://inforadio.hu/arena/2016/11/10/vendegunk_hando_tunde_a_orszagbirosagi_birovatal_elnoke/) (2. rész), (10:22 – 11:05)
The significant increase in the main sum in 2010 is due to some changes in the accounting policy.

As it is visible from the table, the budget of the courts is constantly increasing since 2010 well above the inflation rate, so from this point of view the judicial system is one of the winner of the Orbán-government. This general statement, however is not entirely true for the personnel cost, which remained practically on the same level since 2002, and there was an increase only recently. It is not visible from the table, but from 2012 the President of the NOJ succeeded to obtain additional resources for two purposes: the renovation of certain court buildings, and the working off the backlog in cases.

2.5.2. Resources allocation process
2.5.2.1. Theory and practice – the 2016 case

Though formally the Parliament decides on the allocation of resources to the judiciary, as we mentioned above the process is more complicated. While other chapters are fiercely debated, there were no debates within the Parliament on the “court chapter”, except in 2016; this will be later detailed.

This means, that theoretically (legally) the President of the NOJ should have to take nothing into consideration when designing the budget, and she could submit a proposal containing for example the double sum of the previous year. The reality however is more complicated, the process is not entirely an open one. There are serious limits of budget planning.

First, the budget is planned by a “base approach”, i.e. taking last years’ budgetary figures into consideration as a starting point. The normal process is that these figures are increased with a certain percentage.

Second, the increase itself is decided by the political sphere, practically by the prime minister, and his inner circle. This can be influenced, and sometimes it is influenced by the President’s actual arguments, or other factors we do not exactly know. For example, in the beginning of the 2010s, when the new system was enacted, the President had enough power to procure additional money for certain goals. These goals were explicitly written in the yearly state budgets (e.g. “Renovation of the Pest regional court building” – 2012-2014 budgets, or “More clerks for the acceleration of judicial processes” – 2012 budget). The budget of the judiciary – as we mentioned above – was increased above 5% yearly, while the inflation rate was well below this level.

However, we know very little about the real planning process. Sometimes stories emerge, when there are turbulences within the system. On 13.05.2016 the opposition led chairman of the budget commission of the Parliament in his speech quoted the letter of the President of the NOJ, where the President wrote, that the “budget proposal she received is entirely different from the one that has been submitted to the parliament”. The difference was that in the original budget there was a 5% increase planned for salary raise. The mistake has been corrected. A week later the President of the NOJ has been heard by the Budgetary Committee. Here, she said that “from the 13 000 employees that are employed by the court system, more than 2500 get the base salary. Sometimes it happens, that a shelf-stacker job is more attractive than a clerk’s in the judicial system”.

93 Speech of Sándor Burány (Socialist Party) at 13.05. 2017. (#78. speech at 14:00) http://www.parlament.hu/folyamatban-levo-torvenyjavaslatok?p_auth=iG7GveF&p_p_id=pairproxy_WAR_pairproxyportlet_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1&pairproxy_WAR_pairproxyportlet_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcplsql%2Fogy_naplo.naplo_fadat%3Fp_ckl%3D40%26p_uln%3D152%26p_felsz%3D78%26p_szoveg%3D26p_felszig%3D78
Apart from the particular events, the whole story shows, that the NOJ President’s room for maneuvering is not as big as it is written in the text of the law.

### 2.5.2.2. Internal and external budget allocation

The allocation of the budget means two things.

What has been discussed until now is the external determination of the budget: the formation process of the main numbers, figures will be later included in the state budget. The determination of this number, as indicated above, is an **eminently political process** in Hungary. The arguments that are used for increasing the amount are mainly quantitative arguments: worn out buildings, low salaries, and primarily the speeding up of the judicial processes, as well as working off the backlog. While the President’s reports contain a lot of qualitative elements, like training of the judges, “open court program” etc., in budgetary issues visibly the quantitative, material arguments are more effective. Finally, it is very probable, that the overall budget number **de facto** is decided by the Prime Minister and his inner circle, and planned by the Ministry of National Economy, though **de jure** this should be the task and responsibility of the President of the NCJ.

The other aspect of the budgetary issues is the internal allocation of the sum available for the courts. This is not an entirely free process, since the whole system has serious determinations.

- The main determination is, that more than 70% of the total budget is spent on salaries, and taxes and social contributions connected to salaries. Since these amounts are determined by the Status Act, here there is very limited room for maneuvering. However, the allocation of the **staff** itself – the so-called statuses (judges and clerks) – is still an issue (see below).\(^\text{94}\)
- Some 10% of the budget should be allocated to “material costs” which are mainly the cost elements of processes that cannot be allocated to the parties. (Like court experts’ costs, that are arisen in procedures where the litigants are not charged.)
- Some 15-20% of the total budget, (20-30 Mln €) is **subject to bargain**, or budgetary decisions. Due to the fact, that we had no possibility to make interviews with the President, or with people who are taking part of this process we have only scarce and scattered information from the annual reports of the President (see below).

### 2.5.2.3. Decision about the allocation of the staff

Personnel costs represent the highest amount within the budget. Therefore, the allocation of the staff is one of the most important issues within the judiciary.

Before 2011, the biggest problem of the judiciary was the imbalanced workload, where the workload of the judges working in the Budapest Capital Regional Court was 40% higher than in any other court. We think this was one of the main reasons of the formation of the recent system. Between 2012-2013, the President of the NOJ was empowered to reallocate the cases from the competent court to other courts where the workload was lower. As mentioned before, this practice was exercised on an ad hoc basis, therefore raised grave constitutional concerns, so this solution was finally aborted. Then the President of the NOJ, beside the temporary transfer of judges from one court to another (judicial secondment), has chosen a more effective, but very “hand-made” solution. In this system, the allocation of human resources is **entirely centralized**. In 2014, the

\(^{94}\)The 240 Mln € seems to be a high amount but in reality – compared to other EC countries, according to the CEPEJ report – salaries of the judges and the other staff in Hungary are very low. Concerning the salaries of the beginner judges there is only one country within the EU where the salaries are lower - Bulgaria. The gross average salary quota (beginners’ salary compared to the average salary) is also one of the worst, taking the poorer countries into consideration. ([European judicial systems - Efficiency and quality of justice - CEPEJ STUDIES No. 23 - Edition 2016](http://www.coe.int/t/dghl/cooperation/cepej/studies/pub/2016/publication/CEPEJ%20Study%2023%20report%20EN%20web.pdf) data), 110.
President made a resolution, 283/2014. (VII. 2.) OBHE (NOJ President’s resolution)\textsuperscript{95}, which is an eight-page document, enlisting all the regional courts, and the “permitted number of FTE” in each court per 10 job types, from the judges to the administrators. This solution practically means that any change within the number of job positions is possible only if this resolution is changed by the President. So, the management of the job positions within the judiciary is totally centralized.

According to our sources, not just the changes in number of job positions is centralized, but also the decision on \textit{filling the vacant positions is entirely depending on the discretion of the President of the NOJ}. This information, however, seems to be at odds with information on establishing “ratio tables” for making well-founded decisions in the process of filling vacancies. (see section 2.4.2.4.) According to the 2015 Report any job advertisement is preceded by a permission process:

“In this process the following parameters are examined: the manpower limit (cap) of the court, the caseload dynamics (change over time), and the workload of the judges. Based on these parameters a decision is made, whether the job vacancy is advertised locally, or in another court.”

Another way of disencumbering the judges is to empower the clerks to certain activities, where judges are not needed. In certain respects this also happened, and is happening at the moment.\textsuperscript{96}

Despite all of its limitations, this “micro-management” method seems to work. At the end of 2011 the average caseload of a judge was 112, and 157 at the Budapest Capital Regional Court. By the end of 2015 the respective figures were 78 and 80. This drop is spectacular.

According to the report of the President of the NOJ, a \textit{software} is under construction which will register all the positions, the number of vacancies, the gross personnel spending, and therefore an “optimal distribution of resources will be possible. (… where) more detailed quotas can be determined that how many clerks, and other office jobs, helping the judges’ work is needed”\textsuperscript{97}. We have no further information on the implementation of the software.

\textbf{2.5.2.4. Allocation of resources – internal budgetary bargains and other issues}

As we mentioned above the other aspect of the internal resource management and allocation is the allocation of the \textbf{15-20\% of “free” money}. These resources are mainly aimed for renovation, or ad hoc remunerations etc. Though the report of the President mentions a series of “budget meetings, where the NOJ meets the presidents of the local courts and the financial officers” and where “structured discussions” are taking place, we have no further information about these discussions and meetings. According to our information the real process is that the president is deciding practically on every important issue.

We have to mention here, that, according to the yearly reports, there are some further efforts and projects going on to improve the financial management of the courts. For example, the 2015 report speaks about the introduction of a \textbf{new controlling software}, which is providing real time information about the financial status of the courts. It is also mentioned here, that the quantity of ad hoc information which had to be provided by court leaders (rather stressful task) between 2012 and 2014 has been also reduced. A further initiative is, that a monitoring system was enacted (no further info on that) and sample regulations (model rules) were introduced in the financial field.

\textbf{2.5.3. Consequences of resource allocation on quality of justice in Hungary}

It is clear, that the resource allocation process (both the financial and the human resources) has two features in Hungary:

\textsuperscript{95}See: \url{http://birosag.hu/sites/default/files/allomanyok/obh/dokumentumok/283_0.pdf}
\textsuperscript{96}2015 Report, 15.
\textsuperscript{97}2015 Report, 112.
- it is a political process
- it is highly centralized, where the key player is the President of the NOJ

It is dominated by the politics, because
- there are no rules, and guarantees for a minimum budget
- there is no other guarantee for any element of the budget
- budget decisions on the whole judiciary is made formally by the Parliament, but practically by the Prime Minister, and his inner circle.

The internal resource allocation is over-centralized, because
- according to the reports the disposable 15-20% of the total budget is distributed on budget meetings, but we have no further information on these meetings. According to our information these decisions are mainly made by the President of the NOJ
- allocation of human resources is formally centralized by a Presidential resolution; no human resource decision can be made without the consent of the President of the NOJ
- NCJ has a formal role, it is practically not controlling the President of the NOJ on budgetary issues.

Despite of its over-politicization there were two serious improvements in the resource allocation field in Hungary. 1. The backlog of cases has been successfully reduced 2. The inequalities in workload – where the burden of the capital courts was 40% higher than other courts – have also been reduced.

Still, the over-politicization, and over-centralization is dangerous, because there are practically no institutional and legal control over the President. As long as she is using this power for “enlightened” purposes it is good, but as soon as a greater political pressure or any budgetary restraints appear, this can have a direct and fast dangerous impact on the whole system.

2.6. Assessment of existing evaluation methods

The picture on the existing assessment methods is very complex. The evaluation process of individual judges is greatly elaborated as it incorporates a wide range of indicators regarding the adjudication, regarding both quality and quantity. The scheme could be appropriate to address all the skills and competences that are crucial for high-quality judicial work. However, as mentioned earlier, it is a long-established practice that the assessment is carried out by the professional superiors of the examined judges. Therefore, although it has not yet been invented in the world better method to check the quality of justice than “human” evaluation, factors such as personal relationship, dependency and prior knowledge can compromise the integrity of the process and the objectivity of the results.

While ‘quality-considerations’ play, in principle, a significant role in the evaluation of the judges, this aspect of adjudication is largely neglected when the performance of the courts is at issue. This latter process is dominated by quantitative standards (backlog, timeliness, resolved cases etc.), and even if efficiency can be conceived as an indicator of quality: namely, that of good functioning of the courts, further qualitative elements are much less addressed. Nevertheless, we experience the efforts of the judiciary to develop more refined and sophisticated methods of assessment to obtain reliable information on the operation of the judiciary. Many of the new initiatives – e.g. satisfaction surveys, stylebook – now focus more on quality than efficiency.

The situation in the field of judicial quality control in Hungary (as in other countries, too) is strongly connected to the traditional and deeply embedded cultural and political image of judges and all jurists. The underlying concept in Hungary is that judges as all other legal practitioners are high-qualified professionals such as doctors, engineers etc. That is why they can be assessed by
using only internal-professional standards and they are mostly measured by productivity standards in a hierarchical way. The system of legal education in Hungary supports this model of quality control both directly and indirectly. On the one hand legal education puts emphasis on the text of the laws and on legal-doctrinal knowledge and cares much less about the social responsibility of lawyers and improving their ‘soft skills’. On the other hand the exams are extremely text(book)-oriented (it is often required to recite the text of the law by heart in front of the teacher), there is very little room for team-work, essay writing and moot-court activities. This hierarchical, productivity-oriented approach is similar to the assessment of judges. That is why it is not a surprise that court users’ opinions do not matter in the course of evaluation.

3. Innovative practices in quality evaluation and quality development

3.1. System of mentor judges

As a recent development in Hungarian courts a mentor-judge network operates. Junior judges that need legal-professional support may turn to senior judges registered as “mentors”. Unfortunately, we have no data on the number of junior judges who use this opportunity. On the one hand mentor system can be a good initiative for the personal improvement of junior judges. It is so because a newly appointed judge has to adjudicate as a single decision-maker even in quite complicated and difficult cases. (At the same time, senior judges in appellate courts review the junior judges’ verdicts in panels generally consist of three experienced judges. In our opinion this situation can hardly be justified.) On the other hand, being a “mentored” judge proved to be a “stigma” on judges who enlist in this program. Another question to be answered: who bears the professional responsibility if a junior judge makes a faulty decision based on the advice of the mentor judge?

3.2. EU law consultant network

Since 2012 a special organization is functioning under the umbrella of NCJ, the network of EU law consultant judges. Originally the initiative was started after the EU accession as a series of trainings, but later the group of trainers formed an informal network, and finally in 2012 the new President created a formal structure out of it.

Recently the network consists of 54 judges from around the country, and from different courts. They receive a working time reduction, and 10% extra remuneration. Their main task is the consultation locally in legal matters affected by EU law. A “side effect” of the network is, that the members of the network are representing the Hungarian judiciary in foreign forums, and conferences.

The network holds compulsory trainings twice a year, which are two days long. One day is held in English. The topics are comprised of different EU law fields. The participation is compulsory for the members of the network, which is registered by the coordinator (leader) of the network. For example, recently a training was held on legal aspects of EU migration law.

The participants should self-educate themselves, and quarterly upload a report, and a self-assessment on an online form. Their activities (advice given, presentations, publication activity) should be registered here. This system is not only a tool for the performance measurement, but, since the advising activity (in the EU law problems that have arisen) is also registered, it gives a territorial and per court overview on the everyday EU legal problems of the courts as well.

3.3. The principles of drafting: the ‘Stylebook’

In 2013 a jurisprudence-analysis group was set up to deliver inquiries into the drafting practice of the Curia judges in civil and administrative cases. A similar group was created in criminal matters a year later.
Since the structure of decisions and their linguistic and stylistic level varied from one judge to another to a great extent, the objectives of the working group were to improve the drafting-style, the uniformity and the comprehensibility of judgments in order to meet the expectations of the general public. The analysis addressed five issues concerning the drafting of decisions: spelling/grammar, style, citations, structure, and the substance of the judgment. Although the “drafting group” concentrated exclusively on the practice of the Curia, it was assumed that the proposed changes would likely affect the practice of lower courts, at least indirectly.

As a result of the analysis, a report has been published on the website of the Curia which first highlighted the fundamental shortcomings of drafting practices (e.g. the divergent and incomprehensible internal structure of the judgments, obsolete linguistic terms, long and intricate arguments and redundancies in the text, the great variation of citation methods etc.). Then, it made some moderate proposals to enhance the uniformity of the language, style and structure of judgments. The report suggested, inter alia, the standardization of the description of the subject-matters of the cases, the rationalization of citing previous decisions, the introduction of an internal numbering to the reasoning part, or compliance with the linguistic demands of the heterogeneous target audience. The report also proposed some changes to the substance of the reasoning, but some of them – for instance, avoiding reference to legal literature or the establishment of novel legal doctrines, and refraining from addressing the parties’ arguments which do not affect the decision – were highly surprising.

The “Stylebook” which contains some samples for drafting was published only on the intranet of the judiciary. The “Stylebook” is not compulsory. It is only recommended for the Curia, and we know little about its actual impact on the drafting practices of the courts. The Curia has already started to use this “style guide”, and we were told that some lower courts are now doing the same. Recently, the work of the jurisprudence-analysis groups has been communicated to courts to make their activity and results known for the entire judicial branch. These latter developments might reflect the very first steps of a process of gradual implementation.

Some of these issues concerning drafting were also raised in the medium-term institutional strategy of the Curia which was adopted in 2013. In this document the emphasis was put particularly on the structure of reasoning aiming to facilitate the transparency and the persuasive force of the justification part of the judgment. The strategy also considered crucial that the arguments provided by courts may be understandable for the general public. The strategy recommended the main principles of drafting and the fundamental standards of linguistic and stylistic clarity to be determined by the President of the Curia in the medium term.

3.4. Best practices: The “Debrecen Model” – a bottom-up initiative to promote timeliness

In recent years, a new strategy aiming to improve the timeliness and the quality of adjudication has been developed in the District Court of Debrecen in criminal cases. The project was launched in the early 2014 and is built on three pillars: (1) timely and effective administration of justice, (2) staff satisfaction and (3) customer satisfaction. The new management system was developed as a response to the previous years’ unfavorable trends in the court’s performance: the court faced huge backlog, and the number of the cases pending more than 2 years before the court was also extremely high, according to the statistical data of the early 2010’s. The project targeted a comprehensive change in the attitude of the staff, in all segments of the functioning of the court. A novel method of case allocation was introduced to provide incentives for judges to complete cases and make their

---

work more effective. The former scheme was based on the system of “case equalization” in the level of individual judges: each judge had to deal with the same number of cases which meant that judges were not motivated to resolve cases as the more cases they resolved, the more they got. This scheme was replaced by a case allocation system which builds on the idea that judges receive the average number of incoming cases in every month (regardless of the number of cases she finished in the previous month) with special emphasis on the different difficulty of the cases to be assigned (the guiding principle is “equal number of cases with equal weight”).

This system implies that if a judge performs well and completes cases effectively, she can save time. She will not get extra cases if she finishes more cases than other judges. It was the District Court of Debrecen which first embarked on applying “case weights” in the process of case allocation: weights are established to each particular incoming case and these weights are taken into account in the course of case allocation in order to ensure a balanced workload among individual judges. Case weights in a slightly amended form were later implemented nationwide and today serve as the basis of the “case registry”. Apart from establishing a more fine-tuned system of case allocation based on case weights, novel methods of monitoring and administrative control over judicial activities have been introduced which include, for instance, the tight monitoring of old cases pending over 2 years before the court, inspection visit to the hearings by senior judges, informal discussions with judges on the adequate and effective methods of organizing work etc.

Besides, a complex motivational system has also been elaborated which is directly linked to the performance of the judges. It is a great innovation in itself that the “Debrecen model” deliberately creates a wide range of incentives to motivate judges to carry out their work effectively. As a result, outstanding performance is recognized and rewarded by free time (holiday) which can be spent – according to the choice of the judge concerned – on preparation for hearings, drafting judgments, trainings, language learning, or study trips abroad etc.

Statistical data reveals that the number of cases pending over 2 years has dropped significantly since the model was introduced, namely from 8.6% to 2.79% in a two-year time. Further figures show that beside the substantial decrease in the old cases, the backlog of the court in general has been reduced considerably in the last few years. (The number of pending cases was reduced from 1812 to 787 by the beginning of 2016.) The spectacular performance regarding case completion concerned both easy and complex cases.

Within the “Debrecen model” a lot of emphasis is put on staff satisfaction. This is reflected by the abovementioned motivational system and other novel instruments such as the regular needs assessment of the employees regarding the working conditions, the motivational questionnaires targeting the future plans of staff members for their individual career paths, or other measures put in place to provide a friendly working environment.

Customer satisfaction as the third pillar of the “Debrecen model” is sought to be improved through satisfaction surveys which are assessed on an annual basis.

The “Debrecen model” has recently been subjected to a comprehensive scholarly analysis in order to reveal those features of the model that can be implemented by other courts. The study seeks to explore how the introduction of the new model has affected other areas of the quality of administering justice at the District Court of Debrecen.
Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice
The evaluation and development of the quality of justice in Italy

Francesco Contini: Senior Researcher, IRSIG-CNR
Davide Carnevali: Researcher, IRSIG-CNR
Marco Fabri: Acting Director - IRSIG-CNR
Nadia Carboni: Researcher, IRSIG-CNR

1. The institutional context

1.1 Judicial structure overview

The Italian judiciary is split in two major branches: the “ordinary jurisdiction” and the “specialized jurisdiction”. The Specialized jurisdiction comprises the administrative courts (Regional administrative tribunal and the Council of State) the Court of Account, the Fiscal boards and the Water tribunals. The report does not deal with such specialised jurisdictions.

The architecture of the ordinary judiciary is a classical three-tier court system, with the Court of Cassation at the top, 26 Courts of appeal (plus 3 detached sections), 135 courts of general jurisdiction dealing with civil and criminal cases (Tribunale) and 29 Juvenile Courts, handling cases involving minors. Furthermore, there are 441 Justice of the Peace Offices in which cases are handled by non-professional magistrates with a legal background. The Surveillance offices and the Surveillance courts supervise the execution of criminal sanctions. Prosecutors’ offices, not dealt with in this report, are attached to the Court of Cassation, Appeals, Tribunals and Juvenile courts.

At the end of 2016, 6,396 judges were employed in Italian courts (Table 1), supported by 3,846 giudici onorari (sometimes translated as lay or auxiliary or honorary) judges (Table 2) in charge of adjudicating cases in specific matters1 (hereinafter honorary judges). In 2016, there were about 34,638 units of administrative staff employed at Italian courts, prosecutors’ offices, and at the Ministry of Justice (Table 3).

Since 2009 the overall budget of the Ministry of Justice is less than 1% of the State budget. This, however, include just the ordinary jurisdiction, while the budget for administrative, account and military jurisdiction are managed by other Ministries. A large share of the budget of the Ministry of Justice is taken by prison administration. The ministry does not provide a separate budget for Courts and Public prosecutors’ offices.

1.2 Key functions in the administration of justice

The Constitution designs a dyadic governance structure for the national justice system. Article 110 entrusts the Ministry of Justice with the organization and functioning of judicial services (financial provisions, procurement, human resources including court managers, ICT development and deployment etc.). Hence, the handling of the general budget for the administration of justice2, resource allocation to courts, human resource management for the entire non-judicial personnel, and ICT development are the main functions of the Ministry. The Ministry has also the power to issue

---

1 The giudici onorari are appointed for a limited timeframe (such as four years) and paid for the work done. In most of the cases, this is a side job for a legal professions (mainly lawyers). All the giudici onorari have a legal background except for the “expert judges” that provide technical expertise to ordinary judges. We refer to this group as “honorary judges”.

2 Art 110 Const. However, the leadership of the procurement division, ICT division, and administrative personnel within the Ministry of Justice are held by judges.

F. Contini (ed.) Handle with Care: assessing and designing methods for evaluation and development of the quality of justice. IRSIG-CNR. Bologna Available at www.lut.fi/hwc
by-laws and decrees regulating the matters assigned by the Constitution. This gives to the Ministry a policy-

Table 1: Magistrates in service

<table>
<thead>
<tr>
<th>Role/function</th>
<th>Total</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Magistrates in service (Total)</td>
<td>9.356</td>
<td>4.472</td>
<td>4.884</td>
</tr>
<tr>
<td>• Apprentice magistrates (without judicial or prosecutorial functions)</td>
<td>662</td>
<td>252</td>
<td>410</td>
</tr>
<tr>
<td>• Magistrates non performing judicial functions (at Ministries etc.)</td>
<td>134</td>
<td>63</td>
<td>71</td>
</tr>
<tr>
<td>• Magistrates employed in judicial or prosecutorial offices (Total)</td>
<td>8.486</td>
<td>4.105</td>
<td>4.381</td>
</tr>
<tr>
<td>Judges</td>
<td>6.353</td>
<td>2.890</td>
<td>3.463</td>
</tr>
<tr>
<td>Prosecutors</td>
<td>2.133</td>
<td>1.215</td>
<td>918</td>
</tr>
<tr>
<td>Statutory posts: maximum number of magistrates as established by the Law 181/2008</td>
<td>10.151</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vacancies</td>
<td>1.245</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Table 2: Honorary judges

<table>
<thead>
<tr>
<th>Role/function</th>
<th>Statutory posts (2016)</th>
<th>In service (2016)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expert judges at the Juvenile Court of Appeal Sections*</td>
<td>391</td>
<td>352</td>
</tr>
<tr>
<td>Expert judges at the Tribunal (first instance)*</td>
<td>738</td>
<td>694</td>
</tr>
<tr>
<td>Expert judges at the Surveillance Court*</td>
<td>497</td>
<td>428</td>
</tr>
<tr>
<td>Expert judges at the Water Tribunal*</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>Auxiliary judges at the Court of appeals**</td>
<td>400</td>
<td>375</td>
</tr>
<tr>
<td>Justice of the peace**</td>
<td>3553</td>
<td>1341</td>
</tr>
<tr>
<td>Honorary Judge at the Tribunal (first instance)**</td>
<td>2685</td>
<td>2130</td>
</tr>
<tr>
<td>Honorary deputy prosecutor (first instance prosecutors’ offices)**</td>
<td>2064</td>
<td>1770</td>
</tr>
</tbody>
</table>

*Source: [http://appinter.csm.it/situfigiud/situfigiud.dll/EXEC/0/70CBFF0154008CF7D4DEE4402A&B](http://appinter.csm.it/situfigiud/situfigiud.dll/EXEC/0/70CBFF0154008CF7D4DEE4402A&B)  
Expert judges at the Juvenile Court of Appeal Sections should be properly classified as experts (psychologists, criminologists etc.) providing their professional expertise to the professional judge. The other judges have real judicial functions. Honorary deputy prosecutors carry out limited prosecutorial functions, mainly at the hearing stage.

Article 105 of the Constitution entrusts selection, assignments transfers and promotions and disciplinary measures of judges and prosecutors to the Judicial Council (Consiglio Superiore della Magistratura). This body is the self-governance body of the magistracy (judges and prosecutors). It is composed of 27 members. Sixteen are judges and prosecutors elected by their colleagues, eight are law professors or lawyers with at least 15 years of experience in the legal profession elected by

---

3 The composition and the electoral system of the Judicial Council were changed by statute no. 44 of 28 March 2002. Currently, the 16 judges and prosecutors (magistrati) elected members of the judiciary must be as follows: ten judges, four public prosecutors and two judges or public prosecutors working in the Supreme Court or in the Public Prosecutor’s Office attached to the Supreme Court.
the Parliament. The three remaining components are permanent (ex-officio) members. Each member remains in office for four years, and members cannot be immediately re-elected.

Table 3: Clerks and administrative staff (employed at courts, prosecutors’ office and at the Ministry of Justice)

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory post</td>
<td>43.701</td>
<td>43.702</td>
<td>43.658</td>
</tr>
<tr>
<td>In place</td>
<td>35.625</td>
<td>34.534</td>
<td>34.302</td>
</tr>
<tr>
<td>Staff detached from other administrations (+)</td>
<td>450</td>
<td>51</td>
<td>503</td>
</tr>
<tr>
<td>Staff attached to other administrations (-)</td>
<td>176</td>
<td>16</td>
<td>167</td>
</tr>
<tr>
<td><strong>Total in place</strong></td>
<td>35.899</td>
<td>34.569</td>
<td>34.638</td>
</tr>
</tbody>
</table>


The Judicial Council handles the transfer from one court to another, the judicial function performed, the warrant to an extra-judicial activity (e.g. secondment to a job in the executive branch, teaching, consultant activity for an international organization), the assessment, the election (appointment) as head of a judicial office. During the years, the Council has expanded its functions to various areas, including case assignment criteria, and court organisation.

Table 4: Budget for the justice system for 2016

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>General State Budget*</td>
<td>824.312.752.000</td>
</tr>
<tr>
<td>Justice Budget (0,94%)</td>
<td>7.743.034.000</td>
</tr>
<tr>
<td>Justice (courts and PPOs)</td>
<td>4.689.669.000</td>
</tr>
<tr>
<td>Prisons administration</td>
<td>2.760.284.000</td>
</tr>
<tr>
<td>Juvenile and community justice</td>
<td>145.266.000</td>
</tr>
</tbody>
</table>
| Other                  | 147.815


Both judges and prosecutors belong to the magistracy (magistratura), and as members of the same body they are both called magistrates (magistrati). Hence, public prosecutors are part of the judiciary and do not have any tie with the executive. Unless specifically mentioned, the report deals exclusively with judges and courts.

---

4 These members are elected at a joint session of the Parliament with a qualified majority of three-fifths of all the members (about 915 people), or a majority of three-fifths of the voters after the second ballot.

5 Permanent (ex officio) members of the Judicial Council are: the President of the Republic, the President of the Supreme Court of Cassation and the Chief (called General Prosecutor) of the public prosecutor’s office attached to the Supreme Court. The President of the Judicial Council is the President of the Republic, who is elected by the Parliament for a seven year term, but for the day-to-day operations of the Council, the Constitution provides for the election of a vice-president from among the members elected by the Parliament. Art 104 Const.

6 Art 104 Const.

7 The increasing and complex functions carried out by the Council have also increased the number of employees of the Council that are supposed to be about two hundred (this data is not public).

Local judicial councils are decentralised self-governance bodies of the judiciary placed in each Court of appeal district. Their composition entails two ex officio members (president of the Court of Appeal, Chief of the prosecutors’ office attached at the court of appeal), magistrates elected by their colleagues, lawyers appointed by the National Bar Associations, and University professors appointed by the National University Council⁹. The number of the components is established considering the number of magistrates working in the judicial district. When decisions or opinions about non-professional judges, have to be taken, non-professional judges are admitted at the meeting of the Local Councils. The functions of the Local Judicial Councils are consultative. They report back to the (National) Judicial Council on various subjects: evaluation of judges and prosecutors, evaluation of candidates for the appointment to managerial position, case assignment, and monitoring of local courts. Hence, their role is relevant for the purposes of this work (see Sections 3 and 4). A body with similar composition and function is attached at the Court of Cassation. Both bodies express opinions and are not entitled to take decisions that remain under the competence of the (national) Judicial Council.

Other bodies with functions in the administration of Justice - The National Bar Association (NBA) (Consiglio Nazionale Forsense) is the professional body in charge of the self-governance of Italian lawyers. The members of the CNF are elected by the lawyers and the body is formally attached to the Ministry of Justice as independent structure. The law 247/2012 has reformed organisation and functions of the NBA in various areas. Relevant for the purpose of this report are the institutional representation of the Bar, and relations with the Minister of Justice and the Judiciary in policy making. The law states that the NBA, “at the request of the Minister of Justice, [issues] opinions on draft laws that, even indirectly, affect the legal profession and the administration of justice””. This role is supported by a newly established Observatory on jurisdiction (Osservatorio permanente sulla giurisdizione), which “gathers data and prepares studies and proposals to encourage a more efficient administration of justice”.

Local and regional administration – Until 1 September 2015, facility management was in charge to the municipalities in which courts are located. The Ministry of Justice then reimbursed the costs paid by municipalities for facilities. This created several problems, among which very different cost paid for similar or identical services (see section 2.5). At the end of 2014, the Parliament passed a bill that transfers facility management to the Ministry of Justice,¹⁰ cutting the old ties of judicial offices with local administrations.

At the same time, other forms of collaboration between the justice system and local administrations were blooming all over the country. The attempt to co-finance the strapped budget of courts and prosecutors’ offices with resource made available by local administrations is the common trait of such initiatives. In a nutshell, through various forms of “local agreements”, sometimes called “alliance for justice” (patto per la giustizia), local and regional administrations started to provide additional resources (grants for trainees, staff, or equipment). Two recent circular letters of the Ministry of Justice try to regulate this rising phenomena, providing guidance to avoid conflicts of interests and grant the independence of the local justice system and establishing the need of authorisation by the Ministry before the signature of the agreement¹¹.

---

⁹ Art. 9-16 del d.lgs. 27 Gennaio 2006 n. 253, as changed by art. 4, law 111/2007.
¹⁰ Regulation implementing Article. 1, paragraph 530 of the law 190/2014.
¹¹ Circolare 8 novembre 2016 - Convenzioni stipulate ai sensi dell’art. 1, comma 787, L. 28 dicembre 2015, n. 208 (cd. stabilità per il 2016). Necessità di una preventiva autorizzazione. Circolare 13 ottobre 2017 - Convenzioni con soggetti diversi da quelli di cui all’art.1 comma 787 L. 208/2015
Administrative Courts – As a general rule, most of the deliberations of the Ministry of Justice and of the Judicial Council’s are administrative decision. As such they can be appealed at the Administrative Court in Rome (and at the Council of State as second instance court). Such option is often followed in the case of appointment to managerial or quasi-managerial positions (head of courts or head of section, chief or deputy chief prosecutor). Even if the percentage of appeal on such decisions of the Council decreased from 67% in 2010 to 23% in 2016\(^{12}\), the administrative judges, and the criteria they have adopted, play a significant role in the appointment to such positions.

1.3. Current issues in the administration of justice
In Italy, the question of quality of justice is strictly connected with timeliness of judicial proceedings and with the use of the limited available resources. This because, with a high number of breaches of Article 6(1) of the ECHR due to the delay of judicial proceedings,\(^{13}\) and a time to disposition of 952 days in first instance civil proceedings, 1,061 in appeal, and 1,222 in Cassation, public policies and debates are focused on efficiency and timeliness. In this context, other dimensions of the quality of justice remain in the background. The delay issue may affect also the legal quality and the treatment of the public. The Court of Cassation is charged with an unreasonable number of incoming cases making it difficult for the court to have a stable and consistent decision making (“isole di ordine”) as recently mentioned by the First President of the Court quoting Taruffo\(^{14}\). Furthermore, due to the slow pace of proceedings, when a new legal framework has to be applied, the lower courts (and the courts of appeal) have to adjudicate cases without knowing the jurisprudential orientation of the Cassation for a number of years. This lack of consolidated jurisprudence can further raise the entropy of the system. The current litigation rates can be reduced by a more consistent and uniform judicial decision-making, and the work to increase judicial consistency could result in a reduction of the number of recourses, with a positive impact on time to disposition: a higher legal quality can reduce time to disposition.

The backlog and the pressure to close a higher number of cases in a shorter time push the judges in difficult dilemma (or tri-lemma) between productivity, legal quality (time to study the case and write well motivated judgements) and treatment of the parties (time to listen to the parties). In two recent training events organised by the School of Magistracy attended by one of the authors of this report\(^{15}\) the anxiety and outcry about the current working conditions and the embedded dilemmas were the most common reason of intervention by judges. However, the three key dimension of the quality of justice – legality, effectiveness and democracy - are neither independent nor necessarily opposed one to each other\(^{16}\). As the case of the Observatories and other innovative practices demonstrates (see Section 3), some approaches can work simultaneously to improve effectiveness, legal certainty, treatment of the parties, and procedural efficiency (effectiveness).

Last but not least, the overall analysis about the quality of justice in Italy, and the policies implemented to improve some of their pillars, are strongly influenced by the governance structure of the judiciary. Any judicial policy, and almost any decision in the areas of governance or

\(^{12}\) http://www.csm.it/documents/21768/137951/Analisi+sui+conferimenti+di+incarichi+di+direttivi+e+semidirettivi/f8af57b2-d4e2-4c21-9ebf-8515cf0634a


\(^{15}\) The two courses involved 180 judges and prosecutors. Add names of the training courses etc.

organisation requires the collaboration of the Ministry and of the Judicial Council, institutions with different constituencies, priorities and strategies. Hence, the much needed alignment between reform strategy and governance decision is often problematic. Not surprisingly, some of the innovative practices stem from the willingness of judges and lawyers to find local solutions at problems that – for various reasons - were not resolvable at the central level.

2. Classical judicial evaluation arrangements

2.1. Introduction

The evaluation venues of the Italian justice system are multifold, and described in depth in section 2.2, 2.3 and 2.4. However, before discussing such a key arrangements, it is worth focus briefly on other evaluative forms: judicial review at the level of the Court of appeal and at the Court of Cassation, the checks of the Judicial Inspectorate, and some forms of complaint mechanisms, briefly discussed in this section. In this way, the report provides a comprehensive view of the multifold evaluation venues currently in place.

The proceedings heard by the Court of appeal and the Court of cassation are two classical forms of quality evaluation – As in any European judiciary, the Courts of appeal and the Court of cassation have the institutional functions to check the legal quality of the judgments. As noted in Table 5 these two courts suffer for huge backlog and long time to disposition. This affects their effectiveness in dispute resolution and their role as builders of legal certainty.

With the current time to disposition (see Table 5) it takes an average time of more than five years from the filing of the claim at first instance court to judgment at appeal level, and almost ten years from the first instance filing to a decision by the Court of Cassation. The impact of such pace of litigation becomes even higher when cases deal with new legislation: first instance judges, but also lawyers, parties, and generally speaking citizens operate for various years without knowing the orientations of their court of appeal, and for many more years without a judgment at the Court of Cassation. It can be easily deducted that this state of affairs may affect reversal rates.17

Table 5: Time to disposition in civil cases

<table>
<thead>
<tr>
<th></th>
<th>Time to disposition for each instance (days)</th>
<th>Cumulative Time to disposition (days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First instance</td>
<td>952</td>
<td>//</td>
</tr>
<tr>
<td>Appeal</td>
<td>1,061</td>
<td>2,013</td>
</tr>
<tr>
<td>Cassation</td>
<td>1,222</td>
<td>3,235</td>
</tr>
</tbody>
</table>

Source: Ministry of Justice

The official statistics of the Ministry of Justice does not publish data on appeal and reversal rates. A recent research has published comprehensive data for the district of the Court of Appeal of Bologna (one of the largest districts in Italy). For this court, the appeal rate is around 30% of first instance decisions closed with sentences18. The reversal rate (or overturn rate) is also around 30%, evenly split between partial and complete reversal. Data shows differences between the various tribunals, with reversal rates varying from 25% to 35%.

The Court of Cassation is the apex of the court system and has the institutional mission to lead and check the proper application of the law. Its task is to judge the interpretation of the law made by the

---

17 With reversal rate we refer to the percentage of judgements of a lower court somehow changed by the higher court (appeal or Cassation).
lower courts. Differently from many other Courts of Cassation or Supreme courts a permission to appeal is not required and filters have been introduced just recently for civil cases. Indeed, based on art. 111 of the Constitution, “It is always possible to appeal to the Court of Cassation for violation of the law against any sentences and against measures affecting personal freedom”. The stare decisis principle is not in place and the decision of the Court is binding just for the case decided. However the authority of the Cassation, its institutional position as the apex of the judicial pyramid, and in some cases clear jurisprudential orientations should ease a consistent application for interpretation of the law. Furthermore, consistent jurisprudence by the Court reduces complexity and uncertainty for all those working in the system, with relevant benefits for the judges working in lower courts. However there are doubts about the capacity of the Cassation to build a consistent caseload, as noted above.

Inspectorate - The Judicial Inspectorate of the Ministry of Justice provides another classical venue of quality control. Its mission is to ascertain if the organisation and the procedures followed at court level are in line with the current regulations. The role is therefore limited to formal checks in areas like privacy protection (if the case file are accessible just by staff and case parties, if the name or the parties is erased form case listing etc.), judicial expenses, and execution of penalties (law n. 1311/1962). Despite the possibility to deserve a more comprehensive approach to the evaluation and improvement of the quality of justice, the work of the Inspectorate remains largely focused on checks of legality.

Complaint mechanisms – Any person is free to send a complaint to the bodies in charge supervising the judiciary, being the President of Courts, the Ministry of Justice (in charge of disciplinary investigations and inspections), and General Prosecutors’ Office attached at the Court of Cassation (in charge of disciplinary investigation) as well as to the Judicial Council that decides in judicial discipline matters. However, there are neither specific regulations nor pre-established procedures set on how complaints should be handled. The subject who receives the complaint can dismiss it or proceed with an investigation or with an inspection, or start a disciplinary procedure. The person who filed the complaint has no right to be informed about the consequence of the complaint. The procedure becomes formalised and takes the features of an official investigation just when the complaint triggers an inspection, or a disciplinary proceeding. Based on information collected19, the General prosecutor’s office is now informing the complainer about the effects triggered by the complaint.

2.2. Recruitment and initial evaluation of judges
2.2.1. Selection bodies
The recruitment of Italian judges is based on a bureaucratic model: periodical public competitions between law graduate students, based on three written exams and one oral examination. The candidates are mainly tested looking at the knowledge of the law on the books. Previous professional experience is not taken into account in the selection process. As a result, apprentice judges have been for a long time young law graduates without previous professional experiences; hence, professionally trained exclusively within the system. In cases like this, “the process of professional socialization, ripening and development of the professional skills of magistrates will take place and be governed entirely within the judicial system”.20 This could lead to an increasing the separation between the magistracy (judges and prosecutors) and the lawyers.

19 Personal communication with G. Di Federico, January 28, referring of the new approach of the General Prosecutor Office.
In order to participate to the competition, candidates must first have basic personal features: political and civil rights (typically the right of passive and active electorate), be of “irreprehensible conduct”, and having failed to pass the magistrates’ recruitment competition for three times. They must also have a law degree coupled with a post-graduate degree in law. This double requirement is due to have better prepared candidates, but also to reduce their number that, as discussed below, is always very high. Alternatively, the post graduate degree can be substituted by the fact of being member of the Bar, or being a public manager for at least five years, or an honorary judge for at least 6 years, or have positively concluded an internship at judicial offices or have done eighteen month of professional training at the State attorney offices. The Judicial Council assesses these pre-conditions. The alternative options to the post-graduate degree were introduced in 2006, and 2014. This may lead to a change in the traditional profile of apprentice magistrates who until a few years ago had typically no previous professional experiences. As a consequence of this changes, the majority of newly appointed judges are not in the twenties – as it was in the past – but tend to be in the thirties.

The competition should take place every year. The evaluation commission, appointed by the Judicial Council is presided by a senior magistrate (judge or prosecutor), and composed by twenty magistrates, three lawyers and five law professors. The Local Judicial Councils do not have a role in this process, since the selection is centralized. The university professors are chosen by the Judicial Council among a list prepared by the National University Council, and Lawyers from a list drafted by the NBA. The chairman of the committee should be chosen from among judges who have passed their sixth professional appraisal (out of seven), the other magistrates must have passed the third professional appraisal. They are selected on the basis of a public call made by the Judicial Council. Usually, the number of magistrates available is much higher than those selected.

The number of positions available range from 200 to 360 per year. The number is established considering the number of vacant posts and the expected number of retirements in the following 4 years (law 111/2007). However, also other factors, particularly budget constraints are certainly considered. In the last competition (issued in October 2015), there were 16,144 candidates. A total of 5,991 candidates participated to the first written test. At the end of the three days of tests just 2,895 candidates submitted the three written exams. All the papers (3 per each candidate) were, in spring 2017, under the scrutiny of the evaluation commission. The numbers of the examination make clear how demanding the evaluation can be. In the previous competition (2014 for 240 posts), about one third of the candidates which submitted the three written exams passed at the oral stage. Also in this case, the selection was not over in spring 2017. It can happen that the number of successful candidates is lower than the number of available posts. Once the Evaluation commission has finished its work and issued the rank of the candidates, it transmits the full dossier to the Judicial Council. Then, the Council check the correctness of the evaluation process, and approves the list of the winners of the competition.

22 Introduced by the Decree-Law 90/2014, converted into Law 114/2014; The rules of the competition are published on the official gazette. The last competition (GU n.90 del 15-11-2016)
23 Sapignoli, M. 2009. Qualità della giustizia e indipendenza della magistratura nell’opinione dei magistrati italiani, Padova, CEDAM.
2.2.2. Selection process
The three written exams deal respectively with civil, criminal, and administrative law. The oral examination deals with 11 subjects that are almost exclusively of legal nature.\(^{27}\)

The features of the selection process make clear that the candidates are tested almost exclusively on their legal knowledge. Practical skills are not tested. There is no room to check their mental attitude towards the job, their interpersonal skills, relational capacity hence the attitude to treat parties properly or to team-work that are becoming essential requisites of contemporary work in courts. The attempt made in 2004 to include psychological tests in the selection process has been abandoned after harsh critiques. Now the issue is just occasionally debated on the media. At the same time, the large number of candidates involved in the selection process, would make such kinds of evaluations or superficial (as a self-administered test) or rather expensive and time-consuming.

**Minorities** - In addition to the national selection, there are special competitions to recruit judicial offices in the autonomous province of Trento and Bolzano, where German and Ladin are official languages, and a special status is granted to the autonomous provinces. The structure and feature of the competition are identical to those of the national one but is open just to Italian citizens belonging to one of the three ethnical groups located in the autonomous province (Italian, Ladin or German). The exams can be done either in Italian or German, but the bilingualism of the candidates must be ascertained. Similar arrangements do not protect other linguistic minorities. This limitation, however, is not criticized probably because such linguistic minorities are fully bilingual. Religion, ethnicity and other diversity issues are not debated yet. This could be explained by two reasons. First, the Italian society has been rather homogeneous until few years ago, and second, the recruitment process is designed to be purely meritocratic and neutral in respect to any kind of diversity. In the near future, however, it is reasonable to expect the request of affirmative actions to keep the composition of the judiciary representative of an increasingly diverse society.

2.2.3. Selected candidates
As noted above, previous professional experiences are not particularly relevant in the selection process. Nevertheless, since the age of the winner of the competition is rising, it is possible that a growing number of magistrates have previous professional experiences. Recent socio-demographical profiles are not available.

Generally speaking, the data show a proper gender balance of the Italian judiciary: 52% are females and 48 males. At the same time, males are still the majority in managerial position as Court president (74%) and quasi-managerial roles as presidents of section (64%)\(^{28}\). Since 1996, data shows that women are more successful in the competition for the recruitment. Since 2002, the average age of recruitment is around 31-32 years.

2.2.4. Training and internship of apprentice judges
The initial training takes eighteen months (Article 18 Legislative Decree N. 26/2006). During the training, a session of six months is held at the School of the Magistracy, while the other 12 months are carried out doing on-the-job training at judicial offices. The two sessions are, in turn, divided into a generic training phase and targeted training (based on the deepening of the subjects and

\(^{27}\) The subjects are almost exclusively legal: roman law, civil procedure, criminal law, commercial law, labour law, commercial and bankruptcy law, labour and social security law, EU law, international law and ICT applied to judiciaries, Italian judicial system and a basic test in a foreign language (art. 1 legislative decree 160/2016).

know-how needed at the office of the first appointment). The Judicial Council regulates the content of the initial training with annual guidelines\(^{29}\) and other prescriptions\(^{30}\).

The “general training” at judicial offices is split into two different internships: the first with courts (four months) the second at prosecutors’ offices (two months). The remaining six months of targeted training are spent in an office corresponding to the office of the first appointment. Such on-the-job training is complemented an integrated by seminars on various topics held at national and local level. While during the general training on the job the apprentice magistrates help and assist other judges, during the targeted training they start to handle and decide their own cases. Analogously, the training at the School of Magistracy is split into two different steps: four months of general training and two of targeted training. During this period, tutors play an active role providing teaching assistance to the apprentice judges.

The different training activities carried out by the apprentice magistrate at the school, at courts, and prosecutors’ offices are variously assessed, and a final evaluation report is transmitted to the judicial council (art. 22 of the Decree). On its turn, the Council decides if the apprentice magistrate can get the judicial functions. The decision is taken considering the evaluation reports and "every other relevant and objectively verifiable element eventually acquired". In the event of negative evaluation, the trainee has to undergo an additional period of training, at the end of which a new evaluation is made. In the event of a second negative evaluation, the trainee is dismissed. The analysis of the records does not reveal any case of dismissal or prolongation of the training due to negative evaluation. However, this phase can be used to identify shortcomings of the apprentice magistrates.\(^{31}\)

### 2.2.5. Debate on possible reforms

The debate and the data available don’t shows discrimination based on gender, race, sex, religion, political or other criteria. There are critiques about the malfunctioning of the selection procedures, pointing to cases of cheating\(^{32}\). The phenomenon is not connected to political or other partisanship, and its scale has not been ascertained. However, just the suspect of cheating does not contribute to strengthen the much-needed perception of high moral standing of the candidates.

A recent change, implemented by the legislative decree n. 168/2016, reduces the duration of the initial training for magistrates appointed after the competitions launched in 2014 and 2015. For these trainees, the length of the training was extraordinarily reduced to twelve months (instead of 18). In this case, the training is planned for two months, not necessarily consecutive, carried out at the School of the Judiciary and ten months, non-consecutive, made at judicial offices. The lack of judges and prosecutors working in the offices (see the question of staff posts below), the reduction of the maximum retirement age of magistrates, and the delays in court proceeding\(^{33}\) pushed the legislator to implement such change that raised various critiques. The impact of this decision on the professional qualification of judges and prosecutors and, hence, on the quality of justice cannot be ascertained yet.\(^{34}\)

\(^{29}\) http://www.scuolamagistratura.it/images//2017/Mot/C_C_Form_Iniziale/DM_2017/Linee%20guida%20CSM%202017.pdf


\(^{33}\) Interview to the vice president of the Judicial council http://www.askanews.it/regioni/toscana/legnini-csm-ridurre-tempi-tirocinio-magistrati_711797227.htm

\(^{34}\) See above particularly Quaderni giustizia.
One of the experts attending at the validation meeting in Utrecht raised another issue. The present recruitment system forces candidates to focus their efforts on the study of legal subjects for a very long time. It follows that, often, when they are recruited, they have lost the “fresh energy” that is much needed for newly appointed judges. “The preparation process for the national competition is not only long but also costly, because the large majority of candidates passes through private schools that have developed training courses targeted on the competition but not on the future profession. As a consequence, access to the Judiciary can be afforded only by a part of the law graduates and therefore by a part of the Italian society.” For this reason, the National magistrates association proposed to go back to the previous system, so to recruit younger magistrates. Furthermore, despite the good technical knowledge of the newly selected magistrates, they tend to be weak in those soft skills as ethics, judicial resilience, communication skills, time management capacity and personal leadership. Such competences have to be developed at the initial training stage because they don’t get these qualities before

2.3. Continuous evaluation of judges
2.3.1. Evaluation bodies
The Constitution assigns the professional evaluation of judges (and prosecutors) to the Judicial Council (art 105). As a consequence, the Ministry of Justice is not involved in the exercise. Given the number of magistrates to be evaluated, the largest part of the work is done by the Local Judicial Council (or, for Supreme Court judges, by the Supreme Court Steering Council). The Presidents of courts (and chief prosecutors) contribute to the evaluation preparing a report on the magistrate that will be evaluated by the Local Judicial Council. The roles of the different subjects will be better exposed when describing the process.

2.3.2. Evaluation process
Judges – Since the end of the sixties and until reforms implemented between 2005 and 2007, the career of judges was de facto based only on seniority, with four different ‘steps’ along the professional life of judges and prosecutors.

In 2005-7, various legal changes re-introduced an evaluation process for the judges (and public prosecutors). The harsh political debate that lead to the current evaluation schema falls outside the scope of this work that focuses only on the functioning of the current mechanism. Now a professional evaluation mechanism is in place. Implementing the law 111/ 2007, the Judicial Council has developed a complex scoring systems to evaluate the performance of judicial officers (judges and prosecutors). The mechanism is coupled with a salary increase, but – strictly speaking – is decoupled from career advancements. Indeed, the salary is not connected to the position of the judge in lower or higher courts. For this reason, the system must be understood as professional evaluation mechanism. The ratio of the reform was to assure stakeholders and citizens that there is professionalism in the judiciary so to increase its legitimation.

The assessment takes place every four years. The general evaluation schema is identical for any magistrate working in courts, prosecutors’ office, or being employed in non-judicial functions (at a Ministry, in an international organisation, or being member of the parliament). However, there are minor differences in the procedure to accommodate the peculiarity of the role performed by the subject that is evaluated.

Sources of information - The professional evaluation is based on multiple indicators and various sources of information.

More particularly:
   a) Information available at the Judicial Council and at the Ministry of Justice;
   b) The self-evaluation made of the magistrate;
   c) Case-load statistics
   d) A sample of judicial writings and decision (including minutes of hearings and sentences, not less than 20);
   e) Judicial appointments (i.e. the functions performed) and extrajudicial activities (i.e. side jobs) performed by the judge/prosecutor
   f) The reports of the heads of the offices, which must take particular account of the specific situations represented by third parties (such as complaints or inputs received by the Bar36).

Judicial writings are evaluated considering the clarity, completeness and synthesis in the exposition of factual and legal issues in judicial documents and decisions, and their appropriateness in respect to the procedural or investigative problems dealt with in such documents. This is ascertained through the examination of twenty judicial documents randomly selected and provided by the judge for the evaluation. The outcome of judicial decision such as reversals of sentences or of precautionary measures not confirmed by the appeal body are evaluated just in exceptional cases specifically reported by the President of the Court37.

Criteria - The data and information collected through the different channels mentioned above are evaluated against a pre-established set of criteria defined by the law and further detailed by the Judicial Council. According to the law,38 the assessment has to take into consideration three fundamental criteria: independence, impartiality and balance. The circular note of the Judicial Council39 defines the three criteria as follow. Independence must be understood as the performance of judicial functions without any conditioning, relationship or constraint that may affect or limit the way in which the judicial authority is exercised. The impartiality is identified as the correct and impartial attitude of the judge against all the procedural subjects. Balance (or equilibrium) is the exercise of the judicial function sense of measure, free from ideological, political or religious opinions and always grounded on objective, concrete and verifiable facts). These criteria are considered pre-requisites to the fulfilment of the judicial function; therefore, they must be rated as “nothing to remark” or the evaluation is immediately negative.

Then, four other criteria have to be assessed: professional skills (capacità), productivity (laboriosità), diligence (diligenza), and commitment (impegno). For each criterion, the Council has drafted a detailed definition. Professional skill is understood as the magistrate’s legal knowledge and by the fact of being up-to-date in terms of law, doctrine and jurisprudential changes. Professional skills should also take into consideration the management of hearings as well as the capacity to coordinate personnel and the relationship with other judicial offices.

---

36 There are not institutionalised channels to collect such complaints that have however to be considered by Court Presidents. Other inputs provided by lawyers about the performances of the judge cannot be considered in the evaluation process.
38 Law 111, 30 July 2007, art. 11/2, then the various very detailed Circular notes of the Judicial Council to implement it, see in particular Circular note n. 20691.
**Productivity** is defined as the number, quality and timeliness of cases dealt with by judges taking also into consideration their specific working conditions (e.g. maternity leave, administrative tasks, complexity of the case etc.).

**Diligence** takes into consideration the days spent in the court office, punctuality during the hearings, the timeframes set for writing judgments and attendance at internal meetings.

**Commitment** is supposed to be assessed based on the availability of judges to make substitutions, and attend at training classes organized by the School of the Magistracy.

The Judicial Council evaluates also the magistrates that do not perform judicial functions, and are temporary suspended from the judicial role (e.g. they are attached to a Ministry or are members of the Parliament). In such case, the assessment is based on a report drafted by the organization in which the magistrate is employed, and is based on the same criteria used for judges and prosecutors.**40** The evaluation, in this case, can be just ritualistic, and magistrates-member of the parliament as well as those temporary employed by other institutions regularly pass the evaluation.

The role of court president as evaluator - The reform gives to the **President of the Court** a role in the evaluation of judges. As mentioned, the President has to draft a report based on a pre-established form approved by the judicial council. The form encompass the four area of performance mentioned above and provides several indicators to be filled in. Box 1 provides a summary translation of the form. This new function has raised the importance of the role of the Head of court that before the reform was, in most cases, a primus inter pares with mainly function of representing the office. Discussing the new role of court president it must be stated that, in the largest majority of cases, they do not interfere with the handling of cases and that internal judicial independence is not at stake. However, Italian judges are very independent also in purely organisational terms. Using a well-known classification of court culture**41**, the Italian courts would have been labelled as “Autonomous” in which [...] “Centralized leadership is inhibited as individual judges exercise latitude on key procedures and policies. Limited discussion and agreement exist on court-wide performance criteria and goals”.

Hence, court presidents may have difficulties in organising offices in which the key professionals can be reluctant to follow basic organisational rules. This attitude, that was very strong ten or fifteen years ago,**42** is now getting weaker, as the widespread adoption of the Civil Trial Online – that imposes significant functional and organisational constraints –demonstrates.

Now various indicators (see in particular section 3) point to the fact that Italian courts are between the communal networked models. Communal since “Judges and managers [start to] emphasize the importance of getting along and acting collectively” networked because as the Common Praxis and the Best practice demonstrate, there are “Efforts to build consensus on court policies and practices extend to involving other justice system partners, groups in the community, and ideas emerging in society [...]”**43**

We checked with a Court President with a long experience in the role (and former member of the Judicial Council) the effects of the change upon court functioning and judicial behaviour.

**40** Art. 11/16 Legislative decree 160/2006.


The president argued that the introduction of the evaluation report does not affect very much the behaviour of the judges and of the President, as well as their relationships. However, he noted that the judges who are evaluated to apply for a managerial position, and that for this reason need the specific evaluation report of the Court president (see below), are more available to collaborate to the organisation of the court.

Box 1: Form for judicial evaluation to be filed by the head of courts (selected issues)

[omission]

C Evaluation of the head of court regarding the parameter of “Independence, impartiality and balance”
- Absence of critical profiles
- Profiles that show defects or critical (to be completed only if you deem)

D Evaluation made by the Court President in respect to the "capacity"

D.1
a) Judicial writings
- Technical drafting capacity
- Use of ICT
- Use of updated jurisprudential references and knowledge of updated jurisprudence
b) Investigation techniques:
- Fairness
- Use of updated jurisprudential references and knowledge of updated jurisprudence

D.2 Anomalies emerging from reversals decisions made by superior courts [just in relevant cases]

D.3 Proper conduct (and/or participation) of the hearing

D.4 Level of the contributions [engagement] in the Chambers

D.5 The organisational capacity

D.6 The ability to interact in an effective, authoritative and collaborative way with colleagues and offices within the court

E. Evaluation made by the Court President in respect to the "effort" (laboriosità):

E.1 On “the level of satisfaction about the number of procedures and processes handled during each year by the judge. This has to be done considering the caseload, the incoming cases, the complexity of procedures dealt with by the judge”;

E.2 Compliance with the standard (average) caseload definition (identified in accordance with Chapter V letter. B, Circular prot. 20691 8 October 2007))

E.3 Timeliness of judicial proceedings (according to the findings under letter. B, Chapter V. Circular prot. 20691 of 2007)

E.4 The cooperation offered for the good court performance

F. The evaluation made by the Court President in respect to the "diligence" of the judge:

F.1 Compliance with the commitments, the number of hearings and the time for drafting and filing of the judicial decisions or, in any case, for the performance of judicial activities:

F.2 Attendance at the meetings [art. 47/4 OG] for the analysis of new laws and for the knowledge and the evolution of law

G. Evaluation made by the Court President in respect to the "commitment":

G.1 The availability for replacements or the engagement in working group in order to solve problems of organizational or legal nature

G2 Availability to participate or actual participation to courses organized by the School of Magistracy.

The evaluation process - The dossier, collecting all the data and information is first discussed at the Local Judicial Council attached to the court of appeal. For this specific function, the composition of the board is restricted to judges and prosecutors. Lawyers and law professors are not
entitled to attend (see below). Then, the dossier is transmitted to the (National) Judicial Council where an internal Commission makes the final assessment.

The performance evaluation mechanism does not seem to be very harsh in filtering poor performing judges (and prosecutors). In the period October 2008- July 2010, 2300 judges (and prosecutors) have been examined: 2297 got a positive evaluation, 3 a “non positive” evaluation, and no judges got a “negative evaluation”\textsuperscript{44}. The data recently published by the Judicial Council provide a slightly more severe picture. Out of a total of 16,097 magistrates evaluated in between 2008 to 2016, the negative evaluations have been 104, the non-positive 183, and the positive 15.810 (98.22\%)\textsuperscript{45}. Also in this case positive evaluations occur in more than 98\% of cases.

The difference between “non-positive” and “negative” is mainly in the consequences of the evaluation. “Non-positive” evaluations are mostly side effects of disciplinary sanctions\textsuperscript{46}. In case of “non positive” evaluation, the judge must be reassessed after one year. In case of “negative evaluation”, the assessment must state if the judge has to attend training courses and if specific judicial or managerial functions are precluded until the following evaluation. Such evaluation must occur two years after the first one. If also this second evaluation is negative the judge (or prosecutor) is dismissed.

The lawyers do not have a specific role in the evaluation of judges and prosecutors. The National Bar Association asked to acknowledge the role of the lawyers in the evaluation process, so far without success. Also, the circular letter of the Council made clear how the different criteria should be evaluated. Just to make some examples, it precise in which cases statistical data should be considered, in which cases the report of the Court President is relevant, and in which other cases the self report of the judge should be considered.

2.3.3. Focus on the evaluation of judgements and legal writings

Judicial argumentations - The codes of civil and criminal procedures provide the specification of the content of the sentence\textsuperscript{47}. Art. 118(1) of the Implementing rules of the Code of Civil procedure establishes that the reasons (justification) of the judgment require the summary exposition of facts and juridical reasons supporting the decision, also with reference to jurisprudence. For the cases discussed and decided in chamber, the judicial decision must include a summary exposition of the facts and of the laws and legal principles applied. The article states also that references to legal doctrine must be omitted.\textsuperscript{48}

In Criminal cases, the code of Procedure (Art. 546) establishes that the sentence must include the charges, the statements of the parties and the concluding requests, a summary exposition of facts and relevant laws, the evidence supporting the decision, and the reasons why evidences to the contrary are not reliable, and the disposition with precise reference to the laws applied. Also in this case, references to legal doctrine must be omitted.

\textsuperscript{45} \url{http://www.csm.it/documents/21768/137951/Valutazioni/06706f39-ce6a-432c-bea2-45726330b9a4}
\textsuperscript{46} Giustizia, M. D. 2017. Relazione del Ministero dellasull’amministrazione della giustizia anno 2016.
Academic literature regularly discusses the judicial reasoning and the jurisprudence of the Court of Cassation focusing on various procedural and substantive issues. Also various judges and prosecutors publish books, handbooks and articles on a variety of legal topics somehow connected with judicial reasoning, with procedural issues, or with the interpretation of the substantive laws. This is the normal dialogue between academics and practitioners. The judges or prosecutors, who authored such academic or professional publications, can ask to include them in the periodic professional evaluation. However, the effects of such dialogue on judicial practice are difficult to map out, also because judicial decisions cannot provide reference to doctrine.

A different kind of dialogue, often harsh, is the one going on since many years between justice and the political system that will not be discussed in this chapter. In this dynamic, media played a major role in supporting the arguments and the interests of the contenders: someone supporting judges (or some “judicial groups”) and their political allies, others endorsing the other political groups. Not surprisingly, in this context, specific judicial decisions are subject to harsh criticisms, largely of partisan-political nature. This is the case when politicians, businessmen, or, more generally, persons with a high public profile are involved in the proceedings, but also when judges decide in areas that are at the same time poorly regulated and highly sensitive such as euthanasia or artificial insemination. Furthermore, usually critiques rise immediately after the communication of the court decision, and not when the motivation of the decision - with the judicial reasoning - is made public some weeks later.

With few exceptions, court presidents are not particularly active in the promotion of the quality of the jurisdiction, especially, the consistency in judicial decision-making. As noticed above, they are mainly entrusted with the management of available resources and in attracting new ones. Furthermore, given the strong emphasis on individual independence, steps in this direction could be considered with suspicion and scepticism. Actions towards a more consistent judicial decision-making are sometimes taken at the level of the court chambers (or sections), through sentencing meetings with the judges assigned to the chamber as established by the Italian Justice System Law. More in detail, Art. 47 quarter states that the President of the Chamber promotes the exchange of information and experiences among the judges of the same chamber. “Exchange of information” may mean different things. As stated by various judges, practices range from formal bureaucratic meetings to in-depth assessment of current legislation. The later are opened also to lawyers and legal scholars to identify consistent interpretations and share sentencing schemas.

The topic, however, has not attracted large interest nor led to the development of specific methods to improve consistency. A remarkable exception is the work done by the “Osservatori per la giustizia civile” (Civil Justice Observatories – more details Section 3).

2.3.4. Consequences of the judicial evaluation on the quality of justice

The connection between performance evaluation and the judicial career is twofold. On the one hand, a positive mark is needed to get a salary increases and to reach the career level required to apply for a position with a higher court or a managerial position. On the other hand, results of the judicial evaluation are just loosely coupled with transfers to higher offices. More in detail, horizontal and

---


vertical transfers are based on calls open to all the judges with qualification (rank) required. The judicial council lists the candidates also using the results of individual evaluation. However, since the “mark” is “positive” for the largest majority of the candidates (i.e. there are no points, marks or grading are assessed as ‘very positive’, ‘excellent’ etc.), the evaluation exercise does not help to differentiate judges on the criteria of merit. Hence, horizontal and vertical transfers remain almost exclusively a matter of seniority. A question still open when writing this is whether the complex judicial evaluation exercise should inform more precisely on key managerial decisions as the appointment of judges to a different office.

As noticed during the validation meeting, the system is mainly a bureaucratic exercise. The “self-evaluation report” is a very important tool that should be used by the judge for self-reflection and personal improvement, but it is conceived as a component of larger bureaucratic mechanism. It has not been used for learning or professional development. Furthermore, the current system lacks of arraignments that are appropriate to improve the quality of the court services such as peer or external reviews.

The assessment is quite comprehensive. It includes both efficiency and legal quality while the opinions of the parties are not properly considered at individual evaluation level. A first summary assessment of the effects of the performance evaluation on quality of justice identifies two major consequences. First, the massive effort made to evaluate judges does not produce information useful (or used) to appoint judges to higher positions. Second, the introduction of a rather comprehensive evaluation mechanism and the role assigned to the court president in evaluating the judges has contributed to a change of the attitude of Italian judges. They are now more committed and cooperative, aware of the constraints that are present in complex organisations. This last consequence is enforced by the special evaluations provided when judges apply to managerial positions. The previous organizational setting was often defined by scholars as organized anarchies or loosely coupled organizations in which each judge was free to adopt or reject any organizational tool or any ICT application. Now courts are better organized, judges use standard ICT systems, and judicial independence properly protect judicial decision-making.

2.3.5. Consequences of judicial evaluation on the appointment to managerial positions

Selection of chief judges and prosecutors – After the 2005-07 reforms the selection of Court presidents (also called head of courts) and chief prosecutors is formally based on ‘merit’ and ‘attitude’. The Judicial Council conducts another evaluation process, which ends with a vote (ballot) among a restricted number of candidates.

According to the Council’s Circular Notes, for the selection of the heads of offices, the ‘merit’ criterion is supposed to take into consideration the whole quantity and quality of the judicial activities of the magistrate. Hence, the process of continuous evaluation of judges should inform the evaluation of the merit that should be a kind of ‘consolidated evaluation’ of the assessment of each magistrate, which takes place every four years. Since 2015, the School for the Magistracy organises training courses on managerial subjects. These courses are to be attended by all those who want to apply to a managerial position. Given the high number of participants the course is organised as

52 Source: the Italian judge that attended at the Validation meeting.
53 Fabri, M. 1998. Gli affanni dell’amministrazione della giustizia italiana. Politica e Organizzazione, 47-60. 56
55 Law n. 150 of 2005, then Legislative decree n. 160 of 5 April 2006, and Circular notes of the Judicial Council to implement the Legislative decree P-19244, 3 August 2010, and then P-14858, 28 July 2015.
Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice

three or four days full-immersion with classes and working groups. This is followed by homework that requests participants to prepare a report on court (or prosecutor office) organisation. The Directive Board of the School evaluates the results of each participant also taking into consideration the inputs of the teachers. Such evaluation is then considered in the selection procedure.

The ‘attitude’ criterion deals more with the candidate’s ability to organize, plan and manage the resources of the office. This criterion must take into consideration previous experiences in managerial positions in courts or prosecutor’s offices. Merit and attitude are then subdivided into several other detailed items.

The appointment of court presidents is another decision that requires the involvement of the two governance bodies since the Judicial Council appoints Court presidents with the “concerto” (endorsement) of the Minister of justice. However, after a Constitutional Court decision (n. 72/1992\(^{57}\)), the opinion of the Ministry is not binding and the Council can appoint a President even without the endorsement of the Minister. As a consequence of this constitutional framework, the Ministry is not involved in performance evaluation of court presidents.

The complex mechanism in place still lag the capacity to make an appointment really based on merit and attitude. As it will be discussed below, the common understanding is that election/appointment are still based on political sponsorship by the different components of the Magistrates association represented within the Judicial Council, i.e. the body that elects the Presidents.

Table 6: Summary of the distribution of Italian magistrates based on gender, and function\(^{58}\)

<table>
<thead>
<tr>
<th>Function</th>
<th>Women</th>
<th></th>
<th>Man</th>
<th></th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percentage</td>
<td>Number</td>
<td>Percentage</td>
<td></td>
</tr>
<tr>
<td>Managerial (ex. court presidents)</td>
<td>105</td>
<td>26</td>
<td>298</td>
<td>73</td>
<td>403</td>
</tr>
<tr>
<td>Courts</td>
<td>73</td>
<td>31</td>
<td>161</td>
<td>69</td>
<td>234</td>
</tr>
<tr>
<td>Prosecutors</td>
<td>32</td>
<td>19</td>
<td>137</td>
<td>81</td>
<td>169</td>
</tr>
<tr>
<td>Quasi-managerial (i.e. head of section etc.)</td>
<td>233</td>
<td>36</td>
<td>443</td>
<td>64</td>
<td>969</td>
</tr>
<tr>
<td>Courts</td>
<td>228</td>
<td>39</td>
<td>361</td>
<td>61</td>
<td>589</td>
</tr>
<tr>
<td>Prosecutors</td>
<td>25</td>
<td>23</td>
<td>82</td>
<td>77</td>
<td>107</td>
</tr>
<tr>
<td>Ordinary judges</td>
<td>4034</td>
<td>54</td>
<td>3379</td>
<td>46</td>
<td>7413</td>
</tr>
<tr>
<td>Courts</td>
<td>3173</td>
<td>57</td>
<td>2386</td>
<td>43</td>
<td>5559</td>
</tr>
<tr>
<td>Prosecutors</td>
<td>861</td>
<td>46</td>
<td>993</td>
<td>53</td>
<td>1864</td>
</tr>
</tbody>
</table>

As mentioned above, while ordinary positions are well balanced, males still occupy the majority of managerial positions as showed by Table 6.

2.4. The evaluation of courts activities
2.4.1. Actors involved

The evaluation of court activities is mainly the result of national policies, or of institutional mechanisms that are embedded in the judicial governance system. Local initiatives are limited to


\(^{58}\) http://www.csm.it/documents/21768/137951/Donne+in+magistratura+%28aggiorn.+marzo+2017%29/330d42d5-ea52-1740-b5b8-9e6f6b74b231
few courts that have conducted court users’ surveys (see below), and to the so-called “best practices” experiences described in section 3.1.

The court evaluation system is made of different components address to design court organisation, and to establish annual plans and goals. The multi-faced components provide a background for the court evaluation. However, as will be discussed, the ways in which the mechanisms in place provide effective evaluation are limited. The entire system is not clearly linked to consequences. At the same time, the system is more effective in steering judicial organisations in given directions through normative constraints and, perhaps, to offer some learning opportunities. Since there are various evaluation mechanisms in place, each one related to specific consequences, each evaluation mechanism description and the assessment of its consequences are joined up to streamline the analysis. Lawyers and court users remain largely outside such evaluation exercise. This exclusion raised some critiques discussed below. Individual courts have conducted some users’ survey but without involvement or support of the Ministry or the Council. The roles of the actors in the court evaluation exercise are described more precisely in the following sections.

2.4.2. The evaluation processes and their consequences: From the organisational charts to the activity plans

The evaluation process is entrusted in three different components: the “organisational chart” (or blueprint), the “annual activity programme”, and the “court activity plan”. Laws, bylaws, and circular notes regulate the entire planning exercise in a very detailed fashion.

**Step 1: establish the “organisational chart” (tabelle) –** The evaluation of court performance starts with a complex regulatory mechanism addressed to distribute the judges to the sections, to define the criteria to assign cases to judges and to establish performance goals at various levels. From an organisational perspective it is essentially an issue of design of the organisational structure: to plan the division of labour among sections (based on subject matters and caseload) and judges.

The assignment of judges to sections and of cases to judges are basic organisational decisions since they determine the organisational chart, provide the criteria of specialisation, and affect the caseload of individual judges because these arrangements aim to secure a similar workload for everyone. Furthermore, the system allows the assignment of each case to a pre-established judge, empowering the constitutional principles of "natural judge" (art. 25 Constitution). The organisational tool used for such multifaceted purposes is called “tabelle” (literally tables). These should be understood as the Court’s “organisational chart” or “organisational schema” as we called it in a previous work.

Such document is prepared every three years. It establishes some key issues among which the judges assigned to each section of the court, the subject matters handled by each section, and the criteria to assign cases to each judge (or panel). As in many other jurisdictions, the degree of specialisation of court sections is higher in larger courts.

More generally, the regulation establishes the "natural judge principle" by assigning whatever case to a pre-established judge. The organisational charts are built through a complex process that requires the contribution of each judge, the assessment of caseload, and the drafting of a document that presents the information collected, the criteria adopted, and justifies the choices made. The draft is then sent to the Local Judicial Council for a first check and then submitted to the national judicial council for the final approval. Quite often the National Judicial Council approves the chart with considerable delay. The charts are published on the Official Bulletin of the Ministry of

---

Justice and sometimes on the courts’ websites. Such charts are considered an issue of organisation of the jurisdiction; therefore, the Ministry of Justice has no say in the entire procedure. The decisions to be taken should be based on sound statistical data. This need pushed the establishment of a new organ within the national judicial council and within each Local Judicial Council, called Caseflow Commission (Commisione flussi) composed of judges, prosecutors and recently opened to lawyers. The collection and the analyses of caseflow data to be used to design organisational chart and provide a balanced caseload to each section and each judge are the main functions of such commissions. The statistician employed by the Courts of Appeal usually does the technical work for the Commission. The data used are quite standard: incoming, decided and pending cases per judge, per type of case, per type of definition, time to disposition etc. Also in this case, the procedure is regulated by a decision of the Judicial Council that has also established a common data collection schema. However, the data describes the caseload, but does not assess the workload (i.e. the time needed by judicial officers and clerks to define a case). This has several negative consequences as seen below.

**Step 2: Couple the organisational chart with the annual activity programme.** The blueprint provided by the “organisational chart” is then associated with the Annual activity programme (programma annuale delle attività) that establishes organisational goals, such as the number of cases to be handled or closed by each court section or by the judges working in each unit. Targeted initiatives addressed to the reduction of backlog called case disposal plans (“smaltimento delle pendenze” (sic!)) usually complement the annual activity programme. This second procedure involves just judges. However, activities must be coupled with resources. Case handling requires the engagement of technological and material means as well as of clerks and administrative staff. Such resources are formally under the control of the Court Manager (a civil servant appointed to that position by the Ministry of Justice), and not of the Court President. Hence, a third step has to be accomplished.

**Step 3: Couple organisational chart and annual activity programme with staff and with material, financial resources (court activity plan) -** The Court Manager (a civil servant) has a role in the annual planning exercise. As the person responsible for the management of financial, material and human resources assigned to the office, she has to make a further plan called court activity plan (Programma annuale delle attività) by taking into account various different kinds of inputs. The programmes and priorities established every year by the Minister of Justice and the inputs of the head of courts, the "guidelines of the Head of the Court and the annual activity program (see above)."

The annual priorities of the Ministry represent a legitimate policy input based on the Constitutional provision that assigns to the Ministry the responsibility of the functioning of the judicial services (art. 110). Also, results reached by the managers will affect their careers and their actual remunerations. Indeed, the results reached are connected to annual bonuses.

Since an agreement about the annual priorities and strategies of the Ministry and the Council is neither agreed nor shared, the two governance bodies may provide courts with inconsistent or contrasting priorities. One institution can have as a top priority the deployment of a given policy while the other institution may consider that policy a threat to the judicial function or judicial independence. The reforms implemented by the centre-right government in 2005-07 are an example

---

60 http://www.bv.ipzs.it/include/Pubblicazioni.jsp?TP=notRuoli&ricerca=ministero&emettitore=Ministero%20della%20Giustizia&codEmett=3&codPubbl=1
61 This new body has been established by the same circular of the judicial council that precise how to create the organisational schemata. http://astra.csm.it/circtabelle/pages/php/stampa2.php
62 http://www.ca.milano.giustizia.it/documentazione/D_1138.pdf
of this state of affairs. This may lead to tensions and conflicts between the two senior figures, the President and the Court Manager. If the two leaders are unable to agree on the annual program, or radically disagree on its implementation, the legislation establishes that it is ultimately the Ministry of Justice to solve the conflict (art. 4), taking the decision on its own or delegating it to the President of the competent Court of Appeal. However, based on the information we have, such option has never been used. Agreements are always found at local level. Tensions emerge more in the “high-level” judicial politics debates that in the court practice, where agreements between the two sides of the office the magistrate head of the court and the court manager are usually reached on pragmatic bases, i.e. what can be done in the office considering the manifold constraints.

**Discussion** - The overall organisation of this complex planning exercise reflects the dyadic governance structure represented by the Council and the Ministry, and the lack of a legislative provision addressed to identify shared goals and priority between the Ministry and the Council. This would be a much-needed pre-requisite in order to provide consistent and coherent inputs and goals to the courts. The entire planning exercise is also based on evaluation, particularly in statistical terms, measuring the caseload of the courts and of the sections within the court. But how are the evaluation, planning and quality of justice connected?

**Quality dimensions** – The organisational plans deal, first of all with the implementation of the natural (or legal) judge principle. In this respect, their introduction has assured the implementation of a key legal principle, and reduced the exposure of individual judges to undue interferences hence internal independence. Also, it has pushed toward judicial specialisation that, as in any professional job, should improve the quality and efficiency of the individual and performance. Even if complex and demanding in terms of time required for their development, they have contributed to improve some key legal principles.

Apart from this, the entire system deals with the economic (or managerial) dimensions of the quality of justice. Other quality areas, such as treatment of the parties, or policies to improve judicial consistencies – if and when existent – are not included in this document. Furthermore, the court activity plans drafted by Court managers are rather modest in terms of goals and areas of improvement. They tend to outline plans that can be implemented without the involvement of the judges since they have no influence on the judicial side of the Court. Hence, such plans are rather self-contained and loosely coupled with the Court annual activity programme. But is the system effective in evaluating and in improving efficiency?

**Data, workload and caseload** – As mentioned, the Italian Judiciary does not have a workload measurement system (or a standard cost system) that clarifies the average working time needed to define a case (or its average cost). Therefore, the Caseflow Commissions and the courts do the planning exercise without the uniform and reliable measure of the workload that should inform the planners about how much work has to be done in each section, by each judicial officer and by each clerk. Due to this lack of information, all the planning is based on caseload measures that are just (rough) proxies of the workload of the unit. Indeed, the data used are mainly incoming, decided (or closed) and pending cases for different types of cases, plus some data about the number of cases below or above certain time standards. Also, another key component that is missing is the full-time equivalent. Human resources are often considered as heads (i.e. persons in post), but factors limiting their working capacity, ranging from sickness or maternity leave, to temporary assignment of a staff unit to another office are not taken into account. Hence, the entire machinery put in place is not very accurate in measuring efficiency and effectiveness.

**Plans, results and consequences** - A last relevant question is about the consequences of the evaluation. From a managerial perspective, plans guide the action needed to fulfil the expected
goals. Various kinds of consequences should be associated with it such as learning, the reward for a good achievement or a sanction for a poor result. The complexity of the multi-steps planning exercise should be mainly justified by the possibility to evaluate court operation against the goals and the activities planned. The research conducted so far point to the fact that consequences of the planning are not clear. Court budget and resource allocation are not influenced by this planning and evaluation exercise, and even symbolic rewards are absent. The planning is largely self-referential and ritualistic, while the results based on the annual performance program of the court are not officially or openly discussed.

However, when a Court President looks for a reappointment or for an appointment as president of another court, the Judicial Council can consider the goals established in the annual plans and the results reached. On the same line, the Council can consider problems emerged in the establishment of the “organisational chart” such as critiques by some judges for the method or the criteria used, or in the implementation of the activity programs. However, how these “results” are transformed into evaluation is not clear, as well as the weight of the results reached in comparison to other criteria.

As developed in Italy, the Annual activity programs (or business plans) may have a negative impact on the quality of justice. The expert emphasised there is not a “proper ownership at a central level of such plans”, and they are not used for a proper allocation of resources among courts. The result is that they are “artificial”. At the same time, the planning exercises put a lot of pressure on the judges to increase productivity and squeeze the resources for getting decisions of a poorer quality. Another mistake is that all the judges of the court are requested to perform on an average (standard) basis, even if they have different capacities. “This is wrong. For me, in a proper organisation, the leader should ask different outcomes depending on the different capacities […] different targets [should be established] depending on the capacities.” Finally, the uniform performance standards negatively affect the outcome of the system.

The case of the less strategic plans prepared by Court managers is slightly different. Indeed, since Court Managers are Civil servants appointed by the Ministry of Justice, they are subject to the general performance evaluation cycle as any other public manager. As a consequence, the Court managers are evaluated also considering the goals and the results reached as established by their annual plans. Such results are one of the inputs of an evaluation exercise based on the “360 degrees approach” assessing the information provided by statistical data, self-evaluation, and inputs from stakeholders and the Court’s president. A Commission appointed by the Ministry of Justice and composed of a high-rank magistrate, an official of the Ministry and an external expert carries out this evaluation. The consequences can be some bonuses for the managers, and a result to be considered for the next appointment. However, for reasons that are not clear yet, the evaluation for the last five years has not been accomplished yet. The consequence is that Court managers are not receiving the bonus calculated on the bases of the results reached since 2013.

The third function of evaluation is accountability. The organisational charts are public (even if not easily accessible) while the activity plans have not been published. Also the analyses made by the Caseflow Commission are not public. The new website of the Judicial Council provides a relevant amount of data, studies, statistics etc., but the basic statistical analysis used to calculate statistics are not public.

---

63 Validation meeting, Utrecht, November 10, 2017.
64 The original plan was to collect such inputs every year through questionnaires addressed to the Bar association, the Penitentiary administration and the Local department of Notaries. Based on the information collected this process of data collection is not implemented yet. https://www.giustizia.it/giustizia/it/mg_1_12_1.page;jsessionid=AEYr4waeipyJoCVeYnCFYraOB?facetNode_1=0_17&facetNode_2=0_17_4&contentId=SPS635811&previsiousPage=mg_1_12
2.4.3. The evaluation processes and their consequences: Statistical data, the Strasbourg project and Court users’ surveys and quality standards

Statistical data – The importance of statistical data for court management is growing also in Italy. The case management systems deployed at the national level for civil and criminal procedures collects detailed data about courts operations. However, the way in which such data are made available for statistical purposes vary.

Even if the case management system for criminal procedures is brand new, it is not yet interoperable with a data warehouse system. Hence, to collect data the Ministry of Justice has to make a request to the courts. The courts make queries to the systems, extract the data and send them to the Ministry of Justice.

In the case of civil proceedings, data are extracted from the case management systems, their quality is checked, and then uploaded to the data warehouse system of the Ministry of Justice. Hence, in civil procedures the system does not work on a limited set of data collected locally (as in the criminal one) but on a large subset of data collected by the case management system. The data are elaborated by the Ministry and by statisticians working at the Courts of Appeal. Reports are then delivered to the courts, the Judicial Council and to the Local Judicial Council.

Discussion - The growing availability of analytical data – together with the growing attention to efficiency and effectiveness - have contributed to a change in the attitude of Italian justice professional towards statistical data. Statistical data are now considered an appropriate means to analyse judicial operations. Some of the data collected by the data warehouse are made public through a dedicated website. Furthermore, the availability of data contributed to the launch of the Strasbourg projects (see below). This project is one of the first attempts made in Italy to manage courts by keeping in stark focus caseflow data.

The “Strasbourg” projects and the statistical monitoring – Since the end of 2014 the Ministry of Justice has tackled the question of delays with a new approach, based on a more precise statistical analysis, and a strategy customised on the specific reasons of delay. The Projects Strasbourg 1 and 2 (Progetto Strasburgo 1 e 2) aim at implementing some of the best practices established by the CEPEJ to reduce the timeliness of judicial proceedings. To do so, taking advantage of the new data warehouse, the Ministry of Justice monitors caseload indicators of the Italian courts. The system has been developed first in the civil area, and then in the criminal one. The statistical analysis revealed that the timeliness problem is not associated with the (allegedly poor) productivity of judges, but with the poor programming of the individual calendar and poor management of caseload. Too many cases older than three years in the backlog were affecting the overall duration of proceedings. Furthermore, the analysis pointed to abnormal rates of litigation in social security and welfare cases in specific courts and identified a group of poor performing offices. Specific corrective measures have been identified and – at least partially – implemented.

Discussion - The monitoring results in ranks for the Italian courts based on different indicators and tables with some data about the resources available with each court. The system is designed to spot and blame poor performing offices and symbolically prizes the efficient ones. This has had some media echoes and is going in the direction of the establishment of a statistical monitoring of Italian courts. From a judicial evaluation perspective, the system provides mainly a tool to steer the functioning of courts, based on CEPEJ good practices, but it looks just at effectiveness (time to disposition) efficiency (case decided by each judge). Furthermore, the system has helped to increase

---

65 See https://websat.giustizia.it. The 2015 criminal procedure data were not available in February 2017, while some data for 2016 were already made public.
courts' accountability by providing for the first time caseload data (incoming, closed and pending) correlated with human resources employed by each court. As previously seen, the evaluation is not connected with clear and sound consequences in terms of resource allocation, sanction for poor performing offices etc. These remain rather symbolic: the possibility to rank the offices based on time to disposition, but also visits of the Minister of Justice and top officials of the Ministry to the slowest courts to check the reasons of the poor performances. There are some methodological limits, mainly due to the lack of the data needed to estimate the workload and correlate it properly with the resources. This is due to the lack of workload measures and the lack of the full-time equivalent of human resources as discussed above. Hence, fast courts may succeed due to an excess of resources, while delays may be the consequence of an inadequate number of judges and staff. So, the rank made public by the Strasbourg project is meaningful and proper just if the resources are allocated to each court based on their caseload or workload. We have checked this hypothesis in section 2.5.3 calculating the cost per case in each Italian court, and found that it is very uneven.

**Surveys** - Despite the data published by the CEPEJ and reported by the EU Justice Scoreboard stating that Italy is regularly conducting users’ survey, the data and the information we have been able to collect point to a different picture. A nation-wide court users survey has never been conducted or – if conducted by the Ministry or by other agencies - it has never been published. There are just local experiences. The first systematic exercise in this area dates back to 2007, with a survey conducted in courts and prosecutors’ offices of a large judicial district. Since then, few works have been undertaken. The website of the Ministry currently publishes the results of 7 different customer satisfaction surveys conducted in 4 different courts in the last 5 years.66

In 2013 and 2015 the National Institute of Statistics (ISTAT) has collected data about the experience of Italian citizens with the civil justice. The two collections are not proper users’ surveys, since data have been gathered in the broader framework of a national survey called "Aspects of Daily Life", and are not collected nor referred to specific courts. Nevertheless, the two surveys provide interesting views about the experience of the people about the services delivered by courts.

Various surveys have been conducted to estimate the trust of citizens in judicial institutions. The comparative work done by Eurostat for EU Member States shows that Italian citizens have a very low trust in judicial institutions, as well as in several other public bodies. A similar survey, with similar results, is carried out for the EU Justice Scoreboard. Interestingly, the opinions of the few court users surveys mentioned above are more confident than those emerging from the Eurobarometer surveys. Even with the well-known problems such as long waiting lines and procedural delays, the day in the court experience is more positive than the representation citizens (not necessarily court users) have based on second-hand experiences and largely built by the media.

**Discussion** - The less developed areas deal certainly with the use of surveys and other tools to involve court users in the evaluation and development of the quality of justice. This is certainly true at central level were surveys are not used (or made public) and there is no discussion about their introduction as systematic means of evaluation. At local level, as noticed, there are initiatives in terms of both users’ survey and other innovative practices discussed in section 3, but such initiative are just local and not promoted by the Ministry or the Council.

**Other quality standards in place** - The rules, and particular the Circular letter of the Judicial Council establishing the procedures and criteria to be followed to define the organisational chart

---

and the annual plans can be considered a quality standard. A rule that, if followed, should deliver quality regarding the proper assignment of cases and establish some annual productivity goals at court level. So, the standard is mainly normative, and the consequences are not clearly outlined.

Another standard is the result of pressure put by the European Court of Human Rights to reduce the number of complaints filed by Italian companies and citizens for unreasonable delays. In addition to the many structural and procedural measures introduced to shorten the length of litigation, in 2001 the Italian parliament approved a bill (called Pinto Law 89/2001), which enables case parties to ask for compensation for unreasonable length of litigation. The law establishes that the length of the proceeding should not exceed the duration of three years at the first instance court, two years at appeal level and one year at the court of cassation or an overall period of 6 years (called also 3+2+1). Once the sentence becomes final, and the term is passed, the claimant can ask for compensation. Since compensations paid by the state under the Pinto’s law schema were 400M Euros in the period 2001-2014, and the estimates of the Ministry of Finance for the following years range around 500M per year, the 3+2+1 scheme established by the law became the core standard for the Italian justice system. This situation appears to be one of the reasons behind the launch of the Strasbourg projects.

A third standard is the assessment and consolidation of the jurisprudence established by art 47 quarter of the Italian justice system Law. Such meetings are held in each court section to discuss the jurisprudential orientations and look for shared jurisprudential approaches. Hence, it should be the primary venue to promote consistency and equality of treatment in substantive and procedural issues.

Since the meetings are held in chambers, there is no precise information about their real organisation and effectiveness. However, their functioning is debated in public meetings, and a common opinion is that there are relevant differences between court-to-court and chamber-to-chamber jurisprudential orientations. While in some courts the evaluation exercise is ceremonial, since the meeting - being established by the law - has to be held, but should not subtract time from other activities, in other cases the meetings lead to a high-level analysis of legal issues, and to agreements about standard procedures and substantive legal questions. In some other cases, it has been reported that the case law orientations are made public. There are also cases in which the jurisprudential discussion has been opened to lawyers and law professors. We will return on this when discussing innovative practices of judicial evaluation.

Discussion - As examined, court evaluation in Italy deals mainly – even if not exclusively - with efficiency and effectiveness. Such a narrow approach has to be understood considering the huge backlog of the Italian justice system and its impact on the pace of litigation. This state of affairs, in years of budget constraints, can mainly be faced improving the efficiency of the available resources.

In the justice sector, the interplay between resource allocation and court performance is complex. Court performances should play a role in resource allocation. If performances are weak due to inadequate management, additional resources can result in a waste of money. On the contrary, an efficient use of resources should be rewarded. However, it can also be argued that a poor performing court should not suffer for a reduced amount of resources. This because the service delivered to the users will be further impoverished. Preferably, interventions should be focused on other areas, such as court management, but this should b handled with care since it could pose at risk judicial independence. Despite the difficulties, some connections between the resources

---

67 Conferenza annuale osservatori giustizia civile, Milano, 20 May 2016.
allocated and the evaluation of court performance and quality of justice delivered by the court is a reasonable pre-condition for resource allocation. This is certainly not the case in Italy.

The following statements, and Table 7 sum up the findings related to individual and organisational evaluation. First, the evaluation mechanisms in place focus on various relevant values to be fulfilled, and particularly on economy and efficiency. Second, treatment of the users is out of the radar in both cases. It is assumed that court users are just asking for speedier judicial proceedings, but other legitimate expectations may be ignored by the current system. Third, the mechanisms in place are very complex and highly regulated. Over the years, the Judicial Council has been particularly active in issuing regulation specifying methods, tools and limits of the various evaluation mechanisms. Fourth, the results of the individual and organisational evaluations are not clearly linked.

Table 7: Main venues of court evaluation in Italy

<table>
<thead>
<tr>
<th>Type of venue</th>
<th>Established by the law</th>
<th>Types of values included</th>
<th>Types of evaluation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Legality</td>
<td>Economy</td>
</tr>
<tr>
<td>Court annual activity programme (Court president)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Court annual activity programme (Court manager)</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Strasburg projects</td>
<td>Official policy of the MoJ</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Court surveys</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Chamber meeting</td>
<td>47/4 Judicial systems law</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

2.5. Resources allocation to courts

2.5.1. Actors involved

The Italian Constitution states: “the Minister of Justice has responsibility for the organisation and functioning of those services involved with justice” (Art.110 Cost.). Accordingly, the budget and resource allocation is largely a matter of the Ministry. The budget proposal of the Ministry is discussed within the Cabinet, consolidated with the requests of the other public sector departments and submitted to the Parliament. After weeks of political discussions and bargaining, the Parliament approves the annual State budget, and thus the budget of the Ministry of Justice. Such budget covers the costs for ordinary courts, prosecutors’ offices, juvenile justice, legal aid and penitentiary department. Even if the Ministry of Justice is the key player in resource allocation to courts and prosecutors’ offices, other actors are involved. The Judicial Council shares competences with the Ministry as far as the allocation of judges and prosecutors to judicial offices. The Local judicial boards, and the Court President and the Court Manager have the roles of requesting and justifying the need of additional resources. The role of different subject will be better précised in the next section.
2.5.2. Resource allocation process

From the Parliament to the Ministry of Justice - As mentioned the process of assigning the budget to the Ministry of Justice is largely, if not exclusively, a political exercise. In the budget strapped by the cabinet, each Minister built the case for budget increase (or against budget cuts). The data shows a reduction of the budget of the Ministry of Justice as percentage of the State budget from 1.04% in 2008 to 0.92 in 2017.

Figure 1: Budget of the Ministry of Justice as share of the State budget

Source: Ragioneria generale dello stato. Il bilancio in rete

The budget provided by the Parliament to the Judicial Council covers just the functioning of the Council itself (and not the functioning of courts and prosecutors’ offices).

From the Ministry to the Courts - For courts and prosecutors’ offices the main entries of the balance sheets are the provisions for human resources (magistrates and administrative personnel), facilities, maintenance and security service, ICT and courtroom technologies, and “justice expenses” (i.e. the direct costs required by the fulfilment of judicial procedures). The system is highly centralised and fragmented at the same time. Each type of resource is allocated following a different procedure as described below.

Facilities: rents, utilities, maintenance, furniture, and security service - Courts and prosecution buildings are owned by municipalities, by the same Ministry of Justice, or rented on the market following national procurement rules.

Before 2015, local municipalities were charged with the direct payment of the rents, of the maintenance and the related costs including the building security. Partial reimbursement from the Ministry were granted on a yearly bases. The system was ineffective for various reasons, and particularly for the differences paid for the same type of service by the different courts. Since 2016, the municipalities are not involved anymore. The Ministry and the judicial offices are responsible for such services. Now, the Ministry directly provides maintenance, furniture, utilities and security service through a centralized national procurement system.

### Table 8.1: Functions and key roles in resource allocation (staff)

<table>
<thead>
<tr>
<th>Resources/Key Actors</th>
<th>Ministry of Justice</th>
<th>National Judicial Council</th>
<th>Local Judicial Council (Consultative)</th>
<th>Head of Courts and Prosecution Offices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Magistrates (judges and prosecutors)</td>
<td>Staff-plan definition</td>
<td>Formal opinion (not binding) on staffing needs and on assignment criteria</td>
<td>Advice on staffing needs</td>
<td>Staffing needs</td>
</tr>
<tr>
<td></td>
<td>Assignment within the pre-established staff plan</td>
<td></td>
<td></td>
<td>Request to cover staff plan vacancies</td>
</tr>
<tr>
<td>Head of courts and prosecution offices</td>
<td>Call for vacant position Yearly recruitment via public competition</td>
<td>Approval of the three-years case assignment plan for magistrates</td>
<td>Opinion on the proposal of three-years case assignment plan for magistrates</td>
<td>Proposal of three-years case assignment plan for magistrates</td>
</tr>
<tr>
<td>Administrative and technical personnel</td>
<td>Staff-plan definition</td>
<td>Advice on staffing needs</td>
<td>Advice on staffing needs</td>
<td>Staffing needs</td>
</tr>
<tr>
<td></td>
<td>Assignment within the pre-established staff plan Call for vacant position Switches from other public administration bodies</td>
<td>Advice on staffing needs</td>
<td>Request to cover vacancies</td>
<td>Request to cover vacancies</td>
</tr>
</tbody>
</table>

**ICT and courtroom** - The General Directorate of Information and Communication Systems (Department of Justice Organization, Ministry of Justice) provides the ICT facilities and other technologies for judicial offices and courtrooms. Private companies, usually selected through public tenders, develop the software. Maintenance and systems assistance is provided by contracted companies and supervised by ICT specialists of the Ministry. All the ICT costs for courts and prosecution offices are covered by the budget of the Directorate.
**Judicial expenses** - The Ministry of Justice covers the costs of “judicial expenses”, i.e. the costs directly associated with the handling of civil and criminal procedures (e.g. videoconference systems, wiretapping, custody of seized properties, translation and interpretation, expert witness fees, reimbursement for witnesses etc.). In this case the judge or the prosecutor order the specific activity needed for the judicial procedure. Once the activity has been carried out, and the payment authorised by the judicial authority, the request of payment is handled through a digital platform of the Ministry of Justice.\(^{69}\)

Table 8.2: Functions and key roles in resource allocation (utilities and other resources)

<table>
<thead>
<tr>
<th>Resources/ Key Actors</th>
<th>Ministry of Justice</th>
<th>National Judicial Council</th>
<th>Local Judicial Council (Consultative)</th>
<th>Head of Courts and Prosecution Offices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rents</td>
<td>Centralized, national procurement system</td>
<td>Advice and opinions</td>
<td>Paid to the owners based on yearly account provisions</td>
<td></td>
</tr>
<tr>
<td>Utilities, maintenance and security service expenditures</td>
<td>Centralized, national procurement system</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Furniture and other facilities</td>
<td>Centralized, national procurement system</td>
<td></td>
<td>Limited by the yearly account provisions</td>
<td></td>
</tr>
<tr>
<td>ICT</td>
<td>Centralized development carried out by the ICT Directorate</td>
<td></td>
<td>Mainly users</td>
<td></td>
</tr>
<tr>
<td>Videoconferencing systems</td>
<td>Centralized development carried out by the ICT Directorate and the Department of prisons.</td>
<td></td>
<td>Mainly users</td>
<td></td>
</tr>
<tr>
<td>Courtroom technologies</td>
<td>Centralized development carried out by the ICT Directorate and the Department of organization.</td>
<td></td>
<td>Mainly users Direct access to an open budget for judicial expenses</td>
<td></td>
</tr>
<tr>
<td>Other expenses (wiretappings, translations, custody of seized properties etc.)</td>
<td>Establish the budget and change (increase) the budget based on on-going requests</td>
<td></td>
<td>Direct access to an open budget for judicial expenses</td>
<td></td>
</tr>
</tbody>
</table>

\(^{69}\) [https://lsg.giustizia.it/](https://lsg.giustizia.it/)
In this area, the Ministry made various efforts to reduce such costs without impinging judicial independence, such as providing framework contracts, or monitoring the costs for specific activities such as wiretapping.

**Human resources: the staff-plans of magistrates and administrative personnel** - Being courts and prosecutors’ offices labour intensive organisations, staff planning is the real pivotal decision in terms of resource allocation. In Italy, such decisions are completely centralised and courts do not have the possibility to recruit staff.

The Law n. 1/1963 (art. 1.5) states that the national “staff plans of the courts and prosecutors’ offices are established by decree of the President of the Republic based on a proposal of the Minister of Justice”. On its turn, the Ministry makes the proposal after consulting the Judicial Council that takes information from the Local Judicial Councils and from the Heads of the Courts and Prosecution Offices.

The same law, amended several times, establishes the maximum number of magistrates working in courts and prosecutors offices (i.e. the national staff-plan for judges and prosecutors). This number represents a maximum value and do not correspond to the real number of units working in a given office at a given time. Also, the national staff-plan does not correspond to the total number of budget posts (i.e. the number of magistrates that can be paid considering the state budget). Indeed, the budget posts are regularly below the thresholds established by the staff plan due to limits in financial resources and problems in recruitment procedures. The same mechanism is in place for the staff-plan of the administrative personnel. In this case, however, the Judicial Council is not involved.

Once the national staff-plan is approved, it is time to establish the magistrates’ staff-plan for each office. Staff-plans should be based on the real amount of work to be done in each operational unit, and should avoid the risk of overstaffed or understaffed courts based on workload criteria. It’s a basic requirement to match the supply and the demand of justice. Therefore, the basic decisional criteria should be founded on workload measured of incoming cases for a significant time-series history. But since workload measures are not available, other criteria have been used.

The way in which such staff plans have been drawn has never been clear. The last staff plan is associated with a recent reform of the judicial map. The Ministry of Justice made public the criteria adopted, and the main criterion adopted is the workload measured (incoming cases). The “additional criteria” is based on quantitative and qualitative data, such as: population (residents and city users), pending cases and delay, court clusters based on dimension (number of magistrates), socio-economical factors, litigiousness and criminality rates, preservation of social cohesion in mafia territories. Nevertheless, it was not declared how these “additional criteria” were weighed in the algorithm used for the staff planning. The algorithm used has not been published so far.

As mentioned, the large majority of the offices have vacancies. To fill in vacancies, the Judicial Council hears the requests of the Head of the Courts and Prosecution Offices and of the Local Judicial Councils, identifies the offices in which vacant positions will be filled, and twice a year publishes the “calls for vacant positions”. This is opened to all the magistrates with the qualifications needed. Then, a public competition (largely based on seniority) is held to select the judges and prosecutors who will take that posts (see section 2.2.). The mechanism allows magistrates to progressively move from the office of first appointment, to another office more appealing for professional or personal reasons. It is through these mechanisms that the real number of magistrates working in a court is finally established. Additionally, there are special policies in

---

70 Ministerial Decree December 1th 2016
place to reduce the vacancies in offices that are regularly understaffed. Financial and career incentives are acknowledged to the magistrates that decide to work in those courts. However, since transfers are on voluntary bases, it may happen that some offices remain largely understaffed. A last option is to identify offices with “mandatory possession”. It means that some of the newly appointed magistrates – usually the last in the rank – have to serve there for at least three years. To sum up, with the current legislation, the possibility of the Council to move judges where needed is rather limited.

As said above, the assignment of administrative staff is a prerogative of the Ministry of Justice. Decisions are based on the requests made by the Heads of Courts and Prosecution Offices, following an assessment of the needs, and taking in consideration the vacancies in the staff-plan. Their staff-plan is calculated as a ratio of those of the magistrates: almost three units of administrative staff per magistrate. Since their distribution follows those of magistrates, it reflects the same problems observed above. Furthermore, due to budget cuts, the Ministry had to stop the turnover of administrative personnel. Since almost 20 years, recruitment has been exclusively based on transfer from other public administrations. As a result very few units of administrative staff have been recruited thanks to switches from other public administration bodies, which are overstaffed, and the total number of administrative staff working for the Ministry of Justice decreased roughly from 50.000 to 38.000. The result is that many judicial offices suffer from the lack of administrative support, and magistrates are increasingly engaged in administrative tasks. Furthermore there are relevant differences in the vacancies of judges and administrative staff.

2.5.3. An estimation of cost per case

As noticed, the resource allocation mechanism is not based on a clear criteria as the workload of each office. Various indicators point to the fact that the mechanisms in place to assign human resources to judicial offices are incapable of providing an even resource assignment to the different courts. To check this hypothesis, we have made an exploratory study to estimate the cost per case in each Italian court in 2015. The calculation is carried out considering civil and criminal caseload (number of defined civil and criminal cases), the number of professional and honorary judged, clerks administrative officers, and their average costs as published by the Ministry of Justice and the Ministry of Finance. From all the analyses we have excluded 6 Courts that have values that are too distant from the set of observed data, and therefore have to be treated as outliers.

Table 9: Cost per case per type of office: range per type of court

<table>
<thead>
<tr>
<th></th>
<th>Civil Less expensive</th>
<th>Civil More expensive</th>
<th>Criminal Less expensive</th>
<th>Criminal More expensive</th>
<th>Total More expensive</th>
<th>Total Less expensive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very large</td>
<td>218</td>
<td>371</td>
<td>300</td>
<td>926</td>
<td>489</td>
<td>242</td>
</tr>
<tr>
<td>Large</td>
<td>198</td>
<td>721</td>
<td>216</td>
<td>948</td>
<td>582</td>
<td>243</td>
</tr>
<tr>
<td>Medium</td>
<td>191</td>
<td>520</td>
<td>261</td>
<td>830</td>
<td>577</td>
<td>272</td>
</tr>
<tr>
<td>Medium-small</td>
<td>139</td>
<td>651</td>
<td>223</td>
<td>813</td>
<td>764</td>
<td>139</td>
</tr>
<tr>
<td>Small</td>
<td>144</td>
<td>510</td>
<td>384</td>
<td>917</td>
<td>696</td>
<td>281</td>
</tr>
</tbody>
</table>

In an ideal world, the cost per case should be the same across the country. But the reality is far more complex: the different case-mix handled by the court (more or less complex, more criminal or civil, etc.) may explain some of the differences observed with cost per case ranging from a normalised value of 139 to 764 Euro per case. For this reason, we have clustered the courts based on different parameters, already used by the Judicial Council and the Ministry of Justice as detailed in the table: very large, large, medium, medium small and small. We have also considered the courts with
special jurisdiction (i.e. courts dealing with more complex cases). As Table 2.4 shows, the cost per case in each type of court is extremely different. The gap between the most and the less efficient is regularly above 200%.

Finally, we have calculated with the same criteria the cost per case in civil and criminal affairs. The picture emerging from this elaboration is not that different as the Table illustrate. This analysis, however, identifies also other differences between courts. Some of them are very efficient in civil and inefficient in criminal and vice-versa. This points to an unbalanced distribution of resources within the court (see Figures 2 and 3).

This preliminary study is something that has to be further developed, using longer historical series. However, the preliminary finding clarifies both the great differences in efficiency of the Italian courts and the uneven distribution of resources among the courts of the country.

2.5.4. Consequences of resource allocation on quality of justice

The resource allocation mechanisms in place are not consistent with a well-balanced distribution of resources to each office and do not foster the quality of justice in term of effectiveness and efficiency. As the discussion made in this section and the preliminary study point out, resources are allocated from the central governance bodies (Ministry and Judicial Council) to the judicial offices based on criteria that are not always clear. In this effort, the national staff-plans and the allocation of human resources to each office are the two main decisions.

Figure 2: Average cost in civil and criminal (first instance courts, all)
The criteria used to establish staff-plans have been made public, but the way in which they operate, the different weight of each criterion, the algorithm used to increase or reduce the number of judges in a given court are not specified. Such indicators point to the fact that the process is largely political. As stated in a recent workshop by one of the top policy maker within the Ministry of Justice, the staff plan approved in 2016 has been established with the objective to “grant social cohesion: give more resources to the north east area [of the country that is under-stuffed], without affecting too much other areas and offices [that are over-staffed]” So, a key criterion has been to make a staff-plan that is politically acceptable, while other criteria (incoming and pending cases, demand of justice, local peculiarities etc.) seem to provide the technical background to justify the decision. If so, the technical considerations stay – understandably - behind political feasibility. As a result of this approach it can be observed that the ratio of judges per inhabitants ranges from 4.612 of Caltanissetta, (Sicily), to 32.304 of Lodi in Lombardia. The presence of organised crime in Caltanissetta, and of large mafia cases requiring dozens of hearings and a huge judicial effort, can explain just in a partial way such huge difference in the ratio. Indeed, the number of companies and business operating in Lodi is by far higher than the one in Caltanissetta. Hence, Lodi should have a higher workload in civil cases. Furthermore, when asked for consultation by the Ministry of Justice, the Judicial Council made similar observations about the patchy distribution of resources before endorsing the proposal of the Ministry. Similar considerations regard the staff-plan of the administrative personnel. The mechanism in place to promote the transfer of judges to understaffed offices does not correct the problem. Any solution, indeed, would require the reduction of the staff-plans in many courts and prosecutor’s offices, and more radical mechanisms to facilitate the occupancy of understaffed courts. This policy option would raise harsh political criticism, and therefore it is difficult to sustain by the Ministry and the Council.

The Strasbourg projects show remarkable differences between the courts of the same cluster the duration of litigation in civil cases and the frequency of lapsing of criminal proceedings due to the
statute of limitation. The estimation of cost per case we made for this purposes demonstrates that human resources are unevenly allocated across the country and that there are wide differences in terms of efficiency among courts with similar features. This is probably the strongest weakness we have identified in the system. The lack of workload analysis makes difficult to ascertain if resources made available to the court systems are appropriate to tackle the caseload. Certainly the high variation of efficiency seems to demonstrate that deploying across the country the practices of best performing courts, the number of cases decided by the entire system in a given period would quickly rise. This finding is consistent with a new policy, enacted by the Ministry of Justice to speed up the pace of litigation.

**Lack of control on key resources** - Another critical issue is that courts and prosecution offices have to operate without the control on production factors since the allocation of human resources and other production factors are established at central level, and in a context in which budget cuts have constantly reduced the resources allocated to courts. This pushed courts to look for additional resources asking the collaboration of local and regional administrations, bar associations, and other donors including banks and industry associations. Sometimes intermediate such as “judicial foundations” bodies have been established to receive and manage the additional finances used to recruit staff or to reimburse graduate students in training. The foundations have been established to avoid some of the threats to judicial independence that may be embedded in this kind of approaches that is well known to the head of courts engaged in found rising. This issue marks a shift towards a new approach, in which courts are necessarily pro-active and open to society, but at the same time makes them more vulnerable to external pressures and raises potential issues of judicial independence and impartiality. As observed by a court president “When I work to sign agreements and gather resources [from external actors] I always feel like walking on a thin line that separates good administration from the extortion.”

Such additional resources have been looked for just for financing innovation or best practices projects, and are not stable channels for the funding of the courts. They are solutions have been searched to solve, at the local level, the problems that the central level is not able to tackle.

**Resource allocation and quality of justice** – The allocation of resources to court is probably the greatest weakness identified in the study. As noticed, it is also not very clear how the evaluation of resources-need (judgeship or clerical position) is made. Despite the efforts to provide technical justifications, the decision seems to be mainly based on political criteria. The system creates courts that are overstuffed and courts that are understaffed. It is compatible with a very large range of efficiency (variations in cost per case) and effectiveness (time to disposition). Also, these economic dimensions are decoupled from other criteria such as legal quality and treatment of users. So, efficiency could be pursued hampering other key values: a superficial study of the case, a careless treatment of the users. We have no data to affirm this is the case, but we have plenty of data to argue that resource allocation have no safeguards to avoid the risk.

**2.6. Assessment of existing evaluation methods**

**The dyadic governance structure** - The dyadic governance structure designed by the Italian Constitution may raise various problems with policy design and implementation. Indeed, many (if not any) policy addressed to change and improve the current state of affairs requires the collaboration of the Ministry and the Council. The two bodies have different constituencies. The Ministry got the confidence vote by the parliamentary, the Council by the Italian ordinary magistrates. As a consequence, the strategies, policy preferences, and the values promoted by the two bodies tend to differ.

---

71 President of a medium court, north Italy, May 2017.
This affects policy making and many institutional and organisational decisions. By constitution, the Ministry of Justice is in charge of the evaluation of organisational performance but also the Judicial Council is developing policies in such areas. The entanglements between the competences of the Ministry and of the Council make performance evaluation quite complex and specific. The alignment between strategy and structure, considered a condition sine qua non for effective management, is often problematic. Not surprisingly, their collaboration is always problematic, and the ‘pass the buck’ attitude is quite common.72

**Partisanship** - Notwithstanding the very detailed procedure and instructions to collect ‘objective’ information for a comparative assessment of the candidates, the election to these prestigious positions is still heavily affected by the candidates’ membership in one of the factions of the Italian Association of Magistrates. Indeed, at the very end, the appointment is decided by a vote of an assembly (the Judicial Council) that reflects the political and cultural orientation of the magistracy and of the Parliament. Indeed, magistrates are elected also considering their membership to one of the 3 or 4 magistrates’ factions, and the parliament elects its member on a clear partisan bases.

Hence, since it is extremely difficult to rank candidates to managerial positions based on pure technical consideration, the decision is facilitated by political affiliation. The practice of grouping several appointments to managerial positions in a single decision (called “appointment package”) in which the Council elects simultaneously judges belonging to different factions as presidents of different courts is considered the clear evidence of this phenomenon. The “appointment package” is highly criticized by the same leaders of the judges associations73, but the solution to the problem is far from being identified.

Even if most of these appointments are below the radar of media scrutiny, in some cases also media gets involved. For example, the sensitive position of head of the prosecutor’s office in Palermo, the regional capital of Sicily, has generated much debate due to the election of the youngest professional and, apparently, the least qualified candidate. The candidate, elected in 2014, did not have any previous experience leading a prosecutor’s office, but he was sponsored by one of the factions of the Association of Judges, and he had served as member of Eurojust (European public prosecutors’ coordination office in The Hague), a political appointment made by the previous centre-right coalition. This is a typical case in which the membership and political ties of the candidate seemed to be much more appreciated than the assessment of ‘merit and attitude’.74 One of the factions of the Association of Judges and Prosecutors, who sponsored a different candidate, voiced its strong disappointment on its website, stating that the magistrate elected had much less experience and professional skills than the other two candidates.75 Of the same tone were the comments of some newspapers that highlighted that political ties were predominant in this selection process. To sum up, the several attempt made to establish ‘objective criteria’ have increased the complexity of the process that lead to the decision, probably it has also structured a kind of “cursus honorum” (career path) required to be appointed, but the political dimension is still relevant.

---

73 See for instance the critique of the President of the judges association and the reply of the vice president of the Judicial Council. [http://www.repubblica.it/politica/2016/06/09/news/giustizia_davigo_attacca_su_nomine_al_csm_poi_smentisce_consiglio_se_vere_parole_gravi_-_141607655/](http://www.repubblica.it/politica/2016/06/09/news/giustizia_davigo_attacca_su_nomine_al_csm_poi_smentisce_consiglio_se_vere_parole_gravi_-_141607655/)
74 At the time of writing, the case has been brought before the Administrative Court, which has quashed the appointment for ‘lack of motivation’ by the Judicial Council, and sent it back to the Council for reconsideration.
If on the one and the Italian magistrates’ association, with its internal groups, is a target of criticisms, the debates going on within the national association and the factions of the association also have positive features, being the primary venue for the discussion and the upholding of judicial values. The exchanges of ideas pass through various and very active mailing lists in which, every day, there are discussions about if and how such values are upheld, and how they affect the work of the judges and the judiciary as a whole. The discussions also occur in general meetings, and conclusions presented to political representatives. 76

3. Innovative practices in quality evaluation and quality development

**Background** - In the last 20 years, several reforms were adopted to improve the functioning of the judicial system. The problem of the lack of effectiveness and efficiency of the justice system became of general concern and its negative implications on the economic development were repeatedly stressed by international organizations (OSCE; World Bank, IMF), 77 the EU 78 and the Italian Government.

The economic crisis and the public budget constraints of the last decade did not stop the reforming process. However, this process was not supported by adequate funds. Most reforms were, in fact approved as "zero costs reforms", as no specific funds were allocated for their implementation. Rationalization and better allocation of resources were at the forefront of the political agenda. Various public sectors’ institutions (local administrations, health and justice) underwent a territorial and structural re-organization.

As for the justice sector, the Italian government has been taking a number of measures to address the inefficiencies and bottlenecks in the functioning of the justice system. These measures seek to:

- Reduce the case inflow (e.g. by increasing court fees, creating appeal barriers, and changing lawyers’ fees structure);
- Promote out-of-court settlements (including by further enhancing mandatory mediation),
- Reduce the number of courts (by creating economies of scale and fostering specialization),
- Strengthen court management (e.g. by giving a greater management role to the President of the court, creating case schedules, managing judges’ workload); and
- Speed up case processing.

The steps taken have had some positive effect, such as the 43% decline in the inflow of small claims as a result of increased fees, 79 while other measures described hereafter have had mixed results. Further changes include streamlined first-instance court proceedings and mandatory e-filing in civil cases through the Civil Trial Online.

The so-called “Decreto del Fare” (Law 98/2013) includes, among other things, the following additional measures:

- Judicial assistants internships to support judges’ work;

---

76 Comment made by the Italian Expert during the validation meeting, Utrecht, November 10, 2017.
77 The economic impact of the justice’s slowness is estimated in an amount around the 1% of the GDP (Gross Domestic Product). Malfunctions in the Italian justice system discourage investments and growth: according to the World Bank Report on “ease of doing business”, Italy ranks 158th in the world in relation to “enforcing contracts”: in part, this is certainly due to the course of the justice system.
78 See for instance the country specific recommendations of the “European Semester” exercise, available at https://ec.europa.eu/info/publications/2017-european-semester-country-specific-recommendations-commission-recommendations_en
79 Source: Observatory of Public Sector Innovation, 2016, www.qualitapa.gov.it
- 400 honorary magistrates task force to clear the backlog of the courts of appeal;
- Compulsory mediation;
- New honorary judges (giudici ausiliari) for the Court of Cassation.

The “Destination Italy” initiative presented in September 2013 reaffirms the government’s commitment to tackling the problems of the judicial system. The first draft of Destination Italy initiative contains some proposals that are in line with the National Reform Program that outlines Italy’s targets towards the Europe 2020 strategy. These include measures to:
- Extend the competences of the commercial courts to all commercial litigation;
- Introduce appeal limitations;
- Allow parties to mediation without compulsory representation by a lawyer;
- Improve assisted negotiation and arbitration;
- Extend the competences of the judges of the peace;
- Ensure the full online handling of the civil trial;
- Complete the “data warehouse” project to improve the use of case flow data for statistical purposes.

Furthermore, the Ministry of Justice has lately paid attention to the review of the judicial map with a reduction of first instance courts and justice of the pace offices.\(^{80}\)

To sum up, over the years national policies devoted attention to changes in the code of civil procedure, to the problems relating to court management and case management, as well as to the benefits coming from ICT (trial on-line, and data warehouse).

In addition to such central and top-down actions, several initiatives have been promoted at the local level. The Tribunal of Turin was among the first one to pioneer a new method of court management, based on constant monitoring of the pending cases, best practices and timeframe management (see the Strasbourg programme in section 2.4.3). The Prosecutors’ Office of Bolzano, adopted a set of “Best practices” largely addressed to improve quality of the services delivered to users (see below). These two experiences sent a powerful message to other courts, the Ministry of Justice, and the Judicial Council. They showed that remarkable results could also be achieved without major changes in the law by “just” applying good managerial practices and a strong commitment to fighting delays and improve the quality of the services.

### 3.1. The Best Practices Project and its many offspring

The Strasbourg programme and the “Best practices” initiatives are just two out of many innovative bottom-up actions in the field of evaluation and promotion of the quality of justice. These practices are mainly initiatives promoted by the court managers or judges to face the decrease of human and financial resources and to improve the quality of justice – primarily efficiency and effectiveness - based on organisational and technological innovation. Some of these instances remained pure bottom-up actions, while others have been up-scaled by the central administrations through EU structural funds.

In 2009 the Minister of Public Administration, the Minister of Justice, the Italian Regions and the European Commission agreed on the implementation of a transnational-interregional project called “Dissemination of best practices in judicial offices in Italy” (BP project) to be funded within the European Social Fund (ESF). The goal of the project was the dissemination of the “best practices” developed during the period 2004-2007 by the Public Prosecutor’s office in Bolzano (funded by European Social Funds). Following this example, the primary objectives of the projects were: a) to increase the quality of civil and criminal justice services; b) to reduce the operating costs of the

\(^{80}\) By 2013 the reform has closed about 750 offices (from 1.396 offices down to approximately 650).
justice system; c) to improve the information and communication capacity and d) to increase judicial offices’ social responsibility over the results and use of public resources. The following actions were undertaken to pursue these objectives:

1. The analysis and redesign of work processes, the reorganization of Judicial Offices, the self-assessment processes (including those based on the CAF – Common Assessment Framework – model) in order to improve the operational efficiency and effectiveness of performance directed to internal and external users;
2. The analysis of technologies used in the office to optimize their coherence and use in the organizational improvements;
3. Drafting of the Social Responsibility Budget Report;
4. Drafting a Service Guidebook and Charter;
5. Support to obtain the certification ISO 9001:2000;
6. Website and web communication design or upgrading.

To fulfil this goal, in 2011 the Public Administration Department launched an initiative called "Improving the Performance of the Justice System" (MPG) to support the Convergence Regions (ROC) and the judicial offices of these territories in the implementation of the interregional/transnational project. MPG is funded under the same umbrella of the European Social Fund, and it is meant to monitor, evaluate and disseminate the results and the good practices implemented by the judicial offices involved in the BP project. Further, it also compares the experiences and results of the offices placed in the ROC regions with those of other offices (nationwide) involved in the BP project. In order to present and promote the information and evidence regarding the offices involved, the projects activated the practices established as well as related materials on a specific online platform - RisorseperlaGiustizia - developed within the MPG initiative.

According to latest available data (April 2014), the number of judicial offices involved in the BP project and monitored by MPG is approximately 200. More than 1300 operative projects have been developed. Almost 50% of the offices involved are in the southern regions (Calabria, Campania, Puglia, Sicilia). Among the participants, 66 are public prosecutor’s offices and 58 courts; there are also courts of appeal, courts and prosecutor’s offices for juveniles and to a much lesser extent, surveillance courts and offices of peace. All the Italian regions and autonomous provinces have gradually joined the project, and more than 200 courts have applied for participation. There are no clearcut data about funding, but estimates lead to conclude the project cost more than 40 million Euro.

According to the Judicial Council recognition of best practices, the follow up of the BP project shows some interesting data, although the information collected are fragmented.

Many judicial offices have implemented most of the project guidelines particularly the ones regarding the customer relations, the quality of the services, and the social budget report. The BP project has shown the possibility of taking part in pilot projects, disseminate solutions, and change management methodologies throughout the entire system.

Regrettably, most of these experiences have stopped once the funds were over. Keeping and managing innovation sometimes requires more resources than those made available by the project.

---

81 The regions of the south of Italy are labelled as “convergence regions”. As such they benefit of special financing by the EU within the Structural Founds Programme.
82 The platform can be accessed at www.qualitapa.gov.it.
83 In detail, 97 offices have completed the activities, 19 are being implemented, 52 are at the initial stage, and finally for 20 offices are being the preliminary procedures for the consulting activities.
In any case, the Ministerial initiative contributed to the creation of a positive attitude towards innovation and to a rise of the number of innovative local practices in fields that are not the six areas (objectives) identified by the BP project.

This new attitude toward innovation is, in the opinion of the authors of this report, the most relevant, unexpected and enduring result of the BP project. The proliferation of innovative local practices pushed the Judicial Council to monitor their features and their results. Hence, since 2010, the Judicial Council (CSM) monitors such “best practices”, collecting data about the various experiences and their results trying to identify ways to transfer such local innovation practices from one office to another. The findings of the monitoring have been made public in 2015, when the Judicial Council has established a new project to analyse and make available online relevant data about such innovative experiences. In 2017, the Council published on its website data on 251 best practices (selected among the 700 received).

Within this framework, the following best practices are discussed in more detail in this section:
1. The InnovaGiustizia experience in the Lombardy Region and the case of the Monza Court (2011);
2. The case of the Court of Florence: agreement between the Court and the Chamber of Commerce to make procedures faster via online for citizens and private companies (March 2016);
3. The office for innovation of the Catania Judicial District (December 2016).

In addition to these, attention will be devoted to the open data initiative, a stream which has been only recently developed in the justice sector.

3.1.1. The InnovaGiustizia experience and the case of the Monza Judicial Offices

The Lombardy was the first region to benefit from the opportunity provided by the BP project. The region launched a call for the “Reorganization of Work Processes and Optimization of Judicial Offices Resources” then assigned it to a Consortium formed by University departments and Business consultancies. The project, named InnovaGiustizia, was implemented over a period of two years (January 2010 - December 2011) and involved 12 Judicial Offices.

Within the InnovaGiustizia experience, the case of the judicial offices of Monza received significant attention from researchers and practitioners. The project was implemented following the Structural Change and Innovation Management methodology, seeking to respond to both citizen problems (e.g. reduction of waiting time for citizens and lawyers) and the need of change within the organisation (e.g. the elimination of routine activities and focus of the efforts upon more critical ones).

The project was developed and implemented by groups of judges, clerks and administrative staff. A Steering Committee led by the President of the Court and the Chief Prosecutor was set up. Working groups implemented the project performing participatory analysis and redesigning various aspects of Court and Prosecutors’ office activities. Work processes and the actual organisation of various procedures (e.g. criminal decrees, execution of immovable property, voluntary jurisdiction) were redesigned. The administrative offices of the criminal law sections of the court have been

---

84 http://www.csm.it/documents/21768/136300/Buone+Prassi++slide+di+presentazione.pdf/e5d15d28-cd56-5b13-024f-70c720004f8f
85 See www.tribunali-lombardia.it.
86 The project of changing Judicial Offices in Monza has received 4 European awards for innovation by Italian and European institutions and selected for the 7th Quality conference of the European Union.
reorganized. Tools for improving the governance and relationship with users and stakeholders were designed with the participation of judges and clerks and involved an effort to increase transparency for the users. Examples of such tools include: the Social Responsibility Balance Sheet and Common Assessment Framework, the Services Chart, the support to the use of information and communication technologies, a planning and control system and a management dashboard for the Court, a system for monitoring workloads of the Public Prosecutor’s Office, a Planning and Innovation Office, an Office of Relations with the territory, a website, a working group for justice with the participation of local institutions, the establishment of a Foundation for Justice.

The primary results of the Monza project involved the reduction of backlog and of the waiting times for citizens and lawyers, the elimination of some routine activities with a focus on the most critical ones, the improved efficiency of the clerk’s offices, the transparency of proceedings. The effort contributed to improving the relations between Court and the Public Prosecutor’s Office, judges and clerks, the Court and “third parties”. The work on organisational issues strengthened the managerial skills of judges and administrative staff, the increased awareness of all the employees over the entire set of service delivered by the Court.

One of the most successful “sub-projects” of InnovaGiustizia was the redesign of the Voluntary Jurisdiction office. Voluntary Jurisdiction concerns the legal protective measures granted in support of vulnerable persons such as mentally or physically disabled persons and elderly citizens. The court does not run a trial, but acts in the interest of these vulnerable citizens, called “beneficiaries”. In most cases, the citizens themselves or their relatives file the request of such measures, often without legal representation. The result of the procedure is the identification of a Tutor or Administrator that acts to support the beneficiaries under the supervision of the Court.

Two innovation groups run the project:

- Consultants, Judges and Clerks focused on the internal Judicial Office.
- Local administrators and members of the community focused on the delivery of the service.

Both groups worked on problem setting (e.g. reduce public access to the court’s front office) and on problem solving (e.g. designing a new website structure providing information and other measures described below).

The design and implementation of “Territorial Proximity Offices” (sportelli di prossimità) are the most crucial organisational innovation. They are detached offices placed in some towns under the jurisdiction of the Tribunal of Monza, managed in collaboration with local administrations and NGOs. In these offices the citizens can gather information and assistance for their requests as well as an expert advice. Many ICT tools have been realized for supporting the change, but mostly the organization and procedures have changed, modifying the behaviours and the organizational skills of individuals and institutions, through their consensus. Some of the results reached with the new area of the Voluntary Jurisdiction are:

---

88. Actors involved:

a) the Steering Committee composed of: the President of the Court, the Chief Prosecutor, the Judge in charge of project supervision, a group of judges, technical and operational supervisors, middle managers of the Civil and Administrative Offices, the President of Lawyers Professional Association.

b) the Project Teams where almost all the staff within the organisation has been involved: Judges of Civil and Penal sectors, Prosecutors and Assistant Prosecutors, Clerks and Administrative Resources.

c) Consultants: Institutions of the Monza e Brianza Area within the “Table of Justice” established in November 2010. A permanent network included Province of Monza e Brianza, Local Health Authorities, Municipalities of Monza and Desio and other Municipalities under the Jurisdiction of Monza Court, Chamber of Commerce of Monza and Brianza, University of Milan Bicocca

89. The indicators used to evaluate case results are: Number of visits to registry office; Number of Citizens who use new forms; Number of Citizens who use the new website and the dedicated section 'Services to the Citizen'; Number of...
• 30% reduction in number of citizens accessing the clerk’s office;
• 20% reduction in the average time needed for filing applications;
• 80% of the applications filed using the new forms including bar codes that can be automatically uploaded into the court ICT application;
• Implementation of the section Services to Citizens of the new website of the Court (with 230,000 total annual visitors);
• More than 90% of the records received from July 2011 managed through the online Tracking System;
• Implementation of the service for the automatic sending of emails to citizens;
• Signing of protocols between the Courts and different Municipalities for the creation of 7 Territorial Proximity Offices, and action to start a free expert consulting service at the Territorial Counters;
• Training courses for Tutors organized by the Province of Monza and Brianza.

The results reached convinced many Italian Courts to implement the new organisational model.

3.1.2. The Court of Florence
The practice of developing cooperation with external parties is getting more and more frequent. An example of this new form of collaboration is the agreement signed by the Court of Florence with the local Chamber of Commerce, a public institution in charge, among other functions, to keep the Business Registers. The main areas of cooperation are the following:

1) Online exchange of documents between the Court and the Business Register of the Italian Chambers of Commerce. The last one and the Tribunal are working together to manage hundreds of acts each year. Since December 2016, all these documents are exchanged exclusively online thanks to the support and collaboration with Infocamere (a private company owned by the Chamber of Commerce).
2) Digitalization of the “ufficio per il processo” (judges’ offices). The Chamber of Commerce of Florence is committed to provide free hardware for the online civil trials in an increasing number of judicial offices.
3) Arbitration will be encouraged for civil cases except for those regarding inalienable rights and labour and social security matters. The new rules adopted to speed up civil proceedings (Law 162/2014) give parties a choice to apply for arbitration even if the proceeding is already started. Since 2013, in Florence is active the first example in Italy of a joint arbitration Chamber involving the Chamber of Commerce and the professional associations of lawyers, accountants and notaries. The new agreement will enhance the use of this method also helping to reduce the backlog in court.
4) Creation of a Mediation Information Point at the court. The Tribunal and the Chamber of Commerce of Florence are working to spread more and more the “culture of mediation”. The plan is to set up an Information point for ADR (Alternative Dispute Resolution) where parties can explore the possibilities the alternative instruments, such as mediation and arbitration, can offer at national and international level.

All these projects and other innovations will be monitored by the technical committee that will be based at the Court of Florence, and include representatives from the Municipality of Florence, the Chamber of Commerce and other agencies, foundations and professional associations. The purpose of the committee will be to coordinate activities at the local level to ensure the best implementation in the field of justice for the benefit of citizens and businesses.

dossiers managed by online Tracking system; Number of contact requests in Territorial Proximity Offices; Time for the first deposit of application.
90 Vecchi, G. 2013. Systemic or Incremental Path of Reform? The Modernization of the Judicial System In Italy. International Journal for Court Administration, 5, 64-87.
91 Press review, March-December 2016
3.1.3. The office for innovation in Catania
Since 2010, judicial offices have launched a strategy aimed at improving court performance and quality of justice. To pursue such strategy the Tribunal of Catania has analysed the court organisation and services delivery with an inclusive approach. At the operational level, they have identified three leading ideas: a) improve the judicial services and reduce the burdens of access to justice for users, especially families, children and businesses, b) increase the court accountability through commitments and public evidence of the results c) providing continuous monitoring. The European Social Fund and the Sicilian Region funded the project.

The Innovation and Organizational Development Office - which has been established by a Memorandum of Understanding signed by the Presidents of the Tribunal and the Court of Appeal – coordinates the project. Later on, other courts of the judicial districts have been involved in the project.

In detail, 45 innovative actions have been enacted in 10 judicial offices of the judicial district:\(^2\): 6 interventions at the tribunal (case management system, online civil trial, re-organization of internships, re-organization of the Voluntary Jurisdiction, projects to improve transparency and legality); 9 actions at the judicial districts level (Public Relations Office, Innovation Office, Courts Service Guide, Legal aid, Judge Agenda, “Migrantes Project”, Civil Affairs, Enforcement, Organizational Development); 6 actions at the Juvenile Court (Calendar of hearings, the Social Responsibility Report, the Register of tutors/ professionals, Organizational development, use of technologies, Services Guide); 24 interventions at the other courts and prosecutors’ offices. In detail, 45 innovative actions have been enacted in 10 judicial offices of the judicial district.

The “Migrantes project” is an example of a good practice developed by the Tribunal of Catania. The initiative involves the Territorial commission for asylum seekers – in charge of deciding the status of asylum seekers. The project succeeded in making asylum application procedures faster, and simpler, and to improve the number of cases dealt with by the court, that was in steep increase due to the well-known migration flow from North Africa. Its implementation required the involvement of various external parties: the government department in charge of the first reception and aid, the migrants’ Hot Spot, the Territorial Commission, the Courts of first instance and Appeal. The project demonstrates that a better coordination between independent actors placed within a “service delivery” chain can produce excellent results.\(^3\) The Migrantes project has been acknowledged and awarded a special mention at the 2017 Cristal scale of justice award.

3.1.4. Open data and justice
The considerable amount of data that is created and managed by the judicial offices has a social and economic impact, given that most disputes between people, companies, and institutions find a resolution within the court. Making such data freely available to the public would improve the knowledge of the many events affected or processed by judicial institutions, as well as the understanding of the functioning of courts and judiciaries.

Two examples, which may help to understand the potential impact of open data, are openmigration.org, and confiscatibene.it. The first provides information on the phenomenon of migration and refugees, to better inform media and the public on the subject. The second is a participatory project to promote transparency, re-use and valorisation of assets confiscated to organised crime.

\(^2\) http://www.percorsigiustiziacatania.it/progetto.aspx?id_progetto=43
\(^3\) https://www.coe.int/t/dghl/cooperation/cepej/Source/Crysal_2017/MIGRANTES_diapositive%20Bilancia%20di%20Cristallo.ppt
The Opendatagiustizia.it project is a data-driven initiative aiming to make available to the public data collected by the justice system at national level. The action is a learning initiative based on data collection, analysis and dissemination of the data on the Italian judicial system. The main objectives of the project are:

- To support the measurement and benchmarking of the activities carried out by the judicial system;
- To enhance transparency policies and public accountability;

Opendatagiustizia is designed as a "civic hacking phenomena": the “community” can be a stimulus for the Judicial Office, the Ministry of Justice, and the Parliament through data collection and analysis. This could only become possible if the community can act "out of the (justice) box", by managing the data coming from the public authorities. As a result of the digital justice agenda, the open data issue is now included in the wider initiative called “Open Government Partnership Forum”, aimed to promote the use of strategic datasets into the public sector.

While the government actions for open data are expected, in December 2016 a consulting organization launched a public contest to promote the use of open data in the justice sector. The contest aims to create a website that provides information on the state of justice in Italy. This is to be achieved with the involvement of analysts, community developers, data scientists, data visualizers, designers, and startuppers. The Opendatagiustizia is an open participatory project that wants to be an opportunity for improving the judicial performances and quality, and the national justice system as a whole.

On the one hand open data present opportunities to develop the economy, increase government effectiveness through information-based policies, and promote civic engagement and democratic accountability. On the other hand, despite these benefits, widespread use of open data poses privacy, security, and civil rights challenges. In any case, this action is more symbolic than substantive so far. The project that won the first contest provided a national map in which all the offices of the Ministry of Justice (Courts, prosecutors, prisons etc.) are geo-referenced, regrettably, with various errors. A lot of work is still needed on both sides, Ministry and open data movement, to make effective this new approach.

3.2. The Civil justice observatories (Common praxis)
3.2.1. The rise of a the observatories and the establishment of local protocols

The “Civil Justice Observatories” (literary translation of Osservatori per la giustizia civile) are court based groups of judges, lawyers, court managers, clerks and academics organised on voluntary bases to analyse (observe) different fields of substantive and procedural civil litigation and establish common practices.

Such initiative raised spontaneously in various courts as a bottom up attempt to solve some of the many problems affecting civil procedures. Since the nineties, the uncertainty generated by continuous changes in civil procedures, and later on the introduction of a new e-justice platform pushed judges, lawyers and court managers to look for a different approach to reduce the uncertainty generated by the implementation of technological and legal innovation, and by the application of procedural rules. The attempt was, first of all, addressed to build stable routines respecting the legal constraints and the functional requirement of the court and the practicing

---

94 http://www.opendatagiustizia.cloud/map/uffici
lawyers. The slow pace of litigation, and societal pressures ranging from low trust in the institution, ECHR sentences for violation of Article 6 of the European Convention on Human Rights, frequent critiques by the media, difficult and inconsistent interpretation of newly enacted procedural laws are some of the reasons behind the rise of the Observatory.

The underlining idea is that the problems of civil justice cannot be solved without the involvement of the entire spectrum of actors concerned (magistrates, lawyers, clerks, Court managers, academics), without open discussion, and without the identification of common practices based on realistic choices that are coherent with the existing regulatory framework.

The “Common praxis” initiative that began in Bologna at the beginning of the nineties is considered the first step in this direction. During the same period, Observatories raised in the tribunals of Bari, Salerno and Reggio Calabria, as well as Milan. Later on the process involved also Rome, Rovereto, Florence, Genoa, Verona, Naples and many other courts. Considering the clear goal of the groups, and the problematic translation of the Osservatori per la giustizia civile in Civil justice observatories, the initiative will be hereafter referred to as the “Common praxis groups.”

How do they work – Over the years, the groups have developed a shared working methodology. Each Common praxis group is based in a city and involves at least judges of the tribunal and member of the local Bar. They work together to define and promote a shared interpretation of procedural or substantive rules, and address the multi-folded organisational problems that affect the court(s), including the poor predictability of judicial decisions. Substantively, the observatories develop standard practices in areas like adjournment policies, conduct of the hearings, case priorities, drafting of hearing minutes, summoning (including through electronic means), and structure of procedural documents such as complaints, briefs, and sentences. The participants develop standard practices through processes that are neither linear nor peaceful. Tensions due to different interpretations of the law, the nature of the problem, or the advantages of alternative solution are present. However, the underling idea is that through a dialogue between the different interested parties - lawyers, judges, clerks and academics - agreed solutions should be identified. Once a common solution is adopted, the agreement is brought to the attention of the president of the bar association and of the president of the court. It is quite common that the two apexes endorse the protocol with a formal signature, so to enforce its application. The protocol is not mandatory, but being developed bottom-up and endorsed top-down (by the two presidents) it provides a significant guidance for both judges and lawyers.

Over the years, the court-based groups have established some coordination mechanisms to share the analysis and the praxis (protocols) adopted in the different courts. The approach is now based on annual cycles of activities.

During the year some representatives of the various court-based groups attend two or three national coordination meetings. The meetings have two main goals. First, they contribute to the promotion and coordination of the on-going initiatives at local at national level through the organisation of “national laboratories” and to the organisation of the annual conference. The “national laboratories” are meetings on a specific topic (e.g. damage law (tort law), court organisation and resources, family law, judicial and legal writings, hearing organisation) attended by all those interested in that argument. Second, they contribute to the organisation of the annual conference. In such Conference,

the work done in the “national laboratories” is shared and further discussed, while new activities are identified and planned.

The work done by these groups does not benefit of any support from the Ministry or the Judicial Council. This is a pure bottom-up approach (see below for more details) that has never looked for any kind of institutionalisation. Increasing procedural standardisation, predictability of judgment, standard treatment of the parties and of the cases, are some of the issues that the Common praxis groups has been able to tackle, with a comprehensive approach to quality of justice in which efficiency, legality and treatment of the parties are consistently improved.

Over the years, the Common praxis approach focused on different subject areas. The choice of the subject(s) dealt with by each Common praxis group is the result of two major trajectories: the relevance of the problem (that can be “endemic” as resources or triggered by a legislative or technological innovation) and the availability of persons interested to deal with it. A first wave of protocols dealt with the organisation of the hearings. The goal was to find out how the current confusing legislation on the various types of hearings could be translated into practical and effective hearings. This offered the possibility to look at the problem from various directions as seen by the different professionals involved, and to compare the different practices adopted by the different courts. The discussions led to the definition of hearing protocols in various courts. In a nutshell, such protocols tend to transform the nature of the hearing in accordance with international active case management principles. During the years, protocols have been approved in various areas, including ICT (Civil trial online). The last national assembly discussed consistency and predictability of judgements, resources, judicial drafting, ADR, damages compensation, and family law.

3.2.2. Up-scaling protocols: from local to national level

The damage compensation protocol - Damages compensation and family law are two interesting cases because they outline two different paths through which local protocols got a national influence.

The calculation of the compensation for personal damages caused by (car) accidents is one of the areas in which the Common praxis group of the Tribunal of Milan focused its activity. After years of work, the group approved the so-called “Tabelle di Milano” (hereafter referred as Tabelle) that provides an objective system for the calculation of the damage. The Tabelle has been progressively applied across the country by a growing number of first instance and appeal courts as the standard method to calculate the damages. However, some courts, such as the Tribunal of Rome, adopted a different standard. The question of which standard has to be applied has been solved by the Court of Cassation that in 2015 acknowledged that the damages have to be calculated by any Italian court according to the Tabelle di Milano. Furthermore, according to the Court, the possible (eventual) use of a different calculation system has to be properly justified in the motivation of the decision.

The national guidelines in family law – The work made by the group on family law shows another possible path through which local protocols can be expanded at the national level. Since we attended the meetings in which the guidelines have been drafted and approved, the case provides a detailed description of how the Common praxis groups work.

The “extraordinary expenses” required by child maintenance after the separation of the spouses regularly trigger parental conflicts during and after the divorce. Such expenses comprise all the costs not included in the regular maintenance check paid by one of the parents such as medical treatments, a language course, or the purchase of a scooter. Their handling often requires the

---

100 Sentence n. 12408/2012 and 10263/2015.
involvement of lawyers, and in several cases the disputes ends up in court. The local protocols regulating how extraordinary expenses have to be managed have demonstrated to be successful in reducing the litigation rate. The lawyers can settle the case explaining to the parties that, based on the protocol, a given cost is covered (or not) by the regular maintenance check, and that if the party decides to file a case, the judge will most likely decide as established by the protocol. Indeed, at court level, the protocol is regularly used and referred to by the judges.\(^\text{101}\) This practice of referring to the protocol has been repeatedly observed in many court hearings.

Consequently, the local protocols succeeded in easing out-of-court dispute resolution, streamlined judicial decision-making and increased the uniformity of the decisions. The problem is that, due to various factors, just 24 courts out of 135 have such protocols. Some courts are too small to have specialised judges and lawyers. In other courts, no one was interested in triggering (or successfully concluding) the long process needed to get a local protocol. Hence, the national protocol (later on called guidelines) can work as a ready-made tool available to all those interested in developing local protocols or even available for single adoption. After a long work in May 2017 the national protocol has been established.

The first step in this process has been a report that compares the protocols of different courts in family law. The report, drafted by a lawyer specialised in family law, highlights the similarities and differences existing between the 24 protocols approved at the local level (out of 135 first instance courts).

The National Laboratory on Family Law (6 May 2017) attended by about 60 persons has been the second step. To avoid "credit seeker lawyers" (i.e. lawyers participating at events just to collect the points required for mandatory annual training) the organisers (Bar and Tribunal of the city that approved the protocol) decided to assign training points to the participants just once the registration was over. A similar approach has been taken at the Tribunal of Milan, for the National Lab of Damage Compensation. Participants were coming from different regions, particularly in the centre-north covering their own expenses. The majority were lawyers coming from various bar associations but there were also judges from the Court of Cassation, presidents of family law sections of large tribunals like Turin, Roma and Bologna, judges from the Court of Appeal of Milan, just to mention a few.

The meeting was coordinated by the lawyer who drafted the report and by a judge. This format was chosen in order, to show that both components are equally important in the groups. The lawyer made a presentation of the draft report, and then the discussion focused on different areas. On the one hand, it was a question of “regulative drafting”: checking the coherence with the current jurisprudence of the Court of Cassation, identifying a minimum common denominator between the 24 protocols (i.e. basic rules applicable all over the country), selecting of the proper terminology, reducing ambiguities, etc. During the debate, a judge questioned the appropriateness of a national protocol. She argued that the protocols are designed to be effective at the local level since their effectiveness directly stems from those (judges and lawyers) who have invested time and knowledge in their development. The later emphasised that the "lawyers knows I will apply our protocol because I have spent time and energy to draft and approve it, but this strength disappears as soon as this is placed out of the context in which it has been approved and developed". So, while at court level the protocol acts as soft law, but with direct enforcement by the same regulators, its peculiar strengths disappear if the context in which it has to be applied changes.

---

\(^{101}\) Sentence n. 12408/2012

http://www.diritto24.isole24ore.com/fuoco/R2V0RG9jdW1lbmRCEUlk/MTI0NzU0MTMmMyZndWlkYUFsRGlyaXR0bw/document.html
After a vivid discussion, the meeting approved the idea to go ahead with the national protocol. The argument was that the national protocol is not a "plug and play" tool, but something to be promoted with specific targeted initiatives in different tribunals: meetings with judges and lawyers of other courts, training, conferences [...]". Also, as speculated by a member of the Court of Cassation, "for the Court [of Cassation] it should be easier to endorse a national protocol than a local one".

At the end of the meeting, the participants agreed to propose to the National Conference - planned in Rome few weeks later - the approval of the draft of the national protocol prepared during the "national laboratory" on family law. Additionally, the participants agreed that the new document would have been called "national guidelines on family law." This choice was justified to differentiate the status of the new soft rules (i.e. the proposal of a good practice made by several local groups), and the local protocols (approved by the bar association and by the President of the Tribunal, and to be applied in that court).

The National Assembly that took place at the Court of Cassation (19-21 May, 2017) was the third step. During the Conference, the guidelines have been amended and approved first by the group of lawyers and judges interested in family law (working group), then by the plenary itself.

In the two national meetings, the working method adopted is the standard one used by the "Common practice approach", and is often referred as the “council chamber method" ("metodo della camera di consiglio"). The idea is to follow the type of work made by the judges working in panels to adjudicate a case: there is a stage of instruction, one of discussion and consensus building, followed by the decision. As in the chamber, the admitted participants discuss, look for the right solution, and if needed, vote the decision. There is, however, one difference: while the access to the chamber is restricted to the panel, the work at the "Common practice" meetings is open to all those interested.

This method gives rise to some oddities as judges and lawyers sitting in one of the most prestigious hearing rooms of the Court of Cassation, discussing a (soft) regulation with an egalitarian approach, voting on amendments to the draft regulation, and finally approve the guidelines. Such a dynamic is more similar to the ones occurring in Parliaments rather than ones of courts: a Parliament without official representation that vote within the Court of Cassation! Nevertheless the source of legitimation is clear: the genuine interest of improving consistency and predictability in judicial decision-making, effectiveness and efficiency in court proceedings, and offering a better treatment to the users by increasing the predictability of the judicial decisions.

**Effectiveness of protocols and guidelines** - The national guidelines have been approved in May 2017,[^102] and it is too early to describe their deployment and their impact. However, the local protocols are in place for many years. Statistical data are not available yet, so we can just provide pieces of evidence collected during direct observation of divorce cases to which we have been admitted. During the data collection, every time there was a question related to an issue regulated by the protocol the lawyer or the judge made direct reference to the protocol as an agreed way to decide the question. In one case, one lawyer suggested a solution not endorsed by the protocol (new criteria to share the unplanned extraordinary child maintenance expenses, see above), and the judge immediately closed the question saying: "we cannot consider this option. The protocol states a different criterion for sharing such costs". Even if it is soft law, its consistent use by judges and lawyers in a given court can make it very compelling.

References


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

Vecchi, G. 2013. Systemic or Incremental Path of Reform? The Modernization of the Judicial System In Italy. *International Journal for Court Administration,* 5, 64-87.

Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice
The evaluation and development of the quality of justice in The Netherlands

Rachel I. Dijkstra: Junior Researcher and Lecturer at the Institute for Jurisprudence, Constitutional and Administrative of Utrecht School of Law, the Netherlands

Philip M. Langbroek: Director of Montaigne Centre Rule of Law and Judicial Administration and Professor of Justice Administration and Judicial organisation at Utrecht School of Law, Utrecht University, the Netherlands

Kyana Bozorg Zadeh: Masterstudent and Student Assistant at the Institute for Jurisprudence, Constitutional and Administrative of Utrecht School of Law, the Netherlands

Zübeyir Türk: Masterstudent at Leiden School of law and student assistant at the Institute for Jurisprudence, Constitutional and Administrative of Utrecht School of Law, the Netherlands.

1. Introduction

Judicial quality in the Netherlands has given rise to substantial debate and over the years judges, court boards, policy makers and the Dutch Council for the Judiciary have undertaken various actions to safeguard and improve this quality. Similar developments can be detected in other Member States of the European Union and within EU policy. One of the main questions concerning judicial quality is to what extent this quality should be evaluated and how this relates to political, professional and organizational aspects of the judiciary. After all, the judiciary consists of professionals with a constitutionally guaranteed independent position—the judges, in an organization that receives its main funding from Dutch Government (taxes). Hence, despite the independent nature of the professionals the current organizational features require public and political accountabilities.

The report before you discusses the Netherlands’ institutional context (chapter 2); classical judicial evaluation arrangements and resource allocations) (chapter 3); and finishes with a discussion on innovative practices regarding judicial evaluation (chapter 4).

2. The institutional context

2.1. Judicial structure overview

During the last two decades, the Dutch judiciary has undergone fundamental reforms. Figure 1 shows the Judicial Map of the Netherlands before and after the reform. These changes include the introduction of an output financing system and an alteration of the judicial map that has resulted in a reduction of the total number of courts from 24 to 16.

The Council for the Judiciary (Raad voor de Rechtspraak) functions as the central management board of the judiciary and is part of the judicial system but has no competences regarding the content of judicial rulings. The Council for the Judiciary administers the courts and has organized the judicial system into three major types of jurisdictions: civil, criminal and administrative. The first two jurisdictions comprise three types of ordinary courts (paragraph 1.2) and the last one three

---


4 More information can be found on the government website: www.government.nl (Search for: The Dutch court system: Administration of justice and dispute settlement).

F. Contini (ed.) Handle with Care: assessing and designing methods for evaluation and development of the quality of justice. IRSIG-CNR. Bologna Available at www.lut.fi/hwc
types of special courts (paragraph 1.3). The Judicial Organization Act (Wet op de Rechterlijke Organisatie or ‘Wet RO’) institutes the courts and determines their competences.\(^5\)

The total of ordinary and specialized courts, have a systematic division in three instances.\(^6\) The courts of first instance include all district courts (arrondisementsrechtbanken). The courts of second instance, the appeal courts (gerechtshoven), have specialized divisions for administrative (tax), civil and criminal cases. Based on the Act on the Judicial Map (Wet op de Rechterlijke Indeling), there are eleven district courts, four appeal courts and one Supreme Court. Each court has its own board.\(^7\) The Netherlands does not have a Constitutional court.

Figure 1: Judicial map of the Netherlands

The composition of the courts is different in each instance. Usually, district court judges hear cases on their own but a panel consisting of three judges must hear the most important or serious cases – this is decided by the court.\(^8\) The judges in the Courts of Appeal hear cases with a panel of three, unless one judge can hear such a case. Only the Supreme Court hears every case with five judges.\(^9\) According to the codes for civil and criminal procedures, judges can refer a case to a plural judge panel or to a single judge panel, if they think this is necessary content wise; the same holds for administrative court proceedings according to the General Administrative Law Act.

Below, we discuss the different types of courts. A schematic overview of the current redress structure of the courts in the Netherlands is presented below.\(^10\) In paragraphs 1.2 we describe the

\(^7\) Ibid 253.
\(^8\) Article 45 paragraph 1 Judicial Organisation Act.
\(^9\) Article 75 paragraph 2 Judicial Organisation Act.
\(^10\) Derived from Philip Langbroek & Mirjam Westenberg, ‘Quality Indicators in the Courts of the Netherlands’ in: Philip M. Langbroek and Mirjam R.M. Westenberg, Court Administration and Quality Work in Four European Judiciaries: Empirical Exploration and Constitutional Implications, Justizforschung series, Stämpfli Verlag, Bern, Chapter 4, paragraph 4.2.1 Organisation of the courts (expected February 2018).
Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice

infrastructure of the administration of the courts, and in paragraph 1.3 we discuss the major issues that are a current concern in the administration of justice.

Figure 2: Overview of courts in the Netherlands

2.2.1. Ordinary courts

The Judicial Organization Act institutes the district courts and stipulates their competence for civil, administrative, taxation and criminal cases. The different jurisdictions are accommodated in different departments within a district court and each specific district court has specialized chambers, for example for cases regarding small crimes or military servant cases. In first instance, the eleven district courts hear almost all cases. Most cases start at a district court. Every district court also administers small claims, and small crimes cases (referred to as kanton-cases). The kanton-judge hears cases such as employment or rent disputes, and other civil cases involving claims of up to €25,000. Kanton judges also hear cases involving minor criminal offences (misdemeanors).

The internal organization of the appeal courts, being courts of second instance, is the same as for the district courts. The Netherlands has four appeal courts, which are territorially divided based on the four geographical judicial areas (ressorts). Appeals against judgments passed by a district court in civil, criminal and taxation cases can be lodged at the competent court of appeal. This court re-examines the facts of the case and reaches its own conclusion. Against the decision by the court of appeal there is the option of appeal for cassation at the Supreme Court.

The Supreme Court (Hoge Raad der Nederlanden) hears appeals in the field of civil, criminal and tax law. The aim of cassation is to promote consistency in the implementation and development of

---

11 Ibid paragraph 4.2.1.1 Ordinary courts
the law. In doing so, the Supreme Court examines whether a lower court observed proper application of the law in reaching its decision. The ordinary jurisdiction applies, if no administrative court has jurisdiction. As will be explained below, administrative law cases don’t have an appeal at the Court of Appeal but go directly to one of the administrative law tribunals.

2.2.2. Special courts
In the Netherlands, three specialized administrative tribunals provide administrative legal protection to citizens that are appealing against administrative legal acts. The General Administrative Law Act (GALA) and the Judicial Organization Act arrange this type of legal protection. The specialized administrative tribunals are appeal courts in administrative cases. The administrative body itself hears the initial complaint in objection proceedings. The decision can be appealed at the administrative law section of a first instance court. The decision of the first instance court can be appealed at one of three specialized courts. Each of these courts decides on different types of cases.

First, the Administrative Jurisdiction Division (AJD) of the Council of State has the general jurisdiction in appeal cases, insofar as the other courts are not competent. The Council also has an advisory division to advise the government on new legislation. Their competence falls outside the remit of the Council for the Judiciary, since the courts are administered by the Council of the Judiciary, except the Supreme Court and the AJD of the Council of State. Second, the Central Appeals Tribunal (CAT) deals mainly with proceedings regarding social security, social assistance and civil-servants law and constitutes the highest judicial authority. Third, the Trade and Industry Appeals Tribunal is the highest court specialized in the area of social-economic administrative law. Recently a bill to merge the several specialized courts was repealed by the government due to a lack of support in Parliament.

2.2. Key functions in the administration of justice
This paragraph discusses various bodies dealing with the administration of justice. The Dutch Council for the Judiciary and the Minister of Security and Justice have central roles and act in close interplay with the management boards of the courts. Another body engaged in the administration of justice is the Dutch Bar Association. The following discusses each of these entities.

2.2.1 The Dutch Council for Judiciary (Raad voor de Rechtspraak)
The Dutch Council for the Judiciary (hereafter called: Council) acts as an independent intermediary between the judiciary and the government. The Council has a minimum of three and a maximum of five members that can be part of the Council for a maximum of nine years, and they cannot also be part of a court board or the legislature among other things. The creation of the Council aimed at increasing the independence of the judiciary and was part of a far-reaching reform of the judiciary system that took effect in 2002. The main tasks of the Council consist of controlling the financing of the law. In doing so, the Supreme Court examines whether a lower court observed proper application of the law in reaching its decision. The ordinary jurisdiction applies, if no administrative court has jurisdiction. As will be explained below, administrative law cases don’t have an appeal at the Court of Appeal but go directly to one of the administrative law tribunals.

2.2.2. Special courts
In the Netherlands, three specialized administrative tribunals provide administrative legal protection to citizens that are appealing against administrative legal acts. The General Administrative Law Act (GALA) and the Judicial Organization Act arrange this type of legal protection. The specialized administrative tribunals are appeal courts in administrative cases. The administrative body itself hears the initial complaint in objection proceedings. The decision can be appealed at the administrative law section of a first instance court. The decision of the first instance court can be appealed at one of three specialized courts. Each of these courts decides on different types of cases.

First, the Administrative Jurisdiction Division (AJD) of the Council of State has the general jurisdiction in appeal cases, insofar as the other courts are not competent. The Council also has an advisory division to advise the government on new legislation. Their competence falls outside the remit of the Council for the Judiciary, since the courts are administered by the Council of the Judiciary, except the Supreme Court and the AJD of the Council of State. Second, the Central Appeals Tribunal (CAT) deals mainly with proceedings regarding social security, social assistance and civil-servants law and constitutes the highest judicial authority. Third, the Trade and Industry Appeals Tribunal is the highest court specialized in the area of social-economic administrative law. Recently a bill to merge the several specialized courts was repealed by the government due to a lack of support in Parliament.

2.2. Key functions in the administration of justice
This paragraph discusses various bodies dealing with the administration of justice. The Dutch Council for the Judiciary and the Minister of Security and Justice have central roles and act in close interplay with the management boards of the courts. Another body engaged in the administration of justice is the Dutch Bar Association. The following discusses each of these entities.

2.2.1 The Dutch Council for Judiciary (Raad voor de Rechtspraak)
The Dutch Council for the Judiciary (hereafter called: Council) acts as an independent intermediary between the judiciary and the government. The Council has a minimum of three and a maximum of five members that can be part of the Council for a maximum of nine years, and they cannot also be part of a court board or the legislature among other things. The creation of the Council aimed at increasing the independence of the judiciary and was part of a far-reaching reform of the judiciary system that took effect in 2002. The main tasks of the Council consist of controlling the financing

---

14 Sometimes these courts also constitute the Court of First Instance for legal acts regarding specific laws. In such situations, the court is the final judicial stage: there is no possibility for appeal.
15 The most important of these rules are laid down in the General Administrative Law Act (Algemene wet bestuursrecht).
16 The Council also has an advisory division to advise the government on new legislation. A debate is going on about whether such different divisions should be part of the same entity; T. Barkhuysen, ‘Het vereiste van rechterlijke onpartijdigheid en de voorgestelde nieuwe Wet op de Raad van State: mag het een onsje meer zijn?’ RegelMaat afl. 2007/3, p. 119-127; Ben Schueler, ‘Een overzichtelijke, onafhankelijke eenheid? Over integratie van de bestuursrechtspraak’, NTB 2014/20.
18 The Netherlands Judges Association (NVvR) acts both as a trade union for judges and prosecutors and as the defender of both judicial and rule of law interests. This entity is left out of the discussion because they do not administer justice.
19 Art. 84 Judicial Organisation Act.
20 This reform took place to guarantee the quality of justice and to be able to fulfil the justified future demands and needs of society; René Verschuur, Independence of the Judiciary, Belgrade, 2nd June 2007, p. 4; Council for the Judiciary, Seminar on Court Reform ‘Economic value of judicial infrastructure: court Reform and Court budgeting’; 3 April 2012 in Portugal.
of the judiciary, supporting the operational management of the courts and monitoring these activities. In addition, the Council contributes to the recruitment, selection, appointment and removal of judicial officers and court officials including judges. These tasks are not listed exhaustively in the law. Currently article 91 of the Judicial Organisation Act (Wet op de Rechterlijke Organisatie) emphasized the operational management. However, if need be the law could be changed to include other tasks or elements that need the attention of the Council. So far the formal tasks of the Council did not change.

Currently two of the main tasks of the Council constitute the financial management of the judiciary and the monitoring of the judiciary’s quality. The Council prepares an annual budget proposal for the courts and distributes the allocated budget within the judiciary (more on this in chapter 2.5 resource allocation). Second, the Council is responsible for the quality of the services of courts and judges, together with the management boards of the courts. According to the explanatory memorandum there is a distinction to be made between the legal quality and the administrative-organizational quality. The Judicial Organization Act stipulates that the Council should particularly focus on the quality of the administrative and organizational processes within the courts. However, when it comes to the legal quality of the judiciary, the responsibility lies primarily with the courts themselves.

2.2.2 The Ministry of Security and Justice (Ministerie van Veiligheid en Justitie)

Another relevant entity to the administration of justice is the Ministry of Security and Justice. The Ministry of Justice as co-legislator is responsible for the (delegated) regulations in the judicial field. These regulations comprise the court map, the legal position of judges, rules of procedure, the administration of justice, legal aid, court fees and so on. Changes in the Judicial Organization Act, or in the Order in Council on the Financing of the court are to be initiated by the Ministry of Justice and Security. The Minister also has certain administrative competences based on article 91 of the Judicial Organization Act. The Minister can give general directions to the Council to the extent necessary to safeguard a proper management of the courts. As far as we know, this has never happened. Furthermore, the Minister recommends people to the Government that could become members of the Judicial Council and he is also empowered to propose the members of the Council for dismissal or suspension in case of unsuitability. With regard to the financing of the judiciary, the Minister has an exclusive competence to submit a budget proposal for the entire justice and security domain to Parliament (2.5 resource allocation). The proposed budget for the judiciary is a part of the budget bill for the entire justice and security department.

2.2.3 The Dutch Bar Association (De Nederlandse Orde van Advocaten)

The Dutch Bar Association (the Bar) is the public-law professional body for all lawyers in the Netherlands and consists of all lawyers registered in the Netherlands. The statutorily regulated core activity of the Bar is to oversee the quality of services provided by lawyers. The Bar is responsible for the procedures regarding admission to the legal profession, the regulation of professional practice and the monitoring of these activities. The Dutch Bar Association has a General Board that constitutes the head of the association. In addition, there are local associations in the various

---

22 Art. 91 lid 1 sub f Judicial Organisation Act.
23 Kamerstukken II 1999/00, 27 182, nr. 3, p. 20.
25 Kamerstukken II 1999/00, 27 182, nr. 3, p. 62.
26 Kamerstukken II 1999/00, 27 182, nr. 3, p. 62.
27 Kamerstukken II 1999/00, 27 182, nr. 3, p. ??.
29 Art. 84 Judicial Organisation Act; Article 15 Judicial Organisation Act.
31 Bovend’Eert 2013, p. 133; Advocatenwet (Lawyers Act).
32 Art. 18 Lawyers Act.
districts. The General Board and the various district associations ensure the proper practice of the legal profession. The Bar defends the rights and interests of lawyers; monitors their compliance with obligations; and fulfills the responsibilities entrusted to them by regulation.\textsuperscript{33} The disciplinary control is entrusted to the Boards of Discipline in each jurisdiction, and – on appeal – to the Court of Discipline.\textsuperscript{34} Therefore the main function of the Bar for the quality of justice relates to its influence on lawyers that safeguard good defense in court rooms and proper litigation.\textsuperscript{35}

2.3. Current issues in the administration of justice

The Dutch administration of justice has had to deal with several issues and changes over the years. First, an alteration of the judicial map resulted in a reduction of the total number of courts from 24 to 16.\textsuperscript{36} Second, the judiciary criticized the complex financing system of the judiciary and budgetary reductions applied over the years.\textsuperscript{37} A courts’ financial position is determined by its output: the annual budget for the judiciary is basically established by a calculation that takes the number of cases decided as point of departure. The budgeting and accounting process of the judiciary system therefore follows the production of court decisions alongside with a workload-measurement system. This system of funding is now included in the Act on the Judicial Organization and the Order in Council on financing of the judiciary of 2005.\textsuperscript{38} The budget for the courts and the Council for the Judiciary in 2014, 2015 and 2016 was about one billion euros.\textsuperscript{39} The new public management ideal is at the basis of the budgeting and accounting process of the Dutch judiciary.\textsuperscript{40} Lastly, the judiciary saw Rechtspraak\textsuperscript{Q} decline. Rechtspraak\textsuperscript{Q} is the common quality management system for the judiciary and is discussed in depth in the next chapter. The main issue with the system is the fact that judges do not consider Rechtspraak\textsuperscript{Q} as a living and functioning thing, but rather refer to it as a ‘dead letter’. In fact, many judges we interviewed did not know the system.

At the end of 2012 many Dutch judges signed the so-called Leeuwarder Manifest to protest against the aforementioned financing system.\textsuperscript{41} The main critique was the overly focus on production and targets.\textsuperscript{42} Especially the criminal law judges seconded this manifest. The judges felt like they did not have sufficient time to prepare their cases and that there was an overly focus on targets instead of quality. After the Leeuwarder Manifest the Council of the Judiciary sought to take into account the judges’ needs in order for these to provide better quality work. They asked the judges what they needed to provide high quality judgments.\textsuperscript{43} The judges responded with the drafting of professional standards. These standards are discussed in the next chapter.

In addition to these professional standards, the Dutch judiciary has developed a new institutional approach towards knowledge and is in the process of implementing legislation to digitalize proceedings. The system is also appointing a more directive role to judges and courts organize so called mirror-meetings between judges and the general public, or lawyers for example, to reflect on the judiciary and specific judges. The third chapter discusses these innovative practices.

\textsuperscript{33} Art. 26 Lawyers Act.
\textsuperscript{34} Art. 46 Lawyers Act.
\textsuperscript{35} More info on <advocatenorde.nl>
\textsuperscript{36} Wet herziening gerechtelijke kaart (HGK) of 12 July 2012; entry into force 1 January 2013. Staatsblad 2012 nr. 313.
\textsuperscript{37} Paul Bovend’Eert, ‘Wat is er mis met de rechterlijke organisatie?’, Ars aequi (May 2016).
\textsuperscript{38} Besluit financiering rechtspraak 28 January 2005, Stb 2005, 55, based on Articles 97, sections 1, 98 and 4 Judicial Organization Act.
\textsuperscript{39} Year Report Judiciary (The Netherlands 2014) 91. Year Report Judiciary (The Netherlands 2015) 72.
\textsuperscript{40} Wouter van Dooren et al., ‘Performance management in the public sector, Routledge 2015. ’’The NPM doctrine has all the characteristics of a performance movement. It prescribes that public agencies should be subdivided into small policy oversight boards and larger performance-based managed organizations for service delivery’’ (pages 48, 49).
\textsuperscript{41} ‘Manifest’ published in Tijdschrift voor de Rechterlijke Macht 2013, afl. 2, p. 40.
\textsuperscript{42} Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017).
\textsuperscript{43} Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017).
3. Classical judicial evaluation arrangements

3.1. Introduction
The Netherlands safeguard the quality of the judiciary at several levels and in different stages. First, the judiciary manages the recruitment of new judges and their initial evaluation – as part of the selection process – thoroughly. Second, to ensure equal and overall quality of the judicial system the Dutch Council for the Judiciary has developed a common quality management system referred to as ‘Rechtspraak’. Rechtspraak is a national quality system that consists of multiple elements and applies nationwide. It is the general framework for evaluation of the judiciary on both the organizational and professional level. It does not correspond to the recruitment of judges.

The following first discusses the recruitment and initial evaluation of judges (2.2). Then the research touches on the evaluation system Rechtspraak. After a general introduction of Rechtspraak the research discusses the evaluation of the judiciary on both the organizational (2.3) and professional level (2.4).

3.2. Recruitment and initial evaluation of judges
Judges in the Netherlands are appointed for life (until the age of 70) under the authority of the Minister of Security and Justice and they are recruited and selected based on pre-set selection criteria. The appointment for life safeguards judicial independence, particularly their personal legal position. Nevertheless, judges can be dismissed, but only by the Dutch Supreme Court at the demand of the Procurator-General at this Court. The Netherlands do not have lay judges or jury trials and there are currently no proposals to introduce these. Nevertheless, scholars seem to agree that the use of lay judges or juries could improve awareness about the judiciary among the population. The next paragraphs describe the selection bodies that choose the new judges, the selection process, the selected candidates and the subsequent training that applies to future judges.

3.2.1. Selection bodies
The Council for the Judiciary has the authority to recruit and select judges and other court officials, as long as the management boards of the respective courts are consulted. But, overall the Minister of Justice is responsible for the recruitment and training of judges, because judges are appointed by royal decree. The Council has instituted a national judicial selection commission (Landelijke selectiecommissie rechters) in order to select and recruit new judges. The national judicial selection commission consists of mostly judges, lawyers and some scholars. The national judicial selection commission manages the selection of candidates for judicial training, the ‘Rechter In Opleiding’ or ‘Judge In Training’, which encompasses several material requirements. Following selection and training, judges are appointed by the government, following a shortlist of candidates for the court with a vacancy, as submitted to the Ministry of Justice via the Council for the Judiciary.

---
45 Article 117 Dutch Constitution; Philip Langbroek, ‘Organisatieontwikkeling en kwaliteitszorg in de rechterlijke organisatie’ in ER Muller and CPM Cleiren, Rechterlijke Macht (Kluwer 2013) 85.
47 The procedure for dismissal is arranged in chapter 6A Wet Rechtspositie Rechterlijke Ambtenaren (Law on the Legal Status of Judicial Officers).
49 Raad voor de Rechtspraak, Regeling Landelijke selectiecommissie rechters (LSR), Staatscourant Nr. 8498, 27 maart 2014.
50 This paragraph draws from the selection procedure document developed by the Council for the Judiciary; Raad voor de Rechtspraak, ‘Selectieprocedure. Recht in opleiding’ (2016) The Netherlands.
3.2.2. Selection process

The national judicial selection commission emphasizes the need for candidates to show public engagement, intellectual and analytical capacities and elements such as persuasiveness and empathy. The Council and the national judicial selection commission, in consultation with the courts, have developed new professional profiles in April 2012 for judges at the lower and higher courts. These profiles lie at the basis of the whole selection procedure. The following list stems from the work of Simone Roos and Elske van Amelsfort-Van Der Kam and entails and outline the criteria underlying the professional profiles. 51

- Adopt a more directing role towards legal proceedings – before, during and after the actual hearing. This directing role mostly corresponds with transparency about the capacities of a judge and with managing expectations of the parties.
- Pay attention to the societal relevance and effects of their decisions.
- Work together with other courts and with legal staff to increase and exchange knowledge.
- Learn how to deal with feedback from colleagues and external parties and balance contradictions.
- Be creative and innovative.
- Be sensitive and listen well.
- Develop learning capacity.
- Realize the importance of speediness.
- Be able to properly communicate findings to external parties.

Hence, these criteria are at the basis of the selection procedure. The selection procedure for the initial judicial training takes about three months and there are two moments per year in which candidates can apply. There are some preconditions in order to even start the application process. One must have the Dutch nationality and a law degree from a Dutch university to become a judge in the Netherlands. 52 Candidates with a criminal record are excluded from initial training unless one of the exceptions applies. 53 Applicants need at least two years of legal experience outside the judiciary but there is no limit to years of experience. 54 In principle the same selection procedure applies to all applicants, regardless of their previous experience. 55 The subsequent initial judicial training differs, though.

If a candidate is eligible for the initial judicial training he or she can send in their application for a position at one or more specific courts. After the first ‘letter and resume’ selection, candidates participate in an analytical test concerning verbal, language and abstraction skills. After successfully completing these analytical tests, candidates have a conversation with a member of the national judicial selection commission, someone from human resources and a representative of the judicial organ a candidate is applying for. Candidates apply for a specific court but can apply for several courts. The next step entails an assessment including several personality tests that focus on intelligence, decisiveness and integrity among other things and a conversation about these tests. The selection procedure ends with three conversations with different members of the selection commission in order to gain insight in personal capacities, societal involvement and societal vision. Legal competence and capacity to work are supposedly evaluated through the use of references and

52 Article 5(1) Wet rechtspositie rechterlijk ambtenaren.
the several analytical tests and assessments. Neither the list of criteria nor the selection procedure mentions diversity as a desirable feature of new recruits. Diversity is understood here to entail gender, religion, ethnic descent and so forth. Nevertheless, some judges emphasize their attention for recruiting judges from minorities to establish a more representative judicial body.

If the judicial selection commission reaches a positive conclusion after the foregoing steps – so both quantitative and qualitative elements, they forward prospective judges to the respective courts. The courts make the final decision on whether to hire a new recruit, they are also free to only choose candidates that they consider eligible, depending on the administrative structure and policy goals of each court. The courts pay specific attention to potential for teamwork and collegiality. In principle, if a candidate is rejected he or she has to wait two years to re-apply. So far there is no mentioning of any evaluation of the selection procedure by candidates. Despite the transparent description of the process, Rutten-van Deurzen still refers to some aspects of the process as a ‘black box’, for example the lack of transparency regarding the criteria that determine who is selected as member of the judicial selection commission. The regulation on the national judicial selection commission, however, make certain that the performance of its members is evaluated.

3.2.3. Selected candidates
At the end of 2015 the majority – 56 percent – of the judges on the level of lower and higher courts were female. Apparently, the selection procedure provides for a ‘proper’ gender-balance. In terms of age most judges are between 46 and 60. There are tables on the national scale detailing the average age of most judges. Other information is not publicly available regarding distinctions, apart from a division between judges with little legal experience (2-5 years) or substantial legal experience (more than 5 years). In 2016 46 new judges started the initial judicial training program (RIO-training), of which 22 had substantial legal experience. In 2015 30 out of 67 selected judges had substantial experience.

From the interviews with some of the court’s board members arose the view that currently the recruitment of judges leads to an excess of female (successful) applicants. One judge mentioned concerns that the overflow of female judges could lead to a rather feminine judiciary that is out of balance. Some even mentioned that men are preferred by recruiting courts to gender-balance the courts. In terms of diversity several judges acknowledge the lack of judges with diverse (ethnic) backgrounds. In the support staff there can be more diversity, for example in the court in Rotterdam. One of the judges we interviewed mentioned that the current judiciary could lose legitimacy because of this shortcoming, especially given the inability of the courts to deal with

58 W.M.C.J. Rutten-van Deurzen, Kwaliteit van rechtspleging (Wolf Legal Publishers 2010), p. 163.
59 Regeling Landelijke selectiecommissie rechters (LSR), Staatscourant Nr. 8498, 27 maart 2014, Art. 6.
64 Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017); Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017).
65 Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017).
66 Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017).
ethnic diversity in selection of judges.\textsuperscript{67} A major reason for the lack of diversity, according to some of the judges, stems from the emphasis in the selection procedure on Dutch verbal and written skills.\textsuperscript{68} For applicants with a non-Dutch background this can be problematic. At the Court of First Instance in Amsterdam we heard of a new research, conducted by an external partner who works with diversity groups within the court to look at diversity issues and how to actively tackle them—especially in the selection of candidates for a judicial position.\textsuperscript{69}

Lastly, because of the professional standards—which are discussed later—the several courts need to recruit many new judges and support staff because the professional standards imply an increase in the numbers of judges and legal support staff. Several judges mentioned this to be incredibly difficult to realize this short-term, because of the time it takes to train judges.\textsuperscript{70}

3.2.4. Training and internship of apprentice judges

After prospective judges are accepted they enroll in initial judicial training mentioned above, and become fully-trained judges after completion of the training.\textsuperscript{71} The duration of this training depends on the amount of previous legal experience. If a prospective judge has two to five years of the aforementioned legal experience, the initial judicial training takes four years.\textsuperscript{72} If you have five or more years of legal experience you can enroll in a different and shorter track. These applicants usually come from legal practice (lawyers) according to some judges, but there are no publicly available statistics.\textsuperscript{73} The additional training then takes generally between fifteen months and three years and can link to previous experience.\textsuperscript{74} The judges do also start working as a judge, but under supervision. In any regard, the initial judicial training contains internal, theoretical trainings on legal matters provided for by the Judicial Training Institute (Studiecentrum Rechtspleging), the training and study center for the judiciary.\textsuperscript{75} The Judicial Training Institute is a service, formally organized within the judiciary (formally comprising both judges and prosecutors).\textsuperscript{76} In co-operation with their clients (the Public Prosecutor's Office and the Council for the Judiciary—and the courts), the Judicial Training Institute designs the training program and the training offer of the Judicial Organization. The Judicial Training Institute is managed by an executive board of a judge and prosecutor.\textsuperscript{77}

The Judicial Training Institute offers a wide range of courses in all areas of law based on a vision on learning and development.\textsuperscript{78} The Judicial Training Institute focuses on professional education and specialized courses. It tries to provide courses based on educational standards that are manageable for the courts in terms of the courts’ budgets. Effectiveness and efficiency are

\textsuperscript{67} Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017).
\textsuperscript{68} Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 februari 2017); Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017).
\textsuperscript{69} Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017).
\textsuperscript{70} Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017).
\textsuperscript{71} Since 2014 the training of judges has significantly altered.
\textsuperscript{73} Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017).
\textsuperscript{76} Besluit opleiding rechterlijke ambtenaren (Order in Council of education of judicial officers).
\textsuperscript{77} In the sence of art. 40 Besluit financiering Rechtspraak.
considered very relevant, also in a training context. Courses taught by other judges, professors and other legal experts, include leadership tracks and coaching and peer review tracks. The court where the judge works (usually the team-manager) discusses the need and value of specific courses for the judge to take and together they develop learning objectives. The courts’ boards pay special attention to planning sessions of peer review where the judges discuss the aims of learning, consultation, reflection, control and collegiality. At Rotterdam district court, these sessions take place once every six weeks and give room to judges to refresh their knowledge on specific subject-matters concerning their working field.

3.3. Continuous evaluation of judges
3.3.1 Introduction: the evaluation system RechtspraakQ

As explained above, RechtspraakQ is a national quality management system that consists of multiple elements and applies nationwide. Once judges are a member of the Dutch judiciary, they automatically are subjected to the overarching quality system RechtspraakQ. Each court is also subject to evaluation. The information generated by RechtspraakQ is used by the boards of the courts and eventually the Council for the Judiciary to maintain and improve the quality of the judiciary. On a national scale, the information is not used for the systematic and individual evaluation of individual judges, but only for the whole of the court and as aggregated information on the level of court divisions and teams.

This sub-paragraph discusses the development and methodological structure of RechtspraakQ. It starts with a brief assessment on why RechtspraakQ came into existence, after which the several norms and assessment instruments are addressed (2.3.2). The paragraph then focuses on the evaluation of individual judges. The next paragraph (2.4) will constitute a discussion on the evaluation of the judiciary as an organization.

RechtspraakQ in the making

Quality of the judiciary in the Netherlands is a concept that has been debated widely over the years and led to the formation of several committees to reevaluate the judicial organization. The changing society developed new ideas and goals for the judiciary, for example speed, effectiveness, accessibility and quality. The idea arose to develop quality management as a vivid element of organization development. In 1998 a committee acting upon instructions of the government published a report outlining ideas to modernize the judiciary. The report pleaded for a hierarchical structure of the judiciary, including management boards and a national, overarching Council for the Judiciary. Moreover, the commission introduced the concept of quality in connection to the judiciary. The report embodied the idea that the judiciary needed to safeguard high quality in terms of classic judicial values, such as independence, but also high quality in terms of management and the organization as a whole.

---

81 Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coordinators, Court of First Instance Rotterdam (Rotterdam, 11 May 2017).
82 W.M.C.J. Rutten-van Deurzen, Kwaliteit van rechtspleging (Wolf Legal Publishers 2010), pp. 6-8.
The judiciary itself also started inquiries into the future potential and form of the judiciary. To this end a project started in 1996, *Toekomstverkenning ZM*, to formulate ideas to safeguard the quality of the judiciary. As a follow up the Presidents of the several courts of first and second instance and the State Secretary of Security and Justice started the Covenant Program Strengthening Judicial Organization (*Conventen Programma Versterking Rechterlijke Organisatie*) or PVRO. This temporary program aimed at strengthening the organization in terms of working processes, external orientation and staff policy and developed a program planning to this end. In 2002 the Judicial Organization Act – article 91 – allocated the responsibility for the quality of the management of the judiciary and organizational processes to the Council for the Judiciary. The Explanatory Memorandum states that this also contains aspects of strict judicial quality, such as impartiality, consistency and speed and promptness. The Minister of Security and Justice is entitled to give instructions to the Council concerning its tasks in Article 91 JOA to the extent necessary for good operational management. This way, the Minister can interfere with the courts’ quality management. The JOA allocates the care for legal quality to the respective boards of the several courts. The Council has a legal obligation to support the activities of the courts with regard to consistency in the application of the law and the promotion of legal quality.

In 2006 another commission (*Commissie-Deetman*) evaluated the instituted changes of the Judicial Organization Act. The main recommendations concerned the need for more enhanced legal quality and ways of quality improvement. Other focus areas concerned the external focus of the judiciary and human resource management. In 2005 the several courts started the implementation of RechtspraakQ. The next paragraph focuses on the functioning of RechtspraakQ.

**RechtspraakQ as a quality system**

RechtspraakQ is based on the INK quality management model (*Instituut Nederlandse Kwaliteit*), which in turn is based on the EFQM model, the European Foundation for Quality Management. The INK model provides the methodological framework for RechtspraakQ and incorporates existing practices in the Netherlands to measure quality in the Dutch judiciary. The INK model has nine main criteria from which RechtspraakQ has developed (a) an overarching normative framework and (b) systems to measure the quality of the judicial system. Many of these quality norms and measuring instruments apply to judges, or groups of judges, and to the judicial organization as a whole.

**(a) an overarching normative framework**

The normative framework (a) of RechtspraakQ has two pillars: quality regulations and the judicial performance measurement system. The first normative pillar, quality regulations, is at the basis of

---

89 *Kamerstukken II*, 1999-2000, 27182, 3 (MvT), p. 62
90 *Kamerstukken II* 1999/00, 27 182, nr. 3, p. 62
91 Article 93 JOA
93 Art. 91 lid 1 sub c and art. 94 JOA
94 Miranda Boone (UU), Philip Langbroek, Petra Kramer, Steven Olthof and Joost van Ravesteijn (KPMG) Financieren en verantwoorden , het functioneren van de rechterlijke organisatie in beeld, BJU, Den Haag 2007.
100 (1) leadership, (2) strategy and policy, (3) management of staff, (4) management of resources, (5) management of processes, (6) customers and suppliers, (7) staff, (8) society and (9) management and financiers. Also a tenth item has been added: improvement and innovation. (Raad voor de Rechtspraak, ‘Quality of the judicial system in the Netherlands’ (2008) *The Netherlands*, p. 6).
Rechtspraak. On the national level the Council for the Judiciary has articulated five quality norms: permanent education, reflection, clear and comprehensible judgments, speed and promptness of case flow and a minimum proportion of cases with a three judge panel.\textsuperscript{101} In addition, each court and all sectors within the court have developed a set of quality regulations to program their activities in the context of Rechtspraak. The quality regulations contain quality standards for the court’s management board and the management of each sector. The Council for the Judiciary has developed an example to model the regulations on. Over the years the quality regulations can change to emphasize different aims.\textsuperscript{102} The courts have also developed norms for their service quality.\textsuperscript{103}

The second normative pillar of Rechtspraak is the system for measurement of judicial performance. This system incorporates indicators that enable courts and the Council for the Judiciary to measure the quality of judicial performance at the individual and court level.\textsuperscript{104} They are based on values that are considered essential for the judiciary. The system reasons from five core areas in which quality is measured: impartiality and integrity, expertise, treatment of litigants and defendants, the consistency of case-law, and speed and promptness.\textsuperscript{105} Each of these areas has diverse indicators. For example, the complaints procedure relates to the area of impartiality and integrity whereas permanent education relates to the goal of expertise. The indicators enable court management boards and the Council for the Judiciary to measure quality in one of the five areas. The values correspond to identified factors of moral legal quality, for example accessibility of proceedings, fairness, consistency; but also more practical factors such as timeliness and cost efficiency.\textsuperscript{106}

\textbf{(b) instruments}

In addition to measuring these indicators, Rechtspraak has developed instruments. These instruments include peer review visits, audits, staff satisfaction surveys, customer satisfaction surveys and court-wide position studies.\textsuperscript{107}

The next paragraph briefly provides an overview on how the normative framework and (measuring) instruments relate to and reflect on individual judges and the judiciary as a whole.

Figure 3: ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands (Council for the Judiciary).

\textbf{3.3.2 Rechtspraak: application to individual judges and the judiciary as a whole}

At the level of the judge, Rechtspraak focuses on both impartiality & integrity and expertise (two out of five values identified in the previous paragraph\textsuperscript{108}). There are several indicators – from the system for measurement of judicial performance – in place to measure these values. Courts and the Council for the Judiciary assess the quality of these values in regard of judges. For example, there are specific norms for the required permanent education of judges. Courts measure and keep score on whether their judges comply with these requirements, which essentially lead or at least is

\begin{itemize}
\item \textsuperscript{101} Council for the Judiciary, ‘Kwaliteit rechtspraak verbeteren’ (Raad voor de Rechtspraak) [https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Paginas/Kwaliteit-rechtspraak-verbeteren.aspx> accessed 13 December 2015
\item \textsuperscript{102} Council for the Judiciary, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands, pp. 6-7
\item \textsuperscript{103} Rapport evaluatie kwaliteitsnormen 2011, The Hague; O.A. Tempelman, Eindrapport Kwaliteitsnormen 2012, Council for the Judiciary, Den Haag.
\item \textsuperscript{104} Council for the Judiciary, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands, p. 8
\item \textsuperscript{105} Philip Langbroek, ‘Organisatieontwikkeling en kwaliteitszorg in de rechterlijke organisatie’ in ER Muller and CPM Cleiren, Rechterlijke Macht (Kluwer 2013)
\item \textsuperscript{106} Article 6 ECHR
\item \textsuperscript{107} Council for the Judiciary, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands, pp. 9-10
\item \textsuperscript{108} The system reasons from five core areas in which quality is measured: impartiality and integrity, expertise, treatment of litigants and defendants, the consistency of jurisprudence, and speed and promptness.
\end{itemize}
supposed to lead to legal consistency and expertise of individual judges. Despite the fact that these measurements are individualized, courts are only held accountable for the overall level of the judges, for example the standard that 80 percent of the judges in a specific court have met the permanent education threshold.

At the level of the court as an organization there is a more substantial role for the remaining three values: the treatment of litigants and defendants, the consistency of case-law, and speed and promptness. These three quality norms correspond to the measuring instruments at the court level and not at the level of individual judges. For example, the customer satisfaction survey corresponds to quality of the treatment of litigants and defendants. Generally speaking the measuring instruments reflect mostly on the performance of the judiciary as an organization, whereas the normative framework incorporates values and indicators to measure quality on the level of (individual) judges. The following highlights the two core values that relate to the evaluation of judges and the legal quality of judgments.

3.3.3 Evaluation bodies & evaluation process for individual judges

The core values for judges are impartiality, independence, integrity, expertise and professionalism, which relate to the first and second core value of the system for measurement of judicial performance. Each core value corresponds to several indicators that enable measuring the quality in the specific area. The following discusses each value and the corresponding evaluation systems.

The management boards of the courts are responsible for enhancing “the quality and the uniform implementation of the law” Since the recent revision of the judicial map in 2013, every management board is provided with a member, who has “quality” in his or her portfolio, which means that he or she is responsible for the development of quality on the individual and court level. Their task is not to be understood as a top-down activity, but as an assignment to create the conditions under which judges and court staff can perform on a high level both on content and on service provision.

Apart from the quality officers, there are several employees within the courts appointed with the goal to strengthen the general quality of individual judges and the court as a whole. These often


110 Art. 23, sub 3 Judicial Organisation Act
experienced judges are called “training coordinators” and “quality coordinators” and are dedicated to a specific legal area. According to one judge we interviewed, the difference between the two coordinators is that training coordinators manage the training of new judges and make sure they “reach the proper quality level”, whereas quality coordinators focus on the ongoing quality and make sure “the proper quality level is maintained”.

The quality coordinators organize trainings on current issues, organize soft mechanisms for quality feedback such as peer-to-peer review, but do not partake in the individual evaluation of judges or the conversations regarding their functioning (between judicial team managers and judges). In their quality related work, they are dependent on the cooperation and authority of the court board since they don’t have any formal powers for this purpose. The current sentiment among some judges, according to a quality coordinator, is that: “There is a strong pro-quality vibe, everyone wants us to work on quality and everyone wants to join”.

**Impartiality, independence and integrity**

First, judges need to be impartial and independent according to article 6 ECHR, which has direct binding according to article 93 and 94 of the Dutch Constitution. These values safeguard citizens against state powers. These values are mainly secured by procedural safeguards and relate less to judicial evaluation. Nevertheless, some of these measurements do constitute a part of Rechtspraak and therefore form part of the evaluation of the courts.

The clearest procedural safeguard for independence and impartiality lies with the appointment for life of all judges. The Dutch law provides for the option to challenge a judge in case there are doubts concerning his or her impartiality. Each legal field has its own articles to provide for these measures. If a danger exists of even a gleam of partiality, either one of the parties can ask the judge to step down from the specific case or the judge can choose to abstain from a specific case. In 2015 parties challenged a judge in 713 cases. The total number of cases is about 1.7 million. Only 32 out of the 713 requests were honored, which adds up to 4-5 percent. The requests are subdivided to courts and higher courts, but not specified per individual court. Furthermore, each legal area in principle provides the option to appeal against a judgment at a higher court. Rechtspraak does not provide an individualized record of all judges concerning their changed or quashed judgments. On the court level the Council for the Judiciary does provide such an overview by using Rechtspraak, but this is not publicly available.

Rechtspraak also assesses the use of the so-called complaints procedure. Parties can file a complaint regarding the behavior of a person working at the court. The complaint can relate to neglect of the court regarding documents, timeliness and the treatment of parties. Courts have taken action to make improvements following a complaint, whether or not the complaint had merit. If there are too many complaints regarding one element, for example improper treatment, some

---

111 Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
112 Langbroek, *Quality indicators*, p. 37
113 Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)
118 Ivo Giesen a.o. ‘Op weg naar een nieuwe Wrakingsprocedure’ (2013) NJB, 384
quality coordinators try to organize a course on this topic or discuss other approaches to deal with it.  

**Expertise**
Second, professionalism is highly valued in judges. The indicators for professionalism or expertise as a desired quality of judicial performance can be roughly divided into peer review and reflection, permanent education and centers of expertise. The following discusses each of these indicators to measure the quality of expertise in judges.

(1) **Peer review**
Peer review involves reflection and feedback between colleagues, for example judges, to discuss their work. RechtspraakQ incorporates peer review and aims primarily at the performance of individual judges. Peer review between judges can include different actions. Courts can promote activities such as co-reading specific judgments, peer-to-peer coaching, discussing judgments among bigger groups of colleagues, dialogue between lower and higher courts, and reflection. Courts try to conduct this as respectfully as possible, but judges did mention the difficulty that sometimes colleagues can be afraid or insecure to show their work. On the team level the coordinator tries to deal with such issues informally. Peer review can also include media training, such as in the court in Utrecht. Media training is about how to deal with the press, for example for interviews or otherwise. Courts have so called “Press Judges”. Many Courts of First Instance have weekly or biweekly lunches to discuss new and relevant case law. The Court of Noord Holland, which has multiple locations, also has face-to-face meetings and sometimes communicates by forwarding the results of their meetings for example.

The national norm, part of RechtspraakQ and the newly emerged professional standards, requires judges to participate at least once a year in peer-to-peer coaching or let a colleague judge co-read at least twelve judgments. Co-reading generally occurs at the lower courts, because higher courts already have a panel of more judges per case. Co-reading focuses on legal quality, hence legal writing, whereas peer-to-peer coaching emphasizes the conduct of judges. Peer-to-peer coaching can be done by a colleague-judge, but also by an external party such as a psychologist. One of our interviewees mentioned that co-reading “is very useful, because you always see all sorts of crazy things”. Another approach incorporates the use of camera’s to reflect on the behavior of a judge. According to a Judge it depends on the external company that organizes these recordings which elements are discussed most thoroughly afterwards, for example with a focus on legal or psychological aspects. Other activities, such as the dialogue and other types of feedback, are not as apparent or differ strongly per court.

---

121 Interview with Kim Oldekamp and Tanya Chub, Senior Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)
123 Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017)
124 Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017); Interview with Mirjam van Walraven, Unitmanager Civil Law, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)
125 Interview with Andre Dekker, Consultant Quality and Planning, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)
128 Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coordinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)
129 Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)
Judges are expected to participate in peer review. The team coordinators, at least in the Court of Rotterdam, see to it that their judges partake in these peer review sessions. Judges mentioned that usually judges will go to a court session of their colleague, and this colleague will return the favor. In terms of the value of such feedback, one judge emphasized: “You must feel safe, and the feedback, peer-to-peer review or discussion should not lead to sadness or fear to dare something. It must be supportive and not only include negative critiques.”

Despite the apparent different focus between co-reading and peer-to-peer coaching, the Council for the Judiciary requires measurement of the norms together. Therefore the norm is ambiguous and difficult to measure. The Council only reflects on these results on the court level. The individual assessments are done by the team coordinators – these are the judges who ‘manage’ smaller teams of judges in a specific legal field. Moreover, each court has autonomy in setting the norm for additional – required – peer review. The number of courts and higher courts that met the required norm for peer review was 50-70 percent of the courts in 2015. Judges do consistently read judgments of judges that are doing the initial judicial training as part of their training. The results regarding content of peer review are not publicly available. The consequence of not fulfilling the required peer-to-peer review usually leads to conversations with the team coordinator on why someone has not managed to participate in such activities.

(2) Permanent education

Another indicator for expertise is permanent education of judges, which was developed in 2006. The Council for the Judiciary requires each judge to spend 30 hours a year on personal education or 90 hours in three years. Each court registers the efforts of their judges concerning permanent education. Therefore each court can independently decide on which activities to accredit for permanent education. Generally permanent education includes courses on the legal content, conferences and trainings focused on skills, such as legal writing.

According to one member of a court board judges do generally need to explain why they want to take specific courses and how these courses strengthen their knowledge or skills. Such a check to a certain extent guarantees useful courses. Many courts use in-company teaching days during which many judges follow courses and participate in other activities that contribute to Permanent Education (PE) points. Such days are valuable in supporting knowledge but also networking and teambuilding. As one judge explained: “It is really nice to do this together during an afternoon or evening. So it also has a networking function”. Court boards also like such days because they tend to be cheaper than separate courses.

---

131 Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coordinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)
132 Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017); Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolvency and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
133 Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)
135 Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)
136 Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolvency and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
137 Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
Nationally, the Council for the Judiciary only registers the efforts by lower and higher courts and the extent to which these entities have fulfilled the required permanent education norm. The annual reports of the Council for the Judiciary show a national consistency of not achieving the norm for permanent education. Critics of the PE system suggest a national accreditation and registration system for the fulfillment of the educational standards. Although such an approach could mean an overly bureaucratic approach, critics argue that the current situation has proved to be incapable of safeguarding the educational norm.

The main focus seems to be the respect of the norm in a formal sense, with an additional informal check on quality. All PE points are filled in digitally and can be used as management information. One concern controller mentioned that the registration of these points is not yet fully digitalized because not all variables – such as teaching days as PE points – are incorporated in the system. The Court Board also uses this information when reporting to the Council. If a judge does not meet the required PE norm this leads to a conversation with the team coordinator about the underlying reasons. There are no formal consequences apart from the reporting of all PE results to the Council. However, our interviewee pointed out that the team coordinators in the court actively monitor how many PE points each judge has and actively suggest specific courses for every individual judge and stimulates judges to live up to the standard.

A point of criticism includes the focus on measurement as opposed to actual quality that stems from measuring permanent education. Some judges emphasize the value of real individual guidance on how to become a better professional and what courses and other activities could support that. As a judge stated: “You have to think about it and see where someone has something to gain in terms of permanent education and use it”. The controller in Amsterdam did mention that there is a shift going on towards more “trust in the sense that measuring PE points is fading in importance, whereas trust in the capacity of judges thrives to make sure they are up to date with their knowledge”.

(3) Centers of expertise

In addition to the permanent education of judges, the Dutch court system runs six centers of expertise. Different higher courts host these centers. The areas of expertise range between fraud, cybercrime, financial law, environmental and healthcare law, insurance law and fiscal law. The several centers of expertise have a specific task description. Each center collects and distributes knowledge on the specific area of expertise and communicates its knowledge with educational centers such as universities but also the Judicial Training Institute, the training and study center for

145 Kim van der Kraats, ‘PE Revisited’ (2015) 6 Trema 172, 175
146 Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)
147 Interview with Frans de Boer, Chief Planning and Control, Amsterdam (Amsterdam, 31 January 2017)
148 Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017); Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017); Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017); Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)
149 Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)
150 Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)
151 Interview with Frans de Boer, Chief Planning and Control, Amsterdam (Amsterdam, 31 January 2017)
the judiciary.\textsuperscript{153} Furthermore, in some very specialized legal areas cases are concentrated in one court.\textsuperscript{154} According to some judges, if needed, judges from a specific court assist in a specific case in a different court when asked to do so by a judge or the board of the other court.\textsuperscript{155} In addition, some centers of expertise run websites and organize conferences on their field of knowledge.\textsuperscript{156}

The next chapter discusses the other assessment instruments and their link to the core values of judicial performance. The following paragraph considers the evaluation of judgments and legal writings, which could also fall under the expertise pillar.

3.3.4 Focus on the evaluation of judgments and legal writings

In terms of legal writing the Council for the Judiciary has made several attempts in streamlining some of the Dutch judgments. The most apparent example is the so-called ‘PROMIS’ method that applies to criminal judgments on a national scale. But in the field of civil judgments the Council for the Judiciary has instructed several committees to develop a standard to check the expertise and skill of these judgments. The following first discusses PROMIS and then the initiatives regarding civil law judgments.

**PROMIS**

PROMIS stands for the project to improve the explanation of the grounds of criminal judgments in better readable language and has been adopted in 2004 as a uniform working method.\textsuperscript{157} Officially fifty percent of all criminal judgments in the Netherlands must be conform the PROMIS-requirements.\textsuperscript{158} PROMIS aspires to provide the parties in criminal cases and society with a more thorough understanding of the arguments of the court, with specific regard to arguments concerning evidence and sanctions.\textsuperscript{159} PROMIS also facilitates peer review between judges and invites judges to make their decisions as clear and detailed as possible, both in convictions and acquittals.\textsuperscript{160} Generally PROMIS requires judgments to follow a specific order of issues to discuss, for example facts, so a judgment template.\textsuperscript{161}

Currently the PROMIS judgments are effective in the sense that parties consider the arguments underlying the evidence as more than satisfactory.\textsuperscript{162} However, this level of satisfaction does not go for the arguments underlying sentencing. These arguments of the PROMIS judgments have not been subject to substantial change.\textsuperscript{163} This relates to the underlying legal norms, namely article 348 and 350 of the Dutch Code of Criminal Procedure, and the more complex questions connected to

\begin{thebibliography}{163}

\bibitem{153} Council for the Judiciary, ‘Kenniscentra’ (Raad voor de Rechtspraak) <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Paginas/Kenniscentra.aspx> accessed 15 December 2016
\bibitem{155} Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)
\bibitem{156} Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolvence and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
\bibitem{157} Wilma HB Dreissen, ‘Promis. Over de nieuwe wijze van bewijsmotivering en de rol van de Hoge Raad’ (2008) 26 Delikt Delinquent 1; Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)
\bibitem{158} Wilma HB Dreissen, ‘Promis. Verzamelingen werken samen in de zorg’ (2008) 26 Delikt Delinquent 5
\bibitem{159} Council for the Judiciary, ‘Kwaliteit rechtspraak verbeteren’ (Raad voor de Rechtspraak) < https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Paginas/Kwaliteit-rechtspraak-verbeteren.aspx> accessed 9 December 2016
\bibitem{161} Raad voor de Rechtspraak, ‘Quality of the judicial system in the Netherlands’ (2008) The Netherlands, p. 12
\bibitem{162} Wilma HB Dreissen, ‘Promis. Over de nieuwe wijze van bewijsmotivering en de rol van de Hoge Raad’ (2008) 26 Delikt Delinquent 5
\bibitem{163} Frank van Tulder, ‘Straftoemeting: intuïtie of overweging?’ (2016) 4 Trema 4
\bibitem{164} Frank van Tulder, ‘Straftoemeting: intuïtie of overweging?’ (2016) 4 Trema 4

\end{thebibliography}
punishment and sentencing.\textsuperscript{164} However, judges from both a Court of First Instance and a Court of Appeal mentioned that PROMIS-judgments get quashed in appeal fairly easy, often because of small mistakes and the PROMIS-format.\textsuperscript{165} It seems that the appeal courts almost ten years after the introduction of PROMIS still do not seem to appreciate it.

**Pilots regarding civil judgments**

In addition to PROMIS the Council for the Judiciary since 2010 has three times commissioned a pilot project regarding the quality of civil law judgments. The first pilot project aimed at developing a framework to measure the quality of civil law judgments, which it did to a certain extent.\textsuperscript{166} However, the developed framework required too much time to be invested by judges.\textsuperscript{167} The quality of civil judgments should embody legal thoroughness, readability, and clearness, consistency and procedural and material correctness, together leading to an acceptable judgment.\textsuperscript{168} In 2012 a new pilot ensued that had adapted the framework a bit, but only covered a very limited number of cases (42).\textsuperscript{169}

In 2014 a new pilot project started that aimed at enabling permanent assessments of material quality of civil judgments.\textsuperscript{170} The assessment should include giving feedback to lower judges.\textsuperscript{171} The assessment form includes 25 questions that relate to seven elements. These elements include proper fact-finding, collecting evidence, asking for appearance, legal content and application, presentation of the argument, layout and final analysis of the overall quality.\textsuperscript{172} In this project 158 judges in higher courts have assessed 632 lower civil judgments.\textsuperscript{173} Hence, providing feedback to lower judges is possible.

During the interviews judges identify the difficulty in assessing what it is that constitutes legal quality.\textsuperscript{174} There are many different styles and formats that each has advantages and disadvantages.\textsuperscript{175} Many judges emphasize the usefulness of exchanging judgments and learning from each other in that regard.\textsuperscript{176} As one Judge emphasized: “The more people look at a specific judgment, the better the outcome and learning potential”.\textsuperscript{177} However, in regard of the pilots on civil judgments, some judges stress that such feedback or double-reading should go both ways: from the lower to the higher court and from the higher to the lower court.\textsuperscript{178} There did emerge resistance towards such a double check by a higher court. Despite the learning capacities of reading each other’s judgments, some judges indicate that it is hard to use such reflection to formulate specific criteria for a “sound legal judgment.”\textsuperscript{179} They consider the co-reading as a soft mechanism rather than as criteria for legal quality.

---

\textsuperscript{164} Henk Abbink, ‘Naar een model van strafmotivering’ (2016) 4 Trema 14
\textsuperscript{165} Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017); Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)
\textsuperscript{166} Council for the Judiciary, ‘Toetsingscommissie Civiele Vonnissen’ (2010) The Netherlands
\textsuperscript{169} Council for the Judiciary, ‘Pilot Kwaliteitstoetsing Civiele Vonnissen’ (2012) The Netherlands, p. 28
\textsuperscript{170} Council for the Judiciary, ‘Rechtspraakbrede toetsing civiele vonnissen’ (2014) The Netherlands, p. 5
\textsuperscript{171} Council for the Judiciary, ‘Rechtspraakbrede toetsing civiele vonnissen’ (2014) The Netherlands, p. 8-9
\textsuperscript{172} Council for the Judiciary, ‘Rechtspraakbrede toetsing civiele vonnissen’ (2014) The Netherlands, p. 14
\textsuperscript{173} Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)
\textsuperscript{174} Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017)
\textsuperscript{175} Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017); Interview with Esther de Roolij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Kim Oldekkamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)
\textsuperscript{176} Interview with Kim Oldekkamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)
\textsuperscript{177} Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017); Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolvency and Unit manager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
\textsuperscript{178} Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)
In addition to co-reading and these pilots a Judge from one court mentioned organizing workshops about language in a judgment. Trainers of such a workshop emphasize the difficult and outdated language used and how it does not correspond to the recipient of the judgment.\textsuperscript{180} Which forms the bridge to another difficulty: for whom do you write a specific judgment? And how should that translate to the language being used? In Amsterdam in the administrative department they phrased the working goal of writing from the premise “What I Am Actually Trying to Say” as a guideline on how to structure and phrase your judgment.\textsuperscript{181} Other courts, for example Rotterdam, use specific electronic “building blocks” to identify steps to be taken when judging. For example regarding child alimony to make sure all elements are discussed and legal unity is safeguarded.\textsuperscript{182} Nevertheless, some quality coordinators and judges acknowledged that it remains very hard to reformulate legal jargon to readable texts.\textsuperscript{183}

### 3.3.5 Consequences of the judicial evaluation for the quality of justice

The system for measurement of judicial performance together with the court quality regulations provide a solid body of quality norms that the Council for the Judiciary and courts consider worth pursuing. Alongside the discussed normative framework that is activated through the use and measurement of indicators, the Council for the Judiciary has published the so-called ‘Calendar of the Judiciary 2015-2018’ that highlights faster judicial procedures – with a 40 percent decrease in average timeliness of judicial decisions – accessibility of legal procedures and expertise.\textsuperscript{184} Hence, the aforementioned framework is the direction the courts and the Council steer the judges towards. In addition, each court constitutes quality plans that incorporate elements of quality that the court should focus on in the next year.\textsuperscript{185}

The specific effects of measuring the different indicators in light of the linked core value are not entirely clear. If judges do not meet the required norm for peer-to-peer coaching and co-reading, the courts hardly ever address this issue.\textsuperscript{186} However, on the level of human resource management – which stands separately from Rechtspraak – there are soft consequences concerning the level of quality work of a specific judge. Teamleaders are increasingly aware of the qualitative efforts of their team members, and engage more and more in conversations with them about quality work. Sometimes, if need be, such conversations may also focus on how improvements can be made. Such an approach in the Court of First Instance in Rotterdam is very individualized and takes a positive approach towards the issue.\textsuperscript{187} If a judge does not improve it is almost impossible to dismiss this person from their judicial position. Only the Dutch Supreme Court (Hoge Raad) can dismiss a Judge because of insurmountable deficiencies regarding ill-functioning or illness.\textsuperscript{188} Some team coordinators “try to get someone to improve his or her quality by surrounding him or her by people who have such quality”.\textsuperscript{189} Judges also emphasize how important it is to discuss the functioning of judges with them, despite the fact that judges have a lifelong position. Not discussing such elements

\textsuperscript{180} Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

\textsuperscript{181} Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)

\textsuperscript{182} Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)

\textsuperscript{183} Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)

\textsuperscript{184} Raad voor de Rechtspraak, ‘Agenda van de Rechtspraak 2015-2018’ (2014) The Netherlands

\textsuperscript{185} Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Andre Dekker, Consultant Quality and Planning, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)

\textsuperscript{186} Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, p. 50

\textsuperscript{187} Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

\textsuperscript{188} Wet rechtspositie rechterlijke ambtenaren

\textsuperscript{189} Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolvency and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
is thought of by some as neglect. In any regard, such situations are according to one member of the court board usually dealt with by the team coordinators and court boards by having conversations with the judge that underperforms. Nevertheless, legal support staff can be demoted to a different position when they do not function properly.

3.3.6 Consequences of the judicial evaluation for the appointment to managerial positions & judicial career

Within Courts of First Instance the career ladder for judges goes from judge, to senior judge to senior judge A. They can also apply for a position in a higher court. Each rank corresponds to a higher salary scale. For the promotion to senior judge the courts use internal rotation guidelines because of the sensitivity of the issue – many judges want to be promoted. These guidelines are available for all judges who want to apply for a position as senior judge, and the guidelines include selection criteria. In the Court of First Instance in Rotterdam each judge who wants to become senior judge can apply once every two years and their application is judged by a selection committee that is comprised of judges from all legal areas of the specific court. After the committee’s advice the court board interviews all candidates and decides on the promotion.

The promotion in Rotterdam entails a quality factor because it requires judges to “participate above average in the jurisdiction” and have an “exemplary role”. Both have a subjective element. This means judges are eligible for example if they are actively involved in training new judges or have a position as quality coordinator. Also, if judges are consistently behind with their permanent education or caseload the court board can take this into consideration as a negative factor.

The information on elements such as permanent education (part of Rechtspraak) is comprised by team coordinators. Some of them conduct conversations with their team members every three months to check and see how everything is going. In addition team coordinators put together personnel files to have insight in the development of a specific employee. These files can also be used by courts boards to decide on who qualifies as a senior judge. According to one judge it depends on the team coordinator how much he or she focuses and emphasizes elements such as permanent education both in conversations and the personnel file.

Senior judges can be promoted to senior judge A. Only very few of the judges become senior judge A. One member of a court board identified specific elements that play a role in this regard: “They have to participate in activities such as publishing, teaching, and have national prominence”. Only then do you potentially qualify for the rank of senior judge A. In terms of promotion to management positions within the court, one Judge mentioned that some courts have introduced a management training program since around 2004 to provide courts with managers from their own

190 Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)
191 Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)
192 Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
193 Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)
194 Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
195 Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)
196 Interview with Jassie van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
197 Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)
198 Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
employees. The judges emphasize that managing is a whole different field of expertise from being a judge, so such programs have positively influenced such transitions.

3.3.7 Debate on possible reforms and the adoption of innovative practices

Despite the enthusiasm and quality driven aims of Rechtspraak, it is debatable whether it has led to the goals envisaged. Many judges have never heard of either Rechtspraak or Rechtspraak being implemented in their court, but they have experienced pressure to meet production targets. Judges mention that Rechtspraak was developed bottom up but then implemented and used as a measuring instruments top down, just to generate management information, which has led to judges considering it a ‘management tool’.

Especially the system for measurement of judicial performance never really evolved, which could be because it relates to the judicial functioning and that is the most tricky part. It is hard to measure effectiveness and quality in the judicial system. Nevertheless, some judges emphasize the value of Rechtspraak to have played a catalytic role in the debate on judicial quality. As one Judge said: “I really think it [...] had a function to make us all aware that with some things it is a good to have goals and to explicate them”. However, according to the same Judge the set-up of Rechtspraak was too big and it evolved to be a “paper tiger”.

One of our interviewees explicitly stated that evaluation of judges is primarily linked to improve judicial and organization performance and is not intended to evaluate the independence of the judges.

3.4. The evaluation of activities of the courts

This section provides a focused analysis on how the Council for the Judiciary and courts evaluate court performance and court quality. The chapter describes the assessment systems, the used data and the consequences of such evaluation.

3.4.1 Actors involved

The main actors in court evaluation are the Council for the Judiciary and the management boards of the respective courts. As mentioned before, Rechtspraak is the main evaluation framework. The previous chapter involved a discussion of these instruments on measuring judicial individual performance. The current chapter deals with the measurement instruments specifically aimed at the evaluation of courts. At the court level the emphasis lies with the core values of the treatment of litigants and defendants, the consistency of case-law and speed and promptness. This follows from the year plans that each court needs to adopt and the calendar with goals formulated by the Council.

199 Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)
200 Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017); Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017); Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017).
201 Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017); Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017); Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coordinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017).
202 Interview with Hester de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017).
203 Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)
204 Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)
205 Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)
206 Esther de Rooij, expert meeting 10 november 2017.
207 Philip Langbroek, ‘Organisatieontwikkeling en kwaliteitszorg in de rechterlijke organisatie’ in ER Muller and CPM Cleiren, Rechterlijke Macht (Kluwer 2013); For individual judges the emphasis lies with integrity, independence and expertise.
The instruments to measure these core values include a court wide position study every other year, audits, a customer evaluation survey, a staff satisfaction survey and visitations. The court wide position study is an internal affair and therefore done by the management board of each court, focusing on the elements emphasized in the applicable court quality regulations. Each board then ideally proceeds with a strategy to improve the results. Another mechanism in place is the audits. Members of the court staff do the audit. Auditing is a critical research on the management of the courts. The next paragraphs discuss in more depth the court user satisfaction surveys, the staff appreciation survey and the visitations.

3.4.2 Evaluation process: functioning of the system
The courts administer a customer satisfaction survey and staff satisfaction survey respectively every three and four years. Every four years a committee also carries out a visitation of all courts. Each court also has strict throughput times, which relate to the financial system of the judiciary. The following discusses these measuring instruments in depth.

(a) Court user satisfaction surveys
Rechtspraak involves a court user satisfaction survey held among all customers of the judiciary. Lawyers and other users of the courts are therefore involved in quality evaluation. This survey is repeated every three years. The most recent, completed survey was held in 2014 and resulted in a report. Currently the third survey is underway and runs until June 2017. Before the national surveys, courts also held court user satisfaction surveys individually before 2011. The courts have done surveys individually since 2001, and published combined reports in 2002, 2004 and 2008. Unfortunately, these reports are not publicly available and could therefore not be analyzed. The following discusses the aims of the court user satisfaction survey (further: CUS), the methodological design of the survey, the type of results and the consequences of these results for the courts.

Reasoning behind the court user satisfaction survey
The main goal of the national court user satisfaction survey in 2011 was to explain and justify the quality of the Dutch judiciary to Dutch society and to establish elements for improvement. Literature has endorsed this function. The emphasis of the survey lies with the justification of the judiciary to the outside world, with a smaller dedication to internal improvements. This main goal relates to some of the core values identified earlier, namely treatment of litigants and defendants and speed and promptness. Nevertheless, the judiciary considers the ‘external world’ as crucial to obtain information regarding the quality of courts. Moreover, societal legitimation is a key

218 Casper van der Waerden, ‘Financiering van de strafrechtsspraak’ (2013) 9 Trema 296, 300
219 Interview Ingrid Corbeij, Judge and Member of the Management Board, Court of First Instance of North Holland (Utrecht 3 March 2017)
element for improving judicial quality.\textsuperscript{221} Therefore, both elements, justification and improvement, determine the court user satisfaction surveys.

\textbf{Methodological design of the court user satisfaction survey}

Methodologically the CUS distinguishes between several ‘types’ of customers that have dealings with the judiciary: professionals on the one hand and litigants on the other hand. This distinction is done because of the different perspectives of both parties on the judiciary.\textsuperscript{222} The CUS therefore collects data from two different target groups. The professionals include people working in the judicial field, such as lawyers, prosecutors, advocate-generals and bailiffs, but also legal representatives of administrative bodies and for example child protective services.\textsuperscript{223} Litigants are citizens seeking justice but also company representatives.\textsuperscript{224} The litigants exclude some parties such as detainees, children and witnesses.\textsuperscript{225} The method of asking the questions differs per target group. The survey in 2011 and 2014 sent questionnaires by e-mail to professionals and held face-to-face interviews with litigants.\textsuperscript{226} The face-to-face interviews were held right after the ending of a court hearing with the use of a tablet.\textsuperscript{227}

The CUS uses questions to obtain a sense of the overall appreciation of both target groups for the judiciary. The original questions could all be traced back to the appreciation of having contacts with the judiciary, which could be linked to several separate components.\textsuperscript{228} The questions are conceptualized at the national level.\textsuperscript{229} However, individual courts are allowed to add a few questions on issues that they would like to get feedback on, although some judges mentioned that this did not happen in the latest CUS.\textsuperscript{230} The questions asked have an internal consistency and are ‘bundled’ together in specific themes.\textsuperscript{231} The bundling is due to the broadness of customer appreciation, which makes it hard to account for all the several aspects, and enables measurement on core themes.\textsuperscript{232} For example, the appreciation of judicial performance is measured by the extent to which the judge left room to hear your story, the extent to which the judge listened to your arguments, the impartiality and expertise of the judge and a couple more questions.\textsuperscript{233} Therefore the survey did not only focus on measurable elements, such as throughput times, which relates to procedural justice and less to the outcome of the case.\textsuperscript{234}

\textbf{Results of the court user satisfaction survey}

CUS provide an overview of so-called \textit{significant differences}, meaning that the differences do not simply stem from pure coincidence.\textsuperscript{235} Significance implies a strong statistical connection between

\textsuperscript{222} Council for the Judiciary, ‘Klantwaardering Rechtspraak 2011. Onderzoek onder professionals en justitiabelen bij gerechten’ (2011) The Netherlands, p. 13; This distinction does not embody a further justification.
\textsuperscript{223} Council for the Judiciary, ‘Landelijk klantwaarderingsonderzoek (KWO)’ (Council for the Judiciary) <https://www.rechtspraak.nl/klantwaarderingsonderzoek#c456-4f17-a7ea-287be5695470> accessed 10 February 2017
\textsuperscript{224} Council for the Judiciary, ‘Landelijk klantwaarderingsonderzoek rechtspraak 2014’ (2014) The Netherlands, p. 70
\textsuperscript{225} Council for the Judiciary, ‘Landelijk klantwaarderingsonderzoek rechtspraak 2014’ (2014) The Netherlands, p. 70
\textsuperscript{229} Interview Frans de Boer, Controller, Court of First Instance in Amsterdam (Amsterdam 31 January 2017)
\textsuperscript{230} Interview Ingrid Corbeij, Judge and Member of the Management Board, Court of First Instance of North Holland (Utrecht 3 March 2017)
\textsuperscript{234} Evert-Jan Govaers, ‘Feedback’ (2015) 4 Trema 115, 115
a specific satisfaction theme and the general satisfaction.\textsuperscript{236} To establish such significance the CUS uses the Single Classification Square Test to determine whether customer appreciation for a specific subgroup differs significantly from the general appreciation.\textsuperscript{237}

From the analysis follows so-called strong points and points for improvement. A more than average level of satisfaction among professionals, which strongly connects to general satisfaction, characterizes a strong point. A score below average satisfaction among professionals, which strongly connects to general dissatisfaction, characterizes an element as one for improvement.\textsuperscript{238} The scores are built up from an average of the individual items, hence the scores from 0-5 (dissatisfied to satisfied) together for all the questions relating to one theme, subdivided by the number of answered questions.\textsuperscript{239} The strong points and points for improvement exist alongside secondary points and secondary points for improvement. The last category differs from the first because they have a lower impact: there is a weak statistical connection between a specific satisfaction theme and the general satisfaction.\textsuperscript{240} Hence, all results are only displayed if they have statistical significance.

**Figure 4: Strong points and points for improvement**

<table>
<thead>
<tr>
<th></th>
<th>Big influence on general appreciation</th>
<th>Little influence on general appreciation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satisfied</td>
<td>Strong point</td>
<td>Secondary strong point</td>
</tr>
<tr>
<td>Less satisfied</td>
<td>Point for improvement</td>
<td>Secondary point for improvement</td>
</tr>
</tbody>
</table>

**Consequences for courts**

The role of the CUS is to provide insight in the current stance of customer appreciation towards the whole judiciary. The results provide suggestions and ideas on how a specific court can improve its operational performance.\textsuperscript{241} The results are not subdivided to provide results to each individual court. The differentiation per type of court in 2014\textsuperscript{242} does distinguish between the clusters of several Courts of First Instance – eleven in total, the Courts of Appeal – four in total, the Trade and Industry Appeals Tribunal and the Central Appeals Tribunal.\textsuperscript{243} Nevertheless, courts can – and do – request an individualized report on their court user satisfaction surveys, also subdivided to courts with more than one location.\textsuperscript{244} This sometimes does cost some extra money. Each court actively uses the CUS results. The court boards discuss the results amongst themselves and then they discuss them with the team-managers to come up with plans for improvement.\textsuperscript{245} Each team-manager in turn discusses the results with his or her team.\textsuperscript{246} They can use the findings


\textsuperscript{242} In 2011 the judicial structures were different.

\textsuperscript{243} See Annex C; The Dutch Supreme Court and the Administrative Jurisdiction Division of the Council of State are exempted from the CUS because they fall outside of the constitutional scope of the judiciary.

\textsuperscript{244} Interview André Dekker, Senior Advisor on Quality and Planning, Court of First Instance North Holland (23 February 2017)

\textsuperscript{245} Interview with Andrie Dekker, Consultant Quality and Planning, Court of First Instance Noord-Holland (Haarlem, 23 February 2017); Interview Ingrid Corbeij, Judge and Member of the Management Board, Court of First Instance of North Holland (Utrecht 3 March 2017)

\textsuperscript{246} Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)
to formulate a plan of action regarding the elements that got a low score in the survey.\textsuperscript{247} Both the court board and the teams try to improve the elements that received negative feedback. The quality officers are not involved in translating and discussing the CUS results with either the board or the team-managers.\textsuperscript{248}

The judges do identify the difficulty that it is not possible to ask the court users for their motivation, which makes it harder to fully understand the (anonymous) feedback given as opposed to staff satisfaction surveys that can be traced to specific teams.\textsuperscript{249} One of the main points of feedback is usually throughput times and digitalized procedures.\textsuperscript{250} As one Judge emphasized: “One of the most important parameters, when you look at societal contexts, is the question [...] about throughput times and how long or short those are.”\textsuperscript{251}

**(b) Staff satisfaction survey**

Another mechanism used is the staff satisfaction survey. The staff satisfaction survey is an inquiry on the motivation and satisfaction of staff members. The survey comprises questions on personal development, elements of management and the variety of work offered.\textsuperscript{252} These elements are considered crucial.\textsuperscript{253} Nationally the survey was held for the first time in 2014.\textsuperscript{254} Before that each court was free to undertake their own staff satisfaction surveys. In general employees of the judiciary tend to be loyal to the organization and characterized by a sense of responsibility.\textsuperscript{255}

Once the results of the survey become available all teams discuss the results amongst themselves and consider what they as a team could do to change difficult elements.\textsuperscript{256} Such an approach also facilitates managers and the court board to ask where specific results are coming from and what the underlying ideas of dissatisfaction are. That in turn eases the way for a joint approach and plans of action.\textsuperscript{257} Regardless, these plans of action keep a certain level of informality.

**(c) Inspection visits**

Every four years a committee also carries out Inspection visits of all courts. The committee comprises members from outside the judiciary, such as academics and legal practitioners, such as lawyers.\textsuperscript{258} The reports that are formulated on the basis of these visitations contain information on many RechtspraakQ evaluation elements.

**(d) Throughput times: speed and promptness**

The allocation of cases in the Netherlands to individual judges is a responsibility of the several Boards of the Courts. These boards develop administrative regulations on this allocation, but they

\textsuperscript{247} Interview Ingrid Corbeij, Judge and Member of the Management Board, Court of First Instance of North Holland (Utrecht 3 March 2017); Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017); Interview with Frans de Boer, Chief Planning and Control, Amsterdam (Amsterdam, 31 January 2017)

\textsuperscript{248} Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)

\textsuperscript{249} Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)

\textsuperscript{250} Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

\textsuperscript{251} Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)

\textsuperscript{252} Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)


\textsuperscript{254} Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017)

\textsuperscript{255} Council for the Judiciary, ‘Waardering door medewerkers’ (Council for the Judiciary) <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-van-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Paginas/Meten-van-kwaliteit-rechtspraak.aspx> accessed 15 February 2017

\textsuperscript{256} Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, p. 84.

have complete autonomy. The allocation can be subject to factors such as expertise, experience and practical circumstances, but the regulations leave room to compose a panel of judges or appoint a single judge at random. Some scholars identify the risk of non-transparency regarding the allocation of cases and advocate for a real at random allocation of cases, such as in Denmark that features electronic allocation of cases depending on the number of points the case has. Other scholars also subscribe the value of transparency regarding which judge sits on a case, mostly regarding their societal position. Nevertheless, in the Netherlands cases are allocated depending on the attached workload minutes, which allows for a certain level of clear objectivity.

In terms of speed and promptness the Dutch courts have national guidelines, or regulations on processes, that govern the moment of inflow and outflow of cases with the use of specific criteria. The speed and promptness of completing cases is a major topic given its societal relevance. The inflow and outflow determines the financial reward of each completed case. These criteria are very strict although they do try to incorporate unforeseen elements, such as an extra witness interrogation. A major issue with throughput times is the fact that some elements, such as illness of judges, are not reflected in the process descriptions. Therefore the measured throughput time can be higher than is expected. Another unforeseen element are the prejudicial questions to be asked to the European Court of Justice, which can increase the throughput times considerably.

In general it is very difficult to get cases registered properly, in terms of procedural steps, and this is a focal point for most courts. Each legal field has a different registration system and there is no overarching system. All cases get registered manually. For example, the case is received (1. Ontvangen zaak) and then assessed within one day after receipt (2. Beoordelen zaak). After the court session is planned (3. Zittingsplanning) the administrative preparations for the case begins within one day after receipt (4. Administratief voorbereiden zaak). This process goes on in identifying steps and linking them to a specific timeframe. As the arrows indicate in the following figure, a case can go back to earlier steps, for example because a case is kept on to hear more witnesses. In general a case is finished after all steps have been taken. The current digitalization legislation aims at minimizing differences and risks of wrong case registration. Controllers do conduct random checks on the timeliness and correctness of the registrations. In doing so they link to recorded registration process guidelines. As one controller mentioned: “At the moment, of course, all of the business is in principle manually introduced. We do all sorts of measurements whether this happens timely and correctly. And I daresay that it goes well for 99.99% of the cases.”

Figure 5: Business process of summary proceedings

259 Article 41 Wet Rechtspositie Rechterlijke Ambtenaren
260 Michiel van Emmerik, Jan-Peter Loof & Ymre Schuurmans, ‘Rechtspraak anno 2014’ (2014) 32 NJB 2228, 2233-2234
262 Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolvence and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
263 Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
264 Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017)
265 Interview with Frans de Boer, Chief Planning and Control, Amsterdam (Amsterdam, 31 January 2017)
266 Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
267 Interview with Frans de Boer, Chief Planning and Control, Amsterdam (Amsterdam, 31 January 2017); Interview with Andre Dekker, Consultant Quality and Planning, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)
3.4.3 Consequences of the evaluation of justice at court level

The results of the evaluation system are presented to the public through reports. Most of these reports can be found at the website of the Council for the Judiciary, www.rechtspraak.nl. In the report of the most recent visitation commission, the commission decided to share specific results regarding the courts only with the courts in case. Hence, these data were exclusively shared with these courts. But the Council for the Judiciary does usually make a part of the data available to the general public.” The focus areas of the court user satisfaction surveys for example interlink with the national policy plans of the Dutch judiciary.

The financing of the judiciary is in its core an output based system. Ninety five percent of the budget is calculated by the multiplication of the estimated number of cases for one year and the price per case category. As the financing system of the judiciary will be explained in more detail in the next chapter, we will suffice to mention that eventually the budget assigned to the judiciary depends on the number of cases completed. The more estimated cases finalized, the more budget will be assigned to the judiciary. If they produce more than expected, they receive 70% of the

---

268 These reports are the Visitation reports: Council for the Judiciary, ‘Visitatierapporten en visitatieprotocollen rechtspraak’ <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Visitatie> accessed 11 September 2017

agreed price per product group from the equalization account. When producing less than agreed, they must deposit 70% of the agreed prices of the cases not finalized in the equalization account.\textsuperscript{270}

The law provides that considerations of quality (results from RechtspraakQ – for example more time needed to spend on permanent education or extra legal staff needed to improve quality) should play a role in determining the price of the case categories.\textsuperscript{271} These prices are determined by the Minister of Security and Justice after negotiating with the Council for the Judiciary and eventually incorporated in a joint price agreement. The outcomes of the quality measurement are reported to the Council for the Judiciary four times per year.\textsuperscript{272} Little is known however about whether these outcomes actually influence the financing of the judiciary. The idea of quality playing a role in determining the height of the price is ideally included in the law, but couldn't be realized until now. The Court of Accounts concluded in a recent report on the judiciary that when negotiating about the case category prices, often the budget of the Minister is the point of departure. Due to this reason, considerations of quality have been pushed to the background.\textsuperscript{273}

\textbf{3.5. Resource allocation to courts}

After the discussion of RechtspraakQ as the Dutch evaluation system, the next part deals with the allocation of resources to the respective courts. In The Netherlands the Minister of Security and Justice (hereafter called: Minister) funds the judiciary\textsuperscript{274} as a whole, by means of a financial contribution to the Council for the Judiciary (hereafter called: Council). The Council has its own separate heading in the justice budget law alongside the central Ministry and the administration agencies, which reflects its special position.

The Ministry of Security and Justice annually determines the budget for the judiciary, based on the financial budget of the Government. The Judiciary currently receives an annual contribution of around 1 billion euro’s.\textsuperscript{275} Negotiations about the budget for the courts are part of the negotiations with the Ministry of Finance, also based on the Government Accounts Act (GAA).\textsuperscript{276} The Council distributes the financial resources among the courts based on the number of cases and time spent on these cases in a year. The Council then transfers the budgets to each of the sixteen courts.

The following discusses the general actors involved in resource allocation (paragraph 2.5.1). Second, it discusses the allocation process (paragraph 2.5.2). Third, the paragraph touches on the consequences of resource allocation for the quality of justice (paragraph 2.5.3). Fourth, it discusses existing debates on possible reforms (paragraph 2.5.4) and ends with an assessment of existing evaluation methods (paragraph 2.6).

\textbf{3.5.1. Actors involved}

The most prominent actors involved in resource allocation are the individual courts, the Council, the Ministry of Security and Justice and Parliament. The following considers each of these actors separately. It starts from the bottom up, so with the individual courts. The production of cases is measured at the individual courts by the courts themselves and the Council. Then these production...
results lead to a budgetary proposal from the Council to the Ministry, after which the Minister proposes the budget as part of the budget for the Justice department to Parliament. Hence, the budget is an earmarked part of the budget of the Ministry.

(a) The role of individual courts
Each court has a board that oversees the general management and day-to-day running of the court, including its finances. This integral management of the courts is an important feature of the Judicial Organization Act. The court’s budget consists of the own funds of the courts (financial business reserve) and the contribution by the Council. The Council makes financial contributions to each of the sixteen courts. Then each court autonomously determines how to allocate and divide its budget between staff – including staff to be recruited if needed, equipment and the various specialized departments (civil, criminal, administrative, family, small claims/small crime) to achieve the agreed output. Their financial administration is subject to the review of an external auditor. The contribution, which the court receives from the Council to implement the administrative agreements, is an integral budget.

The courts must account for their use of resources to the Council, but not for the content of the actual judicial decision-making. Subsequently, the Council reports to the Minister on the use of resources by the courts. The increased autonomy of the judiciary means that the Minister is not directly involved in the expenditures by the courts and the Council for the Judiciary. He does however hold final political responsibility for the functioning of the judiciary system as a whole. This corresponds to the fact that taxpayers are the ones who provide the funds for the judiciary. Also, court fees do exist but they are not meant for the judiciary, but destined to provide income for the Ministry.

(b) The role of the Council for the Judiciary
The Council is accountable to the Ministry for providing information on production and quality of services, and for money received and spent. It prepares the annual plan and budget proposal and is responsible for preparing, implementing and accounting for the judiciary’s budget, and allocates the budgets to the courts in close cooperation with the management boards of the courts. The Council encourages and supervises the development of operational procedures in the day-to-day running of the courts and is responsible for a general annual plan and an annual report for the judiciary in the Netherlands.

As described earlier, the Council is part of the judiciary, but does not administer justice itself. In addition to making the budget proposal, the Council also has an advisory task. It advises the government on draft legislative proposals, which have implications for the judiciary system. This process takes place in on-going consultation with the court boards. It has taken over several tasks from the Minister. These tasks include supervision of financial management, human resource policy and the allocation of budgets to the courts. The Council supports the courts in executing their tasks

278 Order in Council on the financing on court budgets, Article 17 paragraph 1.
280 The line manager at every level is responsible for the running of the part of the organization under his leadership and is given the necessary responsibilities and powers to carry out this task in practice within the boundaries of the law on the policy of the Council.
283 Article 91 (subsections a and b) of the Judicial Organization Act (Wet op de rechterlijke organisatie).
in these areas.\(^{287}\) One of the objectives of the position of the Council and the financing system in relation with RechtspraakQ is to enable the Council to have a stronger position towards the negotiations with the government compared to individual courts (the situation before 2002). They counteract more, give more pressure and stand up against the Minister, in favor of the financial position of the courts.\(^{288}\)

(c) **The role of the Ministry of Security and Justice**

The Ministry is responsible for reviewing the plan and the budget proposal put forward by the Council. The Minister of the Ministry has the competences to oversee and enforce the well-functioning of the Council, especially concerning financial and production reports.\(^{289}\) He also fixes the prices after negotiations with the Council. After acceptance of the budget proposal and annual plan by the Minister, the budget proposal of the judiciary is integrated in the budget proposal of the Ministry. The budget proposal of the Ministry – and the other departments – is presented in September each year for approval by the Parliament.\(^{290}\) The salaries of judges are negotiated between the Ministry and the ‘trade union’ of the judges\(^{291}\) and therefore the Council has no role in this regard. An increase in salaries should lead to higher prices of the cases in the negotiations between the Council and the Ministry.\(^{292}\)

(d) **The role of Parliament**

The governmental departments present budget bills and both House of Representatives and the Senate discuss these budget bills, proposed by each Ministry.\(^{293}\) In late October or early November Parliament also discusses the proposal of the Ministry, having knowledge of the proposal of the Council.\(^{294}\) The proposal requires Parliament’s approval, whether amended or not. Some proposals are amended and adapted, some proposals are rejected and others are adopted immediately without any changes.\(^{295}\) With the adoption of the budget Bills, Parliament authorizes the Minister to carry out the expenditures that are allocated among the various items in the budget Act.\(^{296}\) However, the system for resource allocation does not entail specific safeguards to avoid violation of key judicial values.\(^{297}\) The calculation of the budget follows standard formulas, and thus are not directly related to the salary of judges, since the allocated budget is meant for all costs\(^{298}\) (including housing, salary and so forth) and no standard percentage of the public expenditure is dedicated to the quality of the judicial system. Apart from judicial salaries, during the negotiations between the Minister and the Council, effects and outcomes of the RechtspraakQ quality system are to be taken into account in determining the prices.\(^{299}\)


\(^{288}\) Interview with Jasper van den Beld and Antonette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017); Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017).


\(^{291}\) Nederlandse Vereniging voor Rechtspraak, The Dutch Association for the Judiciary (www.nvvr.org)


\(^{293}\) See also M. Diamant, M.L. van Emmerik, G.J.A. Geerjes, ‘Dutch report for the 19th International Congress of Comparative Law: Limitations on government debt and deficits in the Netherlands (Vienna 20-26 July 2014) 2.

\(^{294}\) European Network of Councils for the Judiciary (ENCJ), ‘Funding of the Judiciary: preparatory works, questionnaire and replies’ (Annex II to the ENCI Report) (2015-2016) 47.

\(^{295}\) In Parliament (States General), only the House of Representatives has the right of amendment and can make changes to budgets bills. The Senate does not have the right of amendment.


\(^{299}\) Court of Audit, ‘Funding the Judiciary System: consequences for efficiency’ (Report) (21 April 2016) p. 22. Accessible through www.courtofaudit.nl. Also see Court Sector (Funding) Decree 2005 or Order in Council on the financing on court budgets 2005 (Besluit Financiering Rechtspraak 2005).
The previous part has discussed the several actors involved in resource allocation to courts. The following paragraph details the actual process of resource allocation.

3.5.2. Resource allocation process
The Council and local courts decide how to spend the budget. The components for budget allocation are not distinguished. As mentioned before, the Minister does not have a direct link with the sixteen independent courts. Figure 6 shows the resource allocation process systematically. Resources are basically allocated in two flows: from the Ministry to the Council, and from the Council to the individual courts. Both flows of allocation are based on objective criteria, meaning that resources are allocated on the basis of an objective measurement of the courts performances done beforehand.

Figure 6: The financing of the judiciary

Table 1. The financing of the judiciary

Very recently, while discussing the bill for a new Accounts Act, an amendment was proposed to create a separate budget chapter for the judiciary. The Minister of Finance recommended rejecting this amendment, but the outcome is not known yet. The president of the Council started this debate in the annual report 2015, supported by an article in the Dutch lawyers’ journal NJB, by another Council member and by the Council’s research director.

(a) Resources flow 1: by the Ministry to the Council for the Judiciary
The Minister allocates the total budget of the judiciary to the Council and is responsible for the management of the budget, the effectiveness and efficiency of the policy that underlies the budget, and the efficiency of the business operations of the Ministry. Although the Minister of Finance

---

300 Idem p. 22
carries the responsibility for the budget of national debt and the – management of the – State’s finances, the sector Minister fully accounts to Parliament on the budget he administers.\textsuperscript{304} Basically, the Minister of Finance agrees on the system and the budget, while the Minister of Security and Justice is responsible for the actual allocation of resources for the judiciary.

When the Council submits its prognosis to the Minister for the number of cases to be disposed in the following year, the Council bases this on inflow and output forecasts drawn up by the Council, together with the Minister and partners in the various administration agencies that fall under the responsibility of the Ministry.\textsuperscript{305} After the Minister submits the budget for the Ministry to Parliament, he indicates how many court cases he proposes to fund.\textsuperscript{306} If these numbers differ from the number in the Council’s budget proposal, this must be explained in the Ministry’s budget. Then the Parliament can form an opinion on the Minister’s decision. After that, the Minister of Finance can exert pressure on the Minister of Justice and try to influence the change of the draft budget as proposed by the Council.\textsuperscript{307} Though the Minister of Justice is obliged to report to Parliament if, why and to what extent he changed the Council’s proposal, he also must submit to Parliament the original draft budget by the Council.\textsuperscript{308}

**Criteria for resource allocation**

The allocation of resources to the courts is mainly performance-based.\textsuperscript{309} This is regulated by Order in Council.\textsuperscript{310} Budgets for year x are calculated by allocating minutes to different categories of cases, and then by calculating the number of cases decided multiplied by the numbers of minutes (per category of cases) – p x q (price x quantity). The ‘Q’ is (annually) proposed by the Council based on (1) the expected inflow from the forecast model; (2) the work stock at the beginning of the year; (3) The desired work stock at the end of the year. If the minister deviates from the Council’s proposal, he must argue this deviation in the draft budget of the Ministry going to parliament. ‘P’ is determined by the Minister every three years after negotiation with the Council (price agreement). These prices based on (1) the past cost price per product group; (2) Changes in the ratio of the number of cases per category of business (3) The product group (the assortment mix); (4) Results of periodic workload measurements at the level of business categories and additional investigations; (5) Quality considerations based on information from the quality system; and (6) Considerations of efficiency.

The criteria for national resource allocation mostly relate to 11 product groups\textsuperscript{311} (a number of case categories that fit together) that determine the final allocation. These product groups are used in the negotiations between the Minister and the Council. The product groups are defined by objective criteria that allocate specific prices to specific groups. The cash flow from the Council to the courts is of the same product groups as the flow between the Ministry to the Council. There are six categories at the district courts, three categories at the courts of appeal and one at the Central Appeals Tribunal. Fields of law, for example civil, criminal, and administrative law characterize the categories. Figure 8 shows the average realized prices per product group versus the average prices agreed upon in the last year.\textsuperscript{312} So the table shows the difference between the planned average costs per case category and the average realized cost per case category.

\textsuperscript{304} Chapter 3 GAA (Comptabiliteitwet 2016).
\textsuperscript{305} For instance, the Public Prosecution Service and the Immigration and Naturalization Service.
\textsuperscript{308} ENCJ, ‘Final report working group on Courts Funding and Accountability’ (2006-2007) 9.
\textsuperscript{309} Council for the Judiciary, The Financing System of the Netherlands Judiciary’ (Report) (20 August 2010)
\textsuperscript{310} (https://www.rechtspraak.nl/SiteCollectionDocuments/The-Financing-System-of-the-Netherlands-Judiciary.pdf)
\textsuperscript{311} Court Sector (Funding) Decree 2005 or Order in Council on the financing on court budgets 2005 (Besluit Financiering Rechtspraak 2005).
\textsuperscript{312} A number of related case categories: article 1g Order in council 2005.
\textsuperscript{312} Judiciary Year Report (2016) 59.
Figure 7: Realized product group prices versus prices agreed upon 2016 (euro)

<table>
<thead>
<tr>
<th>District courts</th>
<th>Realized</th>
<th>Agreed upon</th>
<th>Difference</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil</td>
<td>860,12</td>
<td>813,78</td>
<td>46,34</td>
<td>-5,69%</td>
<td>-1,43%</td>
</tr>
<tr>
<td>Administrative (excl. Immigration and Asylum Chamber)</td>
<td>2,034,28</td>
<td>2,248,08</td>
<td>213,80</td>
<td>9,51%</td>
<td>11,16%</td>
</tr>
<tr>
<td>Criminal</td>
<td>1,177,82</td>
<td>1,050,22</td>
<td>127,60</td>
<td>-12,15%</td>
<td>-3,12%</td>
</tr>
<tr>
<td>Canton</td>
<td>177,63</td>
<td>159,52</td>
<td>18,11</td>
<td>-11,35%</td>
<td>1,79%</td>
</tr>
<tr>
<td>Administrative (+ Immigration and Asylum Chamber)</td>
<td>1,426,76</td>
<td>1,313,85</td>
<td>112,91</td>
<td>-8,59%</td>
<td>-7,77%</td>
</tr>
<tr>
<td>Tax</td>
<td>857,66</td>
<td>1,153,88</td>
<td>296,22</td>
<td>25,67%</td>
<td>15,41%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Courts of Appeal</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil</td>
<td>5,028,86</td>
<td>3,937,86</td>
<td>1,091,00</td>
<td>-27,71%</td>
<td>-22,70%</td>
</tr>
<tr>
<td>Criminal</td>
<td>2,072,40</td>
<td>1,586,72</td>
<td>485,68</td>
<td>-30,61%</td>
<td>-27,86%</td>
</tr>
<tr>
<td>Tax</td>
<td>2,084,67</td>
<td>3,711,67</td>
<td>1,627,00</td>
<td>43,83%</td>
<td>18,58%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Central Appeals Tribunal</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Dutch Administrative High Court</td>
<td>3,975,96</td>
<td>3,509,22</td>
<td>466,74</td>
<td>-13,30%</td>
<td>-7,39%</td>
</tr>
</tbody>
</table>

The average costs per product group (a number of case categories that fit together) in previous years form the starting point for the negotiations. These kinds of data and information used in the process are based on the time it takes to complete a case, in terms of proceedings for a specific court (This is measured on a regular basis). It also depends on whether the case is completed by a judge sitting alone or by a panel of three judges or appeal court justices.³¹³

Figure 8 is an example of prices from different case categories, depending on time per case.³¹⁴ It shows that in civil cases (canton summary proceedings) a judge needs on average 91 minutes and the legal assistant 174 minutes and the costs are €769 euros. The same data is given in administrative cases (also summary proceedings), civil cases with a multiple chamber (three judges), and tax law cases.

Figure 8: Examples of different prices and average time of a case in comparable court cases in different jurisdictions

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Time (in minutes)</th>
<th>Time per minute</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil</td>
<td>91</td>
<td>€7.69</td>
</tr>
<tr>
<td>Bestuur</td>
<td>174</td>
<td></td>
</tr>
<tr>
<td>Civil</td>
<td>319</td>
<td>€1.438</td>
</tr>
<tr>
<td>Belasting</td>
<td>517</td>
<td>€1.814</td>
</tr>
<tr>
<td>Civil</td>
<td>1.440</td>
<td>€4.185</td>
</tr>
</tbody>
</table>

The State budget details the outcome of these negotiations and the agreed upon price.\textsuperscript{315} If the Council and the Minister fail to reach an agreement, the Parliament has a final say in the budget – as Parliament has the final say anyway.\textsuperscript{316} The price agreements are made every three years for various categories of cases, based on average disposal time multiplied by the tariff per minute for each staff category (p x q).

Figure 9 shows the liquidated prices per minute in the year of 2016 per product group.\textsuperscript{317} The first column shows the prices per minutes for judges and the second column that of legal assistants.

\textsuperscript{316} René Verschuur, ‘Independence of the Judiciary’, (Belgrade June 2007) 4.
\textsuperscript{317} Judiciary Year Report 2016 <http://www.jaarverslagrechtspraak.nl/verslag/kostenspecificatie> accessed 11 September 2017
At the end of the year it shows how many cases the courts have handled and the actual excess or shortfall is visible. The Council has an equalization account that is intended to offset differences between the agreed and realized production. The equalization account is settled at a rate of 70% of the price applicable to the case. This means that only 70% of the real price is paid for extra production beyond the estimated production. In the years of austerity policies following the recent economic crisis, the Ministry would only agree to a lower estimated production for the coming year, in order to reduce costs. As a consequence, this ministerial policy has been detrimental to the budget of the Council. An important conclusion of the Court of Audit goes even further, as they clearly say:

“...negotiations about pricing are about budgetary consequences of the total production related contribution based on existing prices and expected cases. Prices are not being re-gauged based on objective information about realized costs, workload, efficiency and quality. By taking the available ministerial budget as a point of departure, the financing method was largely uncoupled from the question what court practice needed to handle court cases timely and carefully”

In other words, outcomes of quality measurement were not taken into account when establishing the budget for the judiciary. Amazingly this has led only to a few proposals by the Council to change the budgeting process, but did not lead to large-scale protests of judges.

---

318 Article 19 paragraph 2 Order in Council 2005.
In the annual report of the Council, the number of cases actually disposed of is published. It is also one of the subjects covered in the audit by the Court of Audit (De Algemene Rekenkamer). The Council sends this report to the Ministry who subsequently submits it to Parliament, which provides for a resource allocation process that is transparent and statistically reliable.

The number of cases that have actually taken place may be higher or lower than the number agreed upon in the Ministry’s budget. When the income received by the judiciary is found to operate in a (‘profit’), this is credited in the own funds of the Judiciary. Hence, an operating deficit results in reduction in the equity. The Council’s budget consists of the contribution by the Ministry and its’ own equity. Yet, as figure 11 displays, the financial capital of the judiciary is empty as from 2015 onwards (eigen vermogen per 31-12).

Figure 10: Equity of the Judiciary (x million euro)

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eigen vermogen per 1-1</td>
<td>49,2</td>
<td>28,6</td>
<td>23,5</td>
</tr>
<tr>
<td>Resultaat</td>
<td>-20,6</td>
<td>-5,1</td>
<td>-23,5</td>
</tr>
<tr>
<td>Eigen vermogen per 31-12</td>
<td>28,6</td>
<td>23,5</td>
<td>0,0</td>
</tr>
</tbody>
</table>

(b) Resources flow 2: by the Council to individual courts
The second cash flow is between the Council and the respective courts. As mentioned before, each court’s management board provides the Council with a production plan and a draft budget for the court, based on the prospective number of cases to be handled. The several boards decide on the way in which the resources are spent. The relationship between the boards and the Council is also embedded in a planning and reporting cycle that include year plans, progress reports every four months and annual reports.

In the relationship with the Government, the budget is estimated based on 11 case categories, but the distribution of the budget to the courts is based on 53 case categories. Each product group is classified within the output-based contribution, as laid down in Article 11 of the Order in Council on the financing on court budgets. Housing costs and ‘specific’ costs are part of the budget for the courts. Unfortunately, in the past 5 years, the Ministry refused to accept the production estimates for the following year, as it had also been subjected to austerity measures.

Court production is not the only basis for the financing of the courts, but 95% of the budget for the courts comes from production. The other 5% are for services to disciplinary proceeding courts for different professions, and for court cases that fall outside calculated production parameters, such as criminal ‘mega cases’. The results of these calculations are to be submitted to the Ministry, and are part of the budget cycle. The Minister can change the budget if he does not agree with the calculations of the Council, or for other reasons. As figure 12 displays, there has always been a

---

324 See the explanatory note by the Order in Council on the financing on court budgets (Toelichting bij Besluit Financiering Rechtspraak 2005).
couple of percentage differences between the claimed and honored production-related contribution between the budget proposal of the Council and the assigned budget.\textsuperscript{326}

Figure 11: Percentage differences between claimed and payed production-related budget between 2008-2015

![Percentage differences between the claimed and payed budget in relation to case production between 2008 and 2015](image.png)

It should be noted that the basis of the calculations for the government budget cycle differs from that for the calculations for the distribution of the budget among the courts. The difference is that the calculation for the government budget is based on 11 case categories, whereas the budget cycle for the courts is based on 53 case categories.

**Criteria for resource allocation**

In 2002 an output based funding system based on objective criteria replaced the non-transparent ad-hoc allocation of funds by the Ministry to individual courts. The Council applies more detail to the prices per case than the Ministry does when allocating resources to the Council. Instead of eleven product groups, there are 53 product groups and prices used to determine the budget of a district court, nineteen product groups for a Court of Appeal and three for the Central Appeals Tribunal.

One of the criteria that determine the prices of the case categories is the lead times of the various case categories. As the Council is obliged to carry out periodical time allocation surveys to assess these lead times,\textsuperscript{327} the prices agreed with the Minister are translated into prices for the case categories. Since there is no direct relationship between the findings and the absolute level of the prices, the results of the negotiations process is still based on the out-turn costs in previous years.

Each of the different categories of court cases are attributed a specific standard amount of court time in minutes. To this end, the courts annually register the number of cases decided per category,

\textsuperscript{326} Court of Audit, ‘Funding the Judiciary System: consequences for efficiency’ (Report) (21 April 2016) 22. Accessible through www.courtofaudit.nl. While the Minister has fully financed the forecasts for the relevant fiscal year in the first years of the Prognosis Model of Legal Chains (pmj, 2008 and 2009), the production agreements since 2010 are under the forecasts and production proposals of the Council. The deviation from the Council’s production proposal in the Minister of Security and Justice budget of 2015 was over € 40 million, with the allocated production-related contribution for 2015 4.3% lower than the claimed production-related contribution for 2015 by the Council.

\textsuperscript{327} Which are obliged under the Order in Council on the financing on court budgets (Court System Decree 2005).
in relation to the numbers of judges and staff. Every three years, the Minister determines the price per minute. Hence, those prices are fixed for a three-year term (2014-2016, 2017-2019 etc.). Forecasts for the following three years, of numbers of cases filed and numbers of cases decided, are part of the calculation. As mentioned before, results of the quality management system of the courts are to be taken into account when negotiating and determining the price per minute.

The Council fixes the prices of the case categories annually – correct for wage and price adjustment – and each court receives the same amount for a given case category. As an incentive for courts to reduce costs, they can retain a surplus if they manage to keep their costs low. The equalization account is meant to be able to finance unexpected costs afterwards. When having lower costs they are then reflected towards the Council and the Ministry in the price negotiations. If they produce more than expected, they receive 70% of the agreed price per product group from the equalization account. Also at this level an operating surplus results in crediting the court’s own funds (the financial business reserve). Though in case of operating in deficit results, which follows in reduction of the courts’ own funds, the Council sets conditions for repayment and improvement measures. When producing less than agreed, the court must deposit 70% of the agreed prices of the unprocessed part in the equalization account. If a court has generated more money for its own funds than 3% of its annual budget, the excess is creamed off by the Council. When assessing the budgets per court though, the Council needs to take into account the court size. For instance, courts that have ‘mega cases’ have higher throughput times than regular courts and therefore there is a separate funding for those mega cases. Registration systems like KEI or other Information Technology Systems also have a separate funding.

3.5.3. Consequences of resource allocation for the quality of justice

The system of financing the courts’ sole purposes were to calculate the budget for the courts and distribute the budget over the courts. Somehow, in the past, the management of the courts translated the budget outcome into the different departments of the courts, also based on production per department. Thus, the money distribution system was transformed into a quite direct pressure on judges to produce judgements for economic reasons. Together with quite a number of proposals to change the court map, rules of procedure, legal aid and giving online-court proceedings a boost, the judiciary has become weary of all the changes and protested against the austerity measures in 2012. The Council adopted this protest.

It should be mentioned that the internal management of the courts has changed, since the change of the court map, so that in the court organisation money is allocated where necessary and not primarily in accordance with production. Nevertheless, allocating resources based on performance has various consequences for the quality of justice.

Caseload and quality of performance

Performance budgeting can result in low quality, namely because budgetary constraints result in a higher workload for individual judges, and therefore quality standards have been designed. There is a different interpretation on what is considered to be ‘quality’: the Council used to interpret this as handling cases with high speed, but most judges interpret this as providing a high quality of

329 Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
330 Programma Kwaliteit en Innovatie Rechtspraak (Programme on quality and innovation of the judiciary).
331 National Budget 2016, see: http://www.rijksbegroting.nl/2016/voorbereiding/begroting,kst212222_22.html# 33 back
judgments, which takes (a lot) more time.\textsuperscript{334} Nevertheless, the output-based financing structure results in judges being scheduled to handle a specific number of hearings.\textsuperscript{335} This implies often that an disproportionate workload lies on the shoulders of courts and judges.\textsuperscript{336} The allocation of resources is not providing enough resources to handle all the caseload, but it is unclear to what extent this affects the quality of judicial work.\textsuperscript{337} What can be said is that the pressure to perform within the budget restrictions may lead to peculiar situations. For instance, when realized production and due compensation provided for civil cases tends to be less than the planned production while the realized production and due compensation provided for criminal cases is larger than the planned production, the budget for the civil section needs to be leveled. If this is done in accordance with internal production results, every department tries to get as much cases they need to comply with the available budget.\textsuperscript{338} Some of our interviewees state this is still the case, others told us the management boards of the courts have left this way of budgeting behind.\textsuperscript{339} If a court handles less cases than initially planned, the court will lose some of its budget and this may have personnel consequences (but not for judges). If a court handles more cases than initially planned, the court will eventually receive more money than budgeted. In short, the output financing means that they can handle less or more cases than were budgeted planning wise and they get paid out for the output realised.\textsuperscript{340}

Even if the workload is not experienced to be unacceptably high, the strict schedule of hearings reduces the autonomy of judges in allocating time to cases (or to refer a case to a three-judge panel). The complexity of a case does no longer play a dominant role, while considerations of effectiveness and efficiency are emphasized.\textsuperscript{341} Since the budget model changed into an output model, the emphasis on quantity steers to more productivity\textsuperscript{342} and accountability for production. Consequently, judges may experience dilemmas when faced with tensions between organizational and professional values. An example is that certain interim judgments made during court proceedings are not qualified by the management as ‘output’ and are therefore not financed. This leads to situations where courts operate in a way where they consider themselves applying to the output-rate soon, or explaining why they are not complying to the standards yet.\textsuperscript{343} One of the problems then arises on what point a case is considered to start or to end. The increase of lead times of cases has the consequence of not handling enough cases according to the budget plan, but it is measured on the total of cases in all jurisdictions.\textsuperscript{344} Since the output-based budget is strict in the sense that when courts don’t comply to the output that is planned (or only for 90\%), they will get paid less. Accordingly, efforts to increase output are threatening the independent position of judges in deciding concrete cases because they can feel pressured to complete cases.\textsuperscript{345} The question is how the judiciary is supposed to be responsible to draft its budget and present it to Parliament or that it can be organized differently.

Apart from the before-mentioned problems that became more urgent when the government implemented austerity measures to all its departments, the average length of time calculated for a product group of cases based on registrations often turns out not to be specific enough. Especially

\textsuperscript{334} Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)
\textsuperscript{335} Nina L. Holvast, Nienke Doornbos, Exit, Voice, and Loyalty within the Judiciary: Judges’ Responses to New Managerialism in the Netherlands, Utrecht Law Review, Volume 11, issue 2 (June 2015) 56.
\textsuperscript{338} Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)
\textsuperscript{339} Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (e-mail message November 13, 2017)
\textsuperscript{340} Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)
\textsuperscript{342} Productivity as the number of cases in a year divided by the total amount of fte employed by the courts.
\textsuperscript{343} Interview with Frans de Boer, Chief Planning and Control, Amsterdam (Amsterdam, 31 January 2017)
\textsuperscript{344} Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
\textsuperscript{345} New Year's speech by Frits Bakker (President Council for the Judiciary) 7 January 2016.
the smaller courts dealing with complex cases experience difficulties. The workload of judges goes up, because they are in a way forced to finish the cases within the reserved time. In addition, there are often insufficient resources to meet important innovations in the Judiciary. In 2013 for example, the judiciary experienced this problem with the reform of the court map. There were additional resources needed to manage this smoothly. As visualized before, these additional funds came from the budget of the judiciary itself. Bakker concludes in a speech that the judiciary is a core task of the state and deserves straight application of the financing model that fits thereto. Also in reaction to those complaints, the government decided recently to invest an extra 35 million euros annually in order to enable the courts to hire more court clerks and judges.

The Court of Audit on performance-based funding

According to the Court of Audit, the performance-based funding of the judiciary system introduced in 2002 has aided in controlling the costs. The consequences for the quality of the judiciary are uncertain. The conclusions from the Court of Audit are based on the following content:

First, the annual performance-based funding of the judiciary system is ultimately dependent on the funds available in the Ministers’ budget. The funding of the judiciary system therefore combines the characteristics of performance-based funding and budget-based funding: a two funding method is a source of tension.

Second, the introduction of performance-based funding leads to less expensive court cases. This results from the costs of courts being stabilized after having increased for a long period of time (1983-2002) and from a decline of the cost differences between courts and cases.

Third, the efficiency incentives do not bring about a further reduction in costs per case. The cost control by the Ministry has improved as a result of the budget ceiling – cost control is a key priority of the Council – but they give higher priority to meeting the performance agreements than to improving their efficiency. Efficiency incentives are not particularly strong in practice and courts can only reduce the costs per case if they deal with more cases. Because the number of cases has been lower in recent years than expected, courts have been unable to meet the performance agreements and do not mind increasing their productivity. The consequence is, that the average costs per case is higher during years of lower productivity. The Court of Audit also finds that the triennial price agreements were not reviewed if there was a demonstrable increase in productivity.

Last, the effect on quality is not known, while the costs of a case should reflect the costs incurred to achieve the required quality. This is a major concern, because the available information provides no reliable indication that there has been any structural change in quality. The absence of reliable information on quality and efficiency incentives prevents a proper consideration of the relationship between quality and price. Also, whether and to what extent the quality of the judiciary system has been influenced by performance agreements is uncertain. Furthermore, the Ministry does not have agreements with the courts regarding the required quality level.

Other factors in the consequences of resources allocation on the quality of justice are related to enhancing the specialized expertise of judges, to raise the procedural and financial thresholds for

---

346 New Year's speech by Frits Bakker (President Council for the Judiciary) 7 January 2016.
348 Idem. More information and reports can be found on http://www.courtofaudit.nl/english/Publications/Annual_Reports.
Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice

litigants and to increase the uniformity of procedures. Basically, improvement of quality and consistency of judicial decisions should result in enhanced performance of the judiciary, which then results in a propitious allocation of resources. The major categories of costs that are affected by measures to improve the performance of the courts are briefly based on transaction costs, costs of postponing activities and costs of uncertainties.350

3.6. Assessment of existing evaluation methods

The allocation of resources with performance based budgeting as described before, has both profitable (such as timeliness) and adverse consequences (too much pressure) for the quality of the justice. Based on the recommendations given by the Court of Audit, the Minister is advised to explain in its budget what consequences any increase or decrease of the budget ceiling for the Judiciary system has for the number of cases to be funded, the required quality and the costs involved. Also, he should explain what risks are involved, what impact they can have and how they can be mitigated and addressed if they occur and what measures should be taken.351

One of the existing evaluation methods is trial risk management. It is based on identifying the working processes. It seems to be desirable to conceptualize the risks of the processes in legal proceedings, and develop methods that restrict the risks of these processes.352 Another method is the measurement on the hours spent in professional education. It seems that registering these hours are more difficult in practice.353 Furthermore, it would be more useful to steer and control what kind of professional education is attended by what kind of judges, than simply measure the quantity of lectures attended by judges in a specific period.354

In the field of the court evaluation, the adoption of innovative practices should rely on investing in better information on the cost and quality of the Judiciary system. Also, a method to monitor the quality of the Judiciary system has to be developed. Therefore, the courts need to agree on a minimum quality standard for the system together with the Minister. This information has to be taken into account in the triennial price review. Another recommendation for the courts is to provide quantitative information on the causes of variances between agreed and actual costs per product group, and from one court to another. Lastly, the cost of a particular type of case in different jurisdictions has to be compared. Differences must be explained, especially if the complexity (or simplicity) of the case appears comparable. This data must be used to improve the efficiency of court procedures and develops professional standards for each jurisdiction. It should be noted that the equalization account (as mentioned in paragraph 2.5.2) is meant to pay unforeseen costs, not to fund the agreed number of cases.

4. Innovative practices in quality evaluation and quality development

This chapter contains a discussion on five innovative practices in the Netherlands. These are professional standards (1), the ‘Organization of Knowledge’ program (2), mirror meetings (3), the digitalization of processes (4), and the directive role of judges during court sessions (5). Other new or innovative initiatives include communication teams within courts and the hosting of meetings with regular litigants, such as the Prosecutors Office or the tax authority for consultation, to strengthen the connection between the judiciary and the external world.355 Some legal areas of

352 Interview with Andre Dekker, Consultant Quality and Planning, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)
353 Interview with Frans de Boer, Chief Planning and Control, Amsterdam (Amsterdam, 31 January 2017)
354 Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)
355 Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, pp. 79, 80; Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)
courts have yearly evaluation meetings with ‘repeat players’, such as curators, to discuss how everything is going.\(^{356}\) Also, many courts have communication teams and a press office that manage publishable cases that are legally or societally relevant.\(^{357}\) So-called press judges respond and reply to the media, especially in sensitive cases.\(^{358}\) To tackle the negative feedback on throughput times courts have adopted a new practice within the administrative law area. Judges in this field try to organize a hearing as soon as possible in order to get the issue clear, which increases the chance on a quick and final solution.\(^{359}\) Lastly, some courts have introduced the so-called ‘Feedback Online’ pilot, which is a survey to be filled in right after a hearing to see what the litigants thought of the performance of the judge and the support staff of the court.\(^{360}\) Another initiative is called “meet the judge”, which is a meeting of judges with citizens.\(^{361}\)

The following will discuss the identified first five major innovative practices in the Netherlands regarding evaluation of the judiciary. The other innovations are not discussed further given the scale of the development.

### 4.1. Professional standards

In addition to Rechtspraak judges have been developing so-called ‘professional standards’ since 2012/2013. These standards embody the vision of judges on quality of judicial performance. These standards have no binding force for judges and are meant for internal use.\(^{362}\) Judges themselves can decide on whether or not to follow them. This is one of the main aims of the standards: to be an instrument of the judges, they are not an internal management & organization tool.\(^{363}\) In this fashion the standards do serve as necessary conditions or criteria for quality judicial work, and as such do not function as an evaluation instrument.\(^{364}\) Effectively they function as a (re)confirmation of judicial professional space within the court organization. As such, they can, however also be translated by the courts’ management boards and the Council for the Judiciary into budgetary demands.

Professional standards are originally intended to be by and for the professionals and to provide a certain level of responsibility to each other.\(^{365}\) The standards therefore need a wide support among the professionals. The standards have evolved from the tension between the quality of the judiciary and pressure to produce sufficient cases or verdicts. The professional standards could be a ‘codification’ of existing, informal agreements to provide counter pressure to the existing workload and financial pressure.\(^{366}\) Moreover, in general society’s demands have increased, which means the judiciary does not longer have the surety of trust.\(^{367}\)

---

356 Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolvence and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
357 Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, p. 79; Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
360 Council for the Judiciary, ‘Rapport visitatie gerechten 2014’ 2014, p. 80; Interview Ingrid Corbeij, Judge and Member of the Management Board, Court of First Instance of North Holland (Utrecht 3 March 2017); Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)
361 Interview with Ward Messer, Judge, Court of First Instance Midden-Nederland (Utrecht, 22 February 2017)
362 Dutch criminal law judges, ‘Professionele standaarden strafrecht’ (2016), p. 3
363 Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)
364 Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)
Each court has established ‘implementation groups’ that look at the professional standards and determines whether a court already acts conform the standard or whether changes are needed. The team coordinators in the civil law department in the Court of Mid-Holland discuss the standards with their team to see what could or should be changed. The team coordinators then discuss where they are with the professional standards with the court board. They can also identify a couple of professional standards to focus on in the following year. Some standards require financial changes and more budget, for example a mandatory legal support officer at every session, whereas other standards do not necessarily or immediately require more compensation, such as how you behave at court sessions. The first requirement can entail the hiring of many new legal support staff, whereas the second can be worked into the daily routine without a need for additional funds. The elements that do require these funds receive them next to the output financing system. The implementation groups are needed because some of the professional standards are formulated quite vaguely, which requires additional specification. For example, if you have to be a pro-active supervising judge it is unclear how much extra time this will cost. To aid this the national meetings of judges in specific fields discuss the standards and try to objectify them as much as possible.

The judges in the Netherlands specialized in criminal law were the first to publish their professional standards after a couple of years as a result of many national meetings (Landelijk Overleg Vakinhoud Strafrecht), internal reflection of the judiciary and advice by parties such as the Public Prosecutor. Judges in other legal fields are also working hard to develop standards and they are currently in the process of being published. Each legal field can determine its own speed and route. At the moment the professional standards for administrative law, tax law, and family and juvenile law are published. The underlying aim is to keep the professional standards with the professionals and to not let the national meetings ascend to be part of the management.

The criminal standards have been formulated and implemented first because, according to some judges, the judges in this legal field were the most active in questioning their work load and communicating this to the Council. In addition, these judges mentioned that this legal field seems to have the most public relevance and is perceived as having the most impact on people, together with family law. In general the standards are launched bit by bit, to make it financially feasible.

---

368 Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017); Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017); Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)
369 Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017)
370 Interview with Ingrid Corbeij, Member of the Board, Court of First Instance Noord-Holland (Utrecht, 3 March 2017)
371 Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017); Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017)
372 Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
373 Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolvence and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017)
374 Dutch criminal law judges, ‘Professionele standaarden strafrecht’ (2016), p. 2
378 Interview with Hester Brouwer, Member of the Board, Court of First Instance Midden-Nederland (Utrecht, 23 March 2017).
379 Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017); Interview with Jaqueline Frima and Jennifer Willemsen, Unitmanager Insolvence and Unitmanager Canton, Court of First Instance Rotterdam (Rotterdam, 9 May 2017).
380 Interview with Esther de Rooij, Member of the Board, Court of First Instance Amsterdam (Amsterdam, 31 January 2017).
Nevertheless, the financial consequences of the professional standards can be greater than anticipated. The concern-controller in Amsterdam emphasized that some professional standards can be calculated precisely, such as shorter court sessions that lead to more sessions to hear all cases. However, other quality elements are more difficult to quantify, especially the ones that are still being objectified. This last category can lead to unanticipated financial needs. Another problematic item for the professional standards is the fact that there are currently insufficient judges to implement all professional standards.

**Professional standards: criminal law**

The standards aim at increasing the quality of work done by criminal law judges by addressing both the individual judges and the judicial organization. The standards supplement other standards already in place, such as the Code of Conduct for the Judiciary. The professional standards influence several elements and therefore have a societal (for example legal unity), substantive (for example expertise) and institutional relevance (for example the judiciary as a branch). Moreover, the standards function as facilitator for quality, regulation and responsibility.

The professional standards concerning criminal law have a three-layer build up. The professional standards for civil law have the same build up and there is communication among the legal fields on using the same format. The first level of the criminal law standards comprises ten fundamental principles and standards that are at the heart of the judiciary. These include but are not limited to the need for proper and continuous education of judges, a balanced division of judges on cases, sufficient administrative support, comprehensible judgments and attention for societal context and treatment of cases that are made to measure.

The second level specifies the practical ways in which the judiciary can meet the standards of level one. The second level is subject to more discussion and provides for more room for maneuvering in terms of the possibility to deviate when motivated properly. For example, the standard of proper education has two lines of practical developments, namely education and development and permanent education. The permanent education then deliberates in six specific ways to safeguard this specific element, for example through periodical discussions of relevant case law and the national norm of ninety hours of permanent education per three years. Another fundamental principle is the exit point that criminal law judges should engage in the ‘professional discussion’. The second level then states that each judge should regularly partake in judge-meetings and should provide each other with feedback (peer review) and participate in professional meetings.

The third level comprises a compilation of publications and best practices that supplement the adopted standards. The several documents listed in this section aim at inspiring judges and a further development of the professional standards.
Some judges felt in the beginning that the professional standards were obvious self-evidences and they are surprised that the standards at this time actually did lead to more legal support and shorter sessions. Others consider professional standards also valuable in the sense that they acknowledge the workload of judges. Nevertheless, some judges are a bit skeptical towards the real workings of the professional standards – the formal launch does not guarantee practical implementation and the implementation of the professional standards in legal areas other than criminal and family law. However, they do applaud the professional standards because the judiciary as a substantive business should give the good example.

The levels of these specific standards correspond to the theoretical framework of professional standards in all sorts of academic fields. According to a research memoranda professional standards have a core of ideals (layer one, the ambition code); a practical realization of these ideals (layer two, the educational code); and a regulatory code that links the first two levels in case of non-compliance. A fourth layer encompasses policy choices and organizational conditions relating to time and money. The professional standards designed by the criminal law judges clearly shows the first two layers or levels, but do not comprise the others levels in the document. Nevertheless, the current Dutch reality embodies the fourth layer. The third layer is also represented, but solely in terms of financial compensation for cases completed. To do it otherwise, could compromise judicial independence within the courts.

### 4.2. Organization of Knowledge

Another current development in the Netherlands is the move towards more specialization of knowledge. Judges in the Netherlands have started in 2015 to develop the so-called project “Organization of Knowledge” for and by the professionals. The problems this new project aims to address are the increasing complexity of cases and more specialized litigators. The idea is that the current body of knowledge is rather piecemeal and not always transparent in terms of where to go to get what information. The main parts of the project are five: reinforcement of the local quality infrastructure (a), digitization of the paper books of the court libraries (b), reinforcement and transparency of the nationwide knowledge management services (organization, management, sharing of information - c), reinforcement of nation-wide expert groups and knowledge centers; networks that gather, manage and share knowledge related to specific legal domains (d), ICT-innovations, like a digital tool to integrally search sources and work on and store results (e).
In order to organize the knowledge networks, each legal field, for example civil law, has a couple of expert groups connected to it, for example international private law or civil procedure. These expert groups are formed at the national level, although sometimes not all courts participate, and these groups safeguard knowledge sharing on specific topics. These expert groups do not replace the knowledge centers that have been discussed earlier: those centers are usually organized as a part of a court and cover less areas of law than the expert centers. However, the goal is to merge the expert centers and knowledge centers.

At the local level the (national) expert groups correspond to knowledge groups. Some legal areas at some courts let their knowledge groups synchronize with the national expert groups, but not all. Within the Court of First Instance in Rotterdam the foregoing has resulted in knowledge groups at the local level on specific topics or legal fields, for example migration law or TBS. Such knowledge groups have 6-10 members including one or two judges. Some knowledge groups are temporary, which could foster enthusiasm, and others are permanent. In any regard, the overarching project aims to support the sharing of knowledge.

The project also aims to make all information digitally available through an e-library and sustainable online sources. One of the main changes includes the formation of one central library instead of many local libraries and one digital library. Finally, the project has the objective of using ICT to facilitate what the professional needs. For example, currently the project is working on a personalized starting page that embodies many or all the elements the professional needs. Hence, the organization and sharing of knowledge sits at the base of one of the main innovations in the Netherlands.

4.3. Mirror meetings

Another innovative practice is the use of mirror meetings (spiegelbijeenkomsten), of which there have been more than twenty-five across the Dutch courts. According to the visitation report these meetings could improve the performance of Dutch courts and are initiated by courts. In mirror meetings customers of the judiciary can articulate their experiences with a specific court under supervision of an independent moderator, while the judges and other staff of the court are only observing. It depends on a specific reflection meeting who is invited to participate, for example lawyers or citizens, so where the reflection is coming from.

---

404 Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)
408 Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)
409 Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)
410 Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)
411 Interview with Liesbeth van Walree, Monique Fiege and Jaap de Wildt, Judicial Quality Coördinators (KC), Court of First Instance Rotterdam (Rotterdam, 11 May 2017)
415 Jitta Miedema and others, ‘Feedback uit de relevante buitenwereld’ (2015) 9 Trema 315, 316
416 Interview with Jasper van den Beld and Antoinette Opstelten, Judicial Board Member and Secretary of the Board, Court of First Instance Rotterdam (Rotterdam, 9 May 2017); Interview with Aafke Klippel and Anneke de Graag, Judges, Court of First Instance Noord-Holland (Haarlem, 23 February 2017); Interview with Kim Oldekamp and Tanya Chub, Senior Chief Judge and Consultant Business Management, Court of First Instance Amsterdam (Amsterdam, 31 January 2017); Interview with Jules Loyson, Judge, Court of Appeal Amsterdam (Amsterdam, 9 February 2017)
The mirror meeting has three rounds. In the first round judges and other observers discuss and come up with points that are important to discuss in the meeting. The second round is the actual reflection meeting. The third and last round contains a meeting with all observers to analyze the feedback and sometimes supports teambuilding, which is also linked back to the feedback givers. Mirror meetings do not require all observers of the judiciary to be positive about them. However, to implement such meetings there is a need for support from the management and key figures in the judiciary.

During the mirror meeting, judges are required to not engage in exchanges with participating respondents. The goal is purely to receive feedback. The observing stance of the judges increases the sense of safety and stimulates openness among the feedback givers, while the judges have room to listen and reflect. The mirror meetings do not comprise a representative idea of the view of customers, such as the CUS aims to do, but the personal nature of the contact and sometimes the repetition of the same feedback does provide courts and participants with a sense of recognition and increases the impact of the feedback. Moreover, the meetings can identify blind spots regarding the impact and performance of judges and support staff.

4.4. Digitalization: KEI/QAI legislation

A fourth innovative practice constitutes the KEI legislation, which stands for legislation on Quality and Innovation. The aim of QAI is to streamline processes and to digitalize legal proceedings, especially proceedings that occur regularly and routinely. QAI is in the process of implementation. The judiciary aims to be more accessible and understandable and QAI is supposed to make the procedures quicker, simpler and more approachable.

One of the features of QAI is the operationalization of ‘digital files’ for all parties involved in specific proceedings. This is because the Dutch judiciary lags behind in terms of digitalization, still using paper files and fax machines for communication on a daily basis. The paper-based system is supposed to be replaced by standardized and user-friendly online-proceedings, designing a new digital procedure that is reforming the national procedural law and regulations. Apart from digitalization, QAI has also started legislative and organizational changes to legitimize adaptations of rules of procedure to digital programming necessities.

For civil law the new legislation involves simplified initial proceedings and mandatory digital litigation. For administrative law the proceedings will also become faster and mandatory digital litigation is introduced. Within the criminal law the several main actors (Courts, Prosecutors’ Office, prisons) try and make their proceedings to fit together to facilitate complete digital documentation.

4.5. Directive role for Judges

Lastly, the Dutch courts have adopted the idea that judges need more of a directive role when leading court proceedings. Traditionally this role differs per type of legal field, for example a rather passive judge in civil law proceedings (‘equal’ parties to the conflict) but a rather active judge in administrative proceedings (‘unequal’ parties to the conflict).

419 Jitta Miedema and others, ‘Feedback uit de relevante buitenwereld’ (2015) 9 Trema 315, 316
420 Jitta Miedema and others, ‘Feedback uit de relevante buitenwereld’ (2015) 9 Trema 315, 316
422 Jitta Miedema and others, ‘Feedback uit de relevante buitenwereld’ (2015) 9 Trema 315, 319
424 Thomas de Weers, ‘Case Flow Management Net –project: the practical value for civil justice in the netherlands, International Journal for Court Administration, Vol. 8 no. 1 October 2016, p. 34.
425 Thomas de Weers, ibidem.
incorporates competences to incorporate such an active or directive stance, for example by being able to add facts to a case on trial (administrative law judges).\textsuperscript{426} However, those competences differ per type of judge. To a certain extent, the QAI legislation will codify and streamline competences regarding the directive role – for example asking questions to the parties, requiring more evidence, asking to hear an expert, making sure the proceedings do not drag on endlessly.

Also judicial case management is introduced to develop the possible role of a judge as a case manager in a civil procedure, which develops a new trend in the concept of the so-called ‘Caseflow Management’ (CFM).\textsuperscript{427} The role of judges implies – mainly in the field of civil justice – managing judicial experts and the monitoring of their performances by putting more emphasis on the division of labor between judges and court clerks, and managing expert witnesses.\textsuperscript{428} The Dutch judiciary has drawn up detailed guidelines for expert opinions that concern the communication with the parties, the right to hear and be heard and impartiality.\textsuperscript{429} Yet, in civil law there is no official system to monitor the quality of experts.

\textsuperscript{426} Article 8:69(3) Awb
\textsuperscript{427} Thomas de Weers, ‘Case Flow Management Net – project: the practical value for civil justice in the netherlands, International Journal for Court Administration, Vol. 8 no. 1 October 2016, p. 32
\textsuperscript{429} Leidraad deskundigen in civiele zaken (date unknown), https://www.rechtspraak.nl/SiteCollectionDocuments/Leidraad-deskundigen-WT.pdf (consulted 7/09/2017).
Comparing the evaluation and development of the quality of Justice in Finland, France, Hungary, Italy and The Netherlands

Under the scientific supervision of
Hélène Pauliat: Professor of public law, University of Limoges, OMlJ

Scientific coordination
Caroline Foulquier-Expert: University lecturer in public law, University of Limoges, OMlJ

List of all contributors
Mátyás Bencze, Professor: University of Debrecen, Department of Legal Theory and Sociology of Law, Research fellow at the Hungarian Academy of Sciences, Centre for Social Sciences Institute for Legal Studies
Laurent Berthier: Senior lecturer, University of Limoges, OMlJ
Caroline Boyer-Capelle: Senior lecturer, University of Limoges, OMlJ
Caroline Foulquier-Expert: Senior lecturer, University of Limoges, OMlJ
Ágnes Kovács: Lecturer, University of Debrecen, Department of Legal Theory and Sociology of Law
Pauline Lagarde: Doctor in public law, OMlJ
Alina Ontanu: Researcher, IRSIG-CNR
Ludovic Pailler: Senior lecturer, Post-doctoral researcher, OMlJ
Hélène Pauliat: Professor of public law, University of Limoges, OMlJ
Nadine Poulet: Senior lecturer, University of Limoges, OMlJ
Agnès Sauviat: Senior lecturer, University of Limoges, OMlJ
1. Introduction

The comparative report is based on the five national reports drafted as part of the research project “Handle with care: Assessing and designing methods for evaluation and development of the quality of justice”: namely, the Finnish, French, Hungarian, Italian, and Dutch National Reports. One of the project’s aims is to identify national practices that could be implemented in other countries in order to improve the quality of the services provided by courts. For that reason, we had to understand what kind of practices exist and what kind of innovative practices were emerging. Five countries were chosen to represent an interesting sample. This report uses the findings of the national reports to identify trends in national approaches and experiences in evaluating and promoting justice quality. It does not seek to assess or evaluate each national system comprehensively; the data collected at national level in each of the five countries are compared to identify common trends and diverging paths, outliers, and weaknesses as well as to verify whether the systems in place are comprehensive, reliable, coherent, and effective venues to evaluate and improve the quality of justice.

2. Methodology

This comparative report’s objective is to reveal common and divergent approaches, problems, and solutions in place at national level to evaluate and promote quality of justice at individual, court and national justice system level. A comparative analysis was deemed to be the most appropriate tool for this purpose. This choice relies on the principle that judges, courts and justice systems fulfil the same or a similar function in all the five countries. In view of the organisational differences and particularities of each national justice system, a functional comparative approach is followed: namely, activities that fulfil the same or similar tasks or functions are considered to be comparable. According to Zweigert and Kötz, ‘the legal system of every society faces essentially the same problems, and solves these problems by quite different means though very often with similar results’.

Although Finland, France, Hungary, Italy, and the Netherlands have different judicial cultures, they are all based on the model of the “Western democracy”. Their political and administrative environments are obviously diverse as the National Reports indicate, but nonetheless they share important common points. All countries are members of the European Union and the Council of Europe, and consequently share a significant number of common legal and professional values. Furthermore, courts are under significant pressure to manage their caseload: this pressure is due to an important activity of referring cases to the courts by the citizens, and to a certain extent they face difficulties with regard to the length of the delays related to court proceedings. For these reasons, their choice of methods for improving the quality of justice seems relevant in terms of sampling. The comparative assessment is carried out horizontally across the five chosen legal systems at three different levels: namely, at individual, at organisational, and at justice system level. This type of analysis leads to the identification of common or divergent trends, recurrent problems, evaluation dynamics, and innovative solutions and practices developed at local and national level.

The choice for a comparative methodology relies on a number of reasons. First, a comparative assessment can provide valuable insights into solutions chosen by the countries to evaluate justice quality at individual, court, and justice system level. This can subsequently contribute to distilling a menu of data and methods that can be used to improve the quality of justice. This reveals in turn also factors that contribute to a successful evaluation or lead to failure of undertaking a meaningful evaluation. Second, a comparative analysis between national evaluation mechanisms and actions

directed towards improving justice quality also has an educative function, offering national policymakers, courts managements, professional training organisation, and individual judges and members of staff a way to learn about each other’s experiences and actions that have been successful in improving justice quality. And third, the results of this comparative report can become a relevant mechanism for national and European policymakers to encourage and improve the evaluation of the quality of justice at national and European level. Knowledge of national evaluation practices and solutions to similar difficulties in seeking to improve justice quality can lead to a diffusion of certain domestic approaches beyond the legal system analysed.

As noted by Örücü, ‘in the context of the European Union, [...] where comparative law is a driving force and has a decisive role in the harmonisation process, the “functional comparative analysis method” [...] provides the potential for convergence in both the legal systems and the legal methods of the member states, leading to a gradual and eventual legal integration’. The comparative analysis can identify existing national practices, difficulties related to evaluation methodologies and key issues for a quality justice, and methods to single out good practices. Being aware of the choices made by different legal systems in the evaluation of justice at various levels is a first step in being able to discuss them and consider their use. An exchange of solutions, ideas and discussions with regard to national approaches can set the way for potential converging methods and for the sharing of best local practices.

Nonetheless, the comparison between the five countries comes up against some limitations. Risks are particularly related to the relevance of the common concepts, and translations used by each national team. In order to tackle these limitations, a thorough understanding of each country’s mechanisms and concepts related to evaluation at various levels is necessary, as well as a careful choice of terminology and a continuous process of verification and validation of findings between researchers. The structure of the study and the main topics to address were consensually established before the collection of the national data by each team. Specifically, a common vocabulary and understanding of concepts were undertaken before starting the data collection. All teams proceeded to the collection of qualitative and quantitative data related to the evaluation mechanisms in place in their national system. This mixed approach between quantitative and qualitative research methodology was considered the most appropriate in order to obtain a holistic image of the national evaluation methods that are deemed to secure justice quality at individual (judge), organisational (court), and justice system level. The qualitative data is complementary to the quantitative findings, and offers a more comprehensive picture of how evaluations are used and what are their consequences.

The Quality of Justice is a very sensitive political subject and consequently, the methodology to collect data is particularly delicate. However, this limit concerns each national report – certainly to a different extent – and does not question the relevance of the sampling nor the interest of such a comparative analysis. It can be alleviated by a very comprehensive approach and by using a wide variety of tools: literature on the subject, interviews with all stakeholders, and field research.

To identify both qualitative and quantitative evaluation mechanisms, the national analysis had to focus on three key institutional venues in which both qualitative and quantitative data are used: the evaluation of judges, court evaluation and the evaluation arrangements associated with the allocation of resources. The three mechanisms match the three perspectives on the quality of justice: professional (evaluation of judges), managerial (court evaluation) and governance (resource allocation). Also, each national analysis sought to explore the rise of innovative practices on quality evaluation and development. Thus, the research groups of the five countries have focused on how the activity of their judges, their courts, and finally their judicial system are managed and evaluated. The budgetary aspects are major concerns for every country and affect a wide range of issues.

---

this lead to important governance reforms in many countries. In seeking to identify trends that can enhance the visibility of national practices that could be interesting for application or national developments in other countries, the study distinguishes then three topics. Firstly, it analyses the methods of evaluation and promotion of individual, courts and judicial system’s quality; secondly, it highlights the importance of budgetary aspects in evaluating and promoting the quality of justice these days, and thirdly, it makes evident the new and innovative developments in governance related to the evaluation and promotion of the quality of justice, and to the resource allocation.

3. Methods of evaluation and promotion of judges, courts and judicial system’s quality

The current comparative analysis focuses on the evaluation methods addressing judges, courts and judicial systems in the five countries. It is then necessary to distinguish the methods of evaluation and promotion of quality at the individual level (judges), at the organisational level (courts) and at the level of the judicial system (by ministries and councils). The main trends in the evaluation and development of the quality of justice in the analysed countries can be established from their analysis.

3.1. Evaluation and promotion of the quality of judges

Individual evaluation is considered particularly important in terms of the quality of justice, therefore it is a highly developed field where various methods and channels are used for assessing the professional qualifications of the judges. As the project initially supposed, in the last decades the role of the judges has changed considerably, and it is still changing. We have been witnessing an unprecedented increase in judicial power within institutional settings. Judges have to decide a growing number of cases. Many cases are very complex, and many are of great importance, having powerful political and moral ramifications. Courts, accordingly, play a significant role in domestic and international policy-making4. More power triggers more attention, and entails well-established demands for greater accountability of courts which has consequences also for the evaluation and promotion of quality of judges.

Recruitment of judges affects the quality of justice to a great extent. Consequently, the recruitment process is given more attention nowadays than in the past, and the new criteria of quality that seem to appear are particularly interesting. While the selection of the judges focused in the past overwhelmingly on the candidates’ legal knowledge (on what the law is and how to apply it in concrete cases), now we can observe a particular attention to the diversification of candidates profiles; special attention is paid to practical skills, with, for example, the combination of school and field experiences, and more attention is given to interpersonal skills. The continuous evaluation of judges’ performance affects the quality of justice too, and the scope of the relevant considerations is also more extended.

Indeed, in continental and civil law judiciaries, once selected, the judges are expected to undergo different evaluation steps during their career. Analysing how continuous evaluation is carried out this points towards a more extended evaluation of the individual assessment which in turn has more consequences on career, learning, or promotion than it used to have in the past. All aspects of quality are increasingly evaluated: from legal conformity to treatment of the parties and efficiency. Five trends become visible from the comparison of the national reports at the individual evaluation and promotion level: diversification of judges’ profiles; promotion of know-how and interpersonal skills in recruitment; a more extended evaluation of the individual performance with awareness of the risks it can entail to judicial independence; the awareness of the necessary prudence in the evaluation of the court decision and of the limits of current systems of individual evaluation.

---

3.1.1. Diversification of Profiles in Recruitment

The comparative analysis suggests that new criteria for individual quality are emerging. The diversification of judges’ profiles is one of them. Diversity is a multifaceted concept, and many aspects of it can be relevant for judicial decision-making: these aspects encompass primarily the professional and social (for instance ethnic) background of the judges, and the gender identity of them. Diversity is an attractive idea as far as it contributes to enhancing the legitimacy of judicial activity: a more diverse judiciary can certainly earn greater trust by the public (the social dimension of legitimacy); and courts can render even better judgments due to the different perspectives, considerations and experience that are given careful attention, if we suppose that extensive exchanges take place between judges in judicial panels, in courts or within the judicial system (the legal dimension of legitimacy). Therefore, all developments characterized by the willingness of the countries to open up the profession to judges with a greater diversity of social background and professional experience and to ensure more diversity in the recruitment process are certainly deemed desirable.

Social diversity does not constitute an independent aspect of judicial profiles in judicial appointments in the five countries. At least in the Netherlands, the problem of lack of ethnic diversity was raised by some judges, but the efforts from the judiciary to make its composition more diverse have so far proved unsuccessful because the recruitment process focuses more on judicial quality than on the social representativeness of the judiciary. In terms of gender equality, the respective countries do not take peculiar measures to promote a fair representation between female and male judges in courts. The lack of special gender policies cannot be seen as a shortcoming as the gender composition of the judiciaries are more or less balanced in most of the countries concerned. However, there is a clear tendency for a relative increase in the number of successful female candidates. Female judges are, accordingly, slightly overrepresented in Finland, Italy and the Netherlands. Women constitute a much higher proportion of the judges in the French and Hungarian courts. Nonetheless, we find less female judges in higher judicial positions almost in all countries concerned by this research project.

In the selection of judges, we can see efforts to open up the profession to those with a wide range of professional experiences, which certainly contribute to adopting decisions that are more reflective and in line with the evolutions of society. This is really explicit in the case of France where external recruitment is increasing in ordinary and administrative courts. In Finland, judicial selection tends to “promote the recruitment of judges from all legal professions, including Court Referendaries, the civil service, academia and other legal professions.” In the Netherlands, the selection rules have not been recently modified but already specify that “applicants need at least two years of legal experience outside the judiciary.” A significant number of candidates recently selected to Dutch courts had substantial legal experience (see NL-3.2.3) In Italy, recruitment still selects relatively young law graduates, with modest professional experiences, and lateral recruitment is limited to few judges at the Court of Cassation. However, alternatives to the post-graduate degree were introduced in 2006 and 2014, and this “may lead to a change in the traditional profile of apprentice magistrates who until a few years ago had most probably no previous professional experiences.”

A notable exception is Hungary where judges are recruited almost exclusively from within the

---

6 See FR-2.2.1
7 See FI-2.2
8 See NL-3.2.2
9 See IT-2.2.1
10 See IT-2.2.1
judiciary, from former judge trainees who gain admission to the judiciary right after graduating from law school. In order to enhance the diversity of the judicial profession, selection boards or commissions responsible for evaluating and ranking the candidates must also reflect different perspectives on the professional requirements for delivering high quality justice. These boards consist mostly of judges, but some external members are usually involved in the recruitment: they are typically representatives of other legal professions such as lawyers or members of the academia. It is France which provides the most diverse boards for judicial appointments including non-legal experts as well (a psychologist or heads of public organizations). By contrast, in Hungary, the outcome of the selection process depends exclusively on judges.

While many countries seek to ensure greater diversity regarding the professional background of the judiciary, social diversity are not a major concern for selecting judges. If the judicial profession remains relatively homogeneous and closed, it is likely to adapt only slowly to the changes in the social environment, and tends to hinder reforms that are targeting traditional and sometimes outdated judicial attitudes, organizational and administrative practices. Also, homogeneity can be problematic in terms of the legitimacy of the judiciary.

3.1.2. Promotion of practical skills and interpersonal skills in recruitment, continuous evaluation and training

Like the diversification of profiles, the development of practical skills/know-how and interpersonal skills seem to become new criteria for individual quality. Indeed, the selection process increasingly focuses on more diverse professional skills, making a shift from the previous focus on legal knowledge towards practical skills and competences. While in the past, the selections were overwhelmingly made on the strict assessment of the candidates’ legal knowledge, now they increasingly focus on interpersonal skills, like teamwork or listening skills.

In France, during their schooling in the National School for Judges (“Ecole Nationale de la Magistrature”), court auditors must acquire thirteen fundamental capacities: deontology, analysis and synthesis, respect for the procedure, authority and humility, relational capacity, preparation and conduct of an audience or an interview, decision-making, motivation, taking into account the institutional environment, teamwork, organization and management. Skills related to know-how and social/interpersonal skills like adaptation, authority and humility, relational capacity, preparation and conduct of an audience or an interview, are new. It is a clear indication of the changing demands concerning adjudication in France. In the same way, a psychologist is now a member of the jury which hears and ranks the candidates. This trend is also actual in the Netherlands; and in Hungary“For candidates, it is compulsory to undergo a professional aptitude test which include medical and physical examination, as well as psychological assessment. The examinations shall cover all mental and health considerations that may preclude or severely impair the judge’s performance, and shall assess the judge’s intelligence and personality. The test shall provide an assessment of the candidate’s personality from the perspective of his/her suitability for being a judge”. Italy and Finland seem to be exceptions from this viewpoint insofar as they do not require such promotion of know-how and interpersonal skills in recruitment. In Italy, for instance, the selection process still concentrates almost exclusively on the candidates’ knowledge of law.

---

11 In the Hungarian judicial system, working as a clerk is generally considered as a necessary step before the application for judgeship. After a minimum one year of clerkship a person can apply for judgeship. See HU 1.1.
12 See FR-2-2-4.
13 See FR-2.2.1
14 See NL-2.2.1
15 See HU-2.2.2
16 See IT-2.2.2
These requirements can also be found in the continuous evaluation and training of individual judges. They show that the quality of the judge does not only imply her legal knowledge but also qualities in her relations with colleagues and users. It is a new and positive development that the evaluation process takes into account and puts a heavy emphasis on judicial skills other than legal knowledge. This attention to the personality of the judges certainly explains the greatest attention paid to the judge's ethics. The question is whether this translates into new considerations in the judge's individual assessment.

If theoretical training is still important and forms part of the initial training of judges, the development of the professional capacity regarding practical skills is more and more the guiding criteria of quality, as mentioned previously. This probably explains the promotion of know-how. Thus, the comparison shows an increase in practice-oriented evaluation and training. In Italy and France, judges’ training opted to combine recently school and field experiences. In Finland, experience in a judicial function or in any other legal profession related to the functioning of society is required to become a judge. In Hungary, while judge trainees and court clerks have to take part in trainings focusing on ordinary doctrinal issues, they also assist the work of judges. Furthermore, there are compulsory in-service trainings for judges (aiming to develop theoretical knowledge and practical skills), and the system also organizes a tutoring period for a new judge by an experienced judge (the system of mentor judges). The only exception in this trend seems to be the Netherlands where judges have always been selected based on a special profile and have already followed initial training with theoretical courses and training on the job. Experienced lawyers can follow a special trajectory.

We observed that in many countries, the consequences of the individual evaluation on the judicial career and promotion are much greater than in the past. It leads to the question whether these developments constitute undue risk on the independence of judges.

### 3.1.3. A more extended individual evaluation but awareness of the risk

Even if individual evaluation seems to be more and more accepted, there is a well-established concern in all countries under consideration that a tight monitoring of the day-to-day activities of the judges might pose threats to judicial independence. This awareness of the risks for the judges’ independence exist especially in countries where there is a link between evaluation and remuneration, for instance, in France, with regard to ordinary as well as to administrative judges. This awareness leads judges and a number of academics to call for establishing a link between individual evaluation and the training of judges in order to connect evaluation to a qualitative rather than to a quantitative objective. Indeed, empirical research shows that in France the bonus is used to encourage judges to increase their productivity.

Precautions are generally taken. The case of Italy is particularly interesting because it puts forward preliminary criteria of individual quality which seem (in theory) to be a bulwark to the risk of undermining independence. The criteria are « independence, impartiality and balance ».

Considered as pre-requisites to the fulfilment of the judicial function, the criteria must be rated “positive” to proceed with the assessment of the other criteria.

---

18 See FR-2.3.3
20 See IT-2.2.1
21 Ibid.
Elsewhere, in order to avoid compromising the professional integrity of judges, or putting significant pressure on them by controlling their activity, the work of the judges is subjected only to “soft” evaluation instruments. These concerns are reflected by the Rechtspraak quality management system of the Netherlands. For example, as an element of the Rechtspraak, in the Netherlands, the system of peer review has been set up as an individual assessment method that is particularly interesting for improving quality and not detrimental to the independence of judges. While it applies to judges who work in a three-judge panel, it is considered as particularly interesting for single judges, whose decisions are more open to criticism. The system of peer review encompasses different actions such as co-reading of judgments, peer-to-peer coaching, discussions or meetings. In Finland, there is a serious caution about individual evaluation, just like in the Netherlands, and the risk awareness is also explicit.

In those countries where the performance of individual judges is in the focus of the quality of justice, judges are subjected to complex evaluation mechanisms which take place periodically. While in Hungary, individual evaluation is only organized every 8 years for experienced judges, it is undertaken every two years in France and every four years in Italy.

In terms of judicial independence, it seems crucial whether judges or courts are the primary subjects of the evaluation process. We are of the opinion that in those countries where performance measurement and management is targeting particularly the judicial organization (and not the work of individual judges), and judges are subjected only to such mechanisms that serve a learning rather than a control function, judicial independence is less exposed to real threats.

While individual assessment is increasingly seen as a condition for quality improvement, a parallel demand for judges’ in-service training is developing. Judges have to participate in in-service trainings in order to develop their professional skills. In Finland, a recent reform was set up in this direction, particularly with the creation of the Judicial Training Board and by establishing a compulsory and more systematic training scheme from 2017. Mandatory trainings for judges constitute a recent development in Hungary as well (see HU 2.3.4). In the Netherlands, there are clear educational standards as judges have to spend 30 hours in a year (or 90 in three years) on trainings. In France, this subject is controversial because experienced judges also have hours of training to perform but due to lack of time they choose them on geographical criteria or availability rather than according to their needs, and particularly the need revealed during the annual professional evaluation. It is only in Italy where mandatory in-service trainings still have not been generally instituted, except for the compulsory trainings for candidates for managerial positions. However, participation in trainings is an aspect of judicial performance that is taken into account in the periodic evaluation of judges (see IT 2.3.2).

Organizing regular in-service trainings have become a generally accepted tool for developing professional capacities. Furthermore, it seems to be a common goal for all respective countries to make these trainings more individualized and adjusted to the special demands of judges. It should be noted, however, that some judges emphasized during the interviews that they do not have the time to follow these training courses because their workload is heavy.

### 3.1.4. Prudence in the evaluation of the court decision

The activity of judges can be evaluated through the quality of the judicial decisions rendered by them. The “legal quality” of the decisions (whether judges have made good decisions or not) can be assessed from an internal perspective through professional standards by higher courts, or in the process of continuous judicial evaluation, and from an external perspective by the stakeholders as

---

22 See NL-2.3.3
23 At the very beginning of the judicial career, judges are evaluated in the third and sixth year.
24 See FI-2.2.5
well. Also, judicial decisions are regularly the subject of academic or public discussions. These tools can serve important purposes, but they can be dangerous from the point of view of the independence of judges, although on this subject much depends on the methodology used. The quality-check conducted by higher level courts is an integral part of all justice systems, but the rate of changed or quashed judgments as an indicator of quality must be applied with substantial caution. This is suggested by the observation of the five countries as the outcome of these procedures rarely has direct consequences for the judicial career. Finland considers the number of quashings, but doing this with respect to the reason for change, which makes the indicator less questionable. Appellate courts use twelve different codes for indicating the reasons for changing the judgment of lower courts, and the relevant information is channelled into the process of budget negotiations. However, the proportion of changed judgments by appellate courts is not recorded or registered related to individual judges (see FI 2.4.2). In Italy, reversal decisions are considered just in exceptional (serious) cases and if signalled by the head of court. In France, the number of quashings is considered, but only at the level of the judicial system’s evaluation. In Hungary, the rate of quashed judgments per courts are monitored and now published, and this kind of information can also be taken into account in the process of individual evaluation.

The quality of judgments can also be assessed within the process of continuous judicial evaluation. This is the case in Hungary and Italy: in the former country, this task is carried out by the judge’s superior, while in the latter by the Local Judicial Council. This competence requires a very careful handling, since it can easily subvert the professional integrity and autonomy of judges. For that reasons, in the Netherlands, the legal quality of the decisions is considered through co-readings and discussions carried out in a friendly environment by colleagues, aiming to provide feedbacks and reflections.

The five countries also show restraint in using appeal rates as indicators of the quality of individual judicial performance. Appeal rates reflect the court users’ perspective, and if they are published, this data is broken down only to courts. This practice reflects the view that the number of appeals can primarily be relevant for the overall performance of the judicial organization.

Judicial writing or drafting constitute a further aspect of the ‘legal quality’ of court services. The goal of improving the quality of judicial writing is sought everywhere. These efforts focus mostly on enhancing the clarity of the reasoning and hence making the judgments more comprehensible for the stakeholders and the public. One can mention for example the attempts to assess the quality of decisions in civil matters, and the existence of writing guides (PROMIS) in the field of criminal justice in the Netherlands. In Italy, some model documents and drafting guides have been developed within the Civil Justice Observatories. Similar bottom-up initiatives regarding the benchmarks of judicial reasoning occur in Finland as well, in the Rovaniemi project. Some models of writing do also exist in France and in Hungary25. One can also mention the French experience of software reporting particular cases or derogations. To achieve this goal, new technologies are particularly useful. Digitisation is used as a way to improve quality, particularly for a quicker and closer justice. But it is also a way for judges to access more legal documents, case-law databases and guidelines.

Despite these precautions and prudence, everywhere, the lack of jurisprudential consistency is subject of regular criticism. To avoid this kind of criticism, in France it has been recently introduced the “litigation opinion” which gives the opportunity to ordinary courts to ask for a legal opinion to the High Court. This tool is already used by administrative courts as a solution to avoid inconsistency in case law. Some French courts also entrusted new tasks to legal assistants to harmonize the case law of a court. In Hungary, the Curia can issue so-called uniformity decisions which are binding on all lower courts and address controversial issues and inconsistencies of the

25 In Hungary, the development of a ‘style guide’ was launched as a pilot project within the Curia, and so far, we know very little about its possible effects on the drafting practice of lower courts. However, the Curia judgments now seem to have the same structure (see HU-3.3).
judicial practice. The Curia can publish “general opinions”, and also guiding decisions (leading cases) which play the role of precedents (see HU-1.1). However, these tools of the Curia were seen by some external experts as being capable of compromising judicial independence, particularly if “non-compliance with rulings of the higher courts will negatively influence the evaluation of judges”. 26

Academic discussions and public debates can make valuable contribution to the quality of judicial decisions by providing feedback for judges. Nevertheless, there is a worrying trend in almost all the five countries: we are witnessing an increasing criticism of the activity of courts put forward by political leaders, who challenge the content of judgments on an incidental basis, especially when judicial decisions are unfavourable to them. This seems to be the case particularly in Hungary, in Italy and in France. In the Netherlands, politicians sometimes also show their discontent with judicial decisions, but this does not occur frequently. Also, the Dutch media are quite respectful to the judiciary. Finland seems to be the only exception, where the judiciary could remain absolutely intact from this dangerous behaviour of the politicians. Indeed, traditionally, such behaviour has been seen as challenging the independence of justice. And some cases in Europe call to remain vigilant 27.

3.1.5. Limits of current systems of individual evaluation

The limits are twofold: on the one hand, the systems of individual evaluation are limited in their scope since they are perceived as dangerous for the independence of the judiciary; on the other hand, they are methodologically limited since their interest for improving quality of justice is considered as poor in the absence of relevant performance indicators.

The individual evaluation must be “handled with care” as it can be very dangerous for the independence of justice. Indeed, “merit remuneration”, marking and ranking judges, are considered dangerous to the independence of the judge. One can wonder too if the “productivity remuneration”, as in France, does not create a risk for quality of justice, as it can question the independence of the judge and focuses only on her speed.

According to the interviewed judges, the methodology of individual evaluation must be perfected. Quality evaluation should imply a precise determination of the objectives of measuring individual performance: should it be solely to the advantage of the court (at risk of being limited in practice to effectiveness and efficiency) or also to the advantage of justice and the judge (the consequence of a bad evaluation being to fill the professional inadequacy by offering the judge the opportunity of training). For instance, in France, the bonus system based on the judge's productivity has been so difficult to handle that some presidents gave the same bonuses to all judges, which paradoxically reduces their interest in terms of motivation for productivity. In addition, should professional advancement be based solely on individual evaluation, whereas it is most often based solely on the assessment of the president?

3.2. Evaluation and promotion of the quality of the courts

In search of the best practices for the evaluation and promotion of the quality at court level, one has to pay particularly attention first to which actors are involved in this process (for instance the Ministry of Justice and/or Judicial Council, the court users). It may also be important whether


quality evaluation is determined by a national policy or is more a matter of local initiatives, or what are the standards for evaluation, which data are used; and the possible consequences of evaluation such as appointment or reappointment of court presidents must also be taken into consideration. Here, the comparative analysis shows three main trends: the development of formal tools for the organization of courts inspired by the Business Management, the search for more coordination and some increasing exchanges with the outside world. We could also analyse the role of resource allocation under this heading but a specific section will be dedicated to this major issue (see infra/below).

3.2.1. Development of formal tools for the organization of courts
Methods derived from the management of companies are developed within the courts administration of the five countries. Formal tools such as Charters in Italy (organisational charts and annual activity programs), court projects in France are established to improve the organization of courts. Such tools are also applied in the Netherlands and in Finland. In Hungary, courts establish annual work plans but they state only very general objectives. These documents are an opportunity to draw up a report on the activity and an improvement strategy. They allow to clarify and to plan different activities. Planning is developed in the form of multi-year planning. In the Netherlands, the Council for the Judiciary publishes four year activity plans. Some courts also develop multi-year planning. In Finland, the example of Rovaniemi shows an interesting multi-year planning. In France, multi-year planning is now integrated in the new « courts projects ». In Italy, the Netherlands and Hungary, courts seem to plan their activities and their goals yearly.

There is also an increasing use of statistical tools and data in the five countries as a way to improve the judicial organization. In Finland, if the use of statistical tools for individual evaluation may vary from a court to another, it is an important part for evaluating the workload of the courts. This is also the case in the other countries. These tools make evaluation possible, which then takes a very quantitative form. They form the basis of the discussion between the authorities involved in the evaluation and the promotion of quality of justice. They are used at central and at local level. In Finland for instance, the use of statistical data is particularly important in the resource allocation process. Courts collect statistical data of the actual workload. In Hungary, the ‘statistical approach’ is also highly influential in performance management. More generally, these increasingly sophisticated statistical tools are essential for evaluating the effectiveness and efficiency of courts. The extensive use of statistics and quantitative data can have some unfavourable consequences: courts and judges can feel under pressure to be more effective and productive while other aspects of quality can therefore be easily neglected. Furthermore, quantitative data reflect an approach for strong control which can compromise judicial autonomy and ultimately, the quality of justice.

3.2.2. Search for more coordination in the organization of the courts
This search for coordination is characterized by the recent creation of quality officers and quality coordinators in each court in the Netherlands. For instance, the quality coordinators create enough possibilities and projects for the judges to spend time for quality work. In Finland, in the Rovaniemi quality project, a quality coordinator was created, but also a quality conference takes place in autumn. In France, this search for coordination can be illustrated by the creation of a coordination

28 See NL-3.4.1
29 See FI-3.1
30 See HU-2.4.2.2
31 See FI-2.4.2
32 See NL-2.3.1
33 See FI-3.1
judge in each district court\textsuperscript{34}, the annual conference on juvenile justice\textsuperscript{35} and a single reception service for the litigants (\textit{service d'accueil unique du justiciable - SAUJ})\textsuperscript{36}. One can also notice the changing role of court presidents in all countries who mainly have this duty of coordination: they spend less and less time on dealing with the traditional tasks of judges, and work almost exclusively as managers. Although in most countries, court presidents are still recruited from judges, a growing emphasis is put on managerial skills with regard to presidents. For that matter, special trainings focusing on the development of these kinds of skills and competences are organized for court managers.

Coordination is used for management as well as for judicial activities. Indeed, the aims of this search for coordination are not necessary the same in all five countries. They tend to avoid managerial or judicial differences between courts (reduce time to disposition and grant the natural judge principle for example in Italy) or rather tend to avoid differences within courts. This is why coordination comes from the central level as well as the local level. In Hungary, “Trainings are coordinated at the central level by the Hungarian Academy of Justice, but then organized and held primarily at the regional and local level”\textsuperscript{37}. This central coordination can be explained by the fact that “trainings were ineffective since local and regional trainings were not coordinated at all”\textsuperscript{38}. However some coordination tools can appear at the local level as a means to improve the quality of justice. This is for example the case of the “reflection committees” on various aspects of the quality of justice (see infra).

\textbf{3.2.3. Growing interaction with the outside world}

Another trend that is really important in terms of improving the quality of justice is the efforts of the judiciaries to increase courts’ exchanges with the outside world.

Communication with the outside world is developing as a way to improve quality, for example in the form of creation of communication teams in the courts or judges meeting with the parties. The exchange with the outside world can thus allow the justices to know areas in which improvements are needed. This is also probably a way to improve the citizens perception on the courts decisions. The interaction with the outside world is nevertheless limited and a criticism is often related to the lack of involvement of other/diverse actors in the evaluation of the courts (lawyers, courts users).

In the Netherlands, communication teams in the courts have been created\textsuperscript{39}; organization of meetings with parties, such as the Office of the Prosecutor, are regularly organized. In France, the new « courts councils » are meeting places to get together judicial actors and local authorities, local associations\textsuperscript{40}. Italy is currently organizing such type of exchanges, but more as initiatives of specific courts than as a result of a national policy. In Hungary, press officers have been appointed at appellate courts, and the central judicial administration places great emphasis on communicating

\textsuperscript{34} This judge must lead the activities of the court and reflect on its organization, judicial practices and case law in relation to the local context. She/he shall inform the President of the district court of the difficulties and the needs. She/he draws up an annual report on her/his activities.

\textsuperscript{35} The aim of the conference is to bring together different actors of juvenile justice, to make their discussions be more fluid, and to define a policy, in civil or criminal matters, and to lead in this area. The difficulties of communication between the institutions, the difficulties arising from heterogeneous practices and the complementarity of the actors should be overcome by a better knowledge of the role and action of each.

\textsuperscript{36} The aim is to replace the various interlocutor previously competent (clerks of the court and administrative employees). It must be the first contact for litigants who come before courts, inform them about the proceedings and provide them with the relevant documents.

\textsuperscript{37} See HU-2.3.4

\textsuperscript{38} Ibid.

\textsuperscript{39} There are press officers in the Dutch courts.

\textsuperscript{40} The Court Council (in French, \textit{conseil de juridiction}) is a recent tool that allows courts to open up to legal actors but also to local actors, thus, constituting an opening of justice to society. See FR-3.3.1.2
judgments and making the judiciary more open for the public. There is no mention of such way of exchanges in Finland, but exchanges can be illustrated with satisfaction surveys (see below).

However, the evaluation of the courts involves little input from the other actors (lawyers, users). It is particularly clear in France, Italy and Hungary where critics in this regard are explicit. In Finland, there is little local involvement. Nevertheless, Rovaniemi is an exception as the outside world is regularly involved in the evaluation system set up by surveys since 2007. In the Netherlands, the courts conduct regular surveys with these two categories of actors (lawyers and users) and also with the staff. Moreover, there is an evaluation carried out by a committee composed of experts which audits the courts every four years. “Mirror meetings” in the Netherlands also allow courts to get feedbacks from lawyers and citizens.

3.3. Evaluation and promotion of the quality of the judicial system

We have found at this level big differences between the five countries in terms of methodology of evaluation and improvement of quality. However, the objectives of quality are the same and address issues such as better treatment of parties, better understanding of judicial decisions, faster processing, and four common trends can be noticed: the growing interest in the assessment of the Judicial System by Customer Satisfaction Surveys; the establishment of informal quality reflection committees working on various aspects of quality; the sharing of best practices; and the development of bottom-up approaches.

3.3.1. Assessment of the Judicial System by Customer Satisfaction Survey

Users’ surveys are perceived as useful tools as they represent an external view of quality in addition or compensation to the most frequently used performance indicators that reflects primarily internal, professional standards. Depending on the country, this interest in surveys is expressed by judges, by managers or by researchers. Nevertheless, it is a shared concern of the research groups that surveys are not used regularly in the five countries.

We can also observe that there is much more evaluation by users’ survey or opinion polls at the national level than at the local level, if we rely on what is happening in the five countries. However, Finland, France, Hungary and Italy do not systematically or regularly organize surveys at the national and the local level (as just mentioned above). It is the Netherlands where the surveys are regularly used. In France, some experts tried to organize them.

3.3.2. Establishment of informal quality reflection meetings or local committees working on general or particular aspects of quality of justice

Most countries have established informal (i.e. not by following a legal obligation) meetings of quality reflection or local committees working on different aspects of quality. Italy put in place workshops on judicial interpretation and other legal issues. France and the Netherlands organised a number of national and local reflection meetings on general questions of judicial quality. In Finland, the court of Rovaniemi is an example of continual reflection on quality.

These committees are often created at the initiative of the judges and reflect a concern about an aspect of justice that appears to be of poor quality. They often lead to tools that are not intended to

41 There are exceptions as some best practices promoted by the Judicial Council or discussed in the innovative practices.
42 One has to point out that this critic is specific to the evaluation of the courts because this is less true for system evaluation in Finland, as will be seen below.
43 See NL-4.3
44 In Hungary, customers’ surveys are not compulsory and contains only very few information.
45 The Italian report even denounces that some of the data provided by the Ministry of Justice to the CEPEJ are not correct.
46 In France, a satisfaction survey was carried out by a member of the CEPEJ under the supervision of the district court of Clermont-Ferrand in 2012.
evaluate practices but simply to improve them, for example through the writing of good practice
guides for their peers. They are more promotional tools than evaluation tools. One may wonder if
these initiatives are reactions of judges to the central evaluation and promotion of the quality of
justice that is too productivity-oriented. This may also be the reason why these committees are often
created spontaneously, informally and locally.

3.3.3. Sharing of best practices
The five countries also share a development/drafting of good practices, sometimes in a bottom-up
approach (like the “best practices” in Italy) or a local approach (like the protocols of agreement in
Italy and in France). Good practices are therefore not always widespread. However in Italy, a best
practice project aims to disseminate them mainly to improve the quality of justice. In France, there
is an interesting ascending practice with the National School for Judges (NSJ) which, through its
training and the documents it disseminates, ensures the sharing of good practices to all judges in
office. This is particularly a Guideline on the methodology of the drafting of civil judgments in
2014 (see below). In the Netherlands, standards are developed by judges in each court on the basis
of the quality demands of the Council for the judiciary, and these standards are also used to define
how much time judges need to deliver quality work. This is then translated into budgetary demands.
In Finland, the court of Rovaniemi organizes “good practice days”. And in Hungary, a new project
aiming to improve the timeliness and the quality of adjudication has been developed at the District
Court of Debrecen in criminal cases.
The definition of these best practices is a quality promotion tool made by judges for judges. It is not
a quality evaluation tool strictly speaking, although it can become so. This is not a quantitative
evaluation as generally implied by budget requirements.

3.3.4. Development of bottom-up approaches
As the examples above show, there is a growing number of bottom-up approaches. The Rovaniemi
Project is the perfect example. What is interesting is that countries that traditionally follow rather
top-down approaches also develop them. We can mention the Civil Justice Observatories
(Osservatori per la giustizia civile) aiming for improvement in various areas of the Italian justice
system and bringing together the entire spectrum of legal practitioners (magistrates, lawyers, clerks,
Court managers, academics) on voluntary bases to analyse various fields of substantive and
procedural law and establish common practices. The French Guideline on the methodology of the
drafting of civil judgments published in 2014 by the National School for the Judiciary is also the
result of a bottom-up approach bringing together members of the first instance court of Paris, a
court which had already carried out a reflection and developed tools in this matter, a court of appeal
adviser and teachers of the school. We can imagine that in these countries this increasing approach
is linked to the shortcomings appearing at the central level.

4. The importance of budgetary aspects in assessing and promoting the
quality of justice
The budgetary aspects are undoubtedly important nowadays as limitation of resources can
negatively affect the quality of justice. This is particularly clear in years of budget cuts. Moreover,
the last 20 years have witnessed profound changes in the way in which resources are allocated: new
managerial practices have changed resource allocation mechanisms in many countries, which have
numerous consequences on the quality of justice. Number of countries have experienced these
budgetary changes and this has led to four new trends in the administration of justice that have to be
pointed out in this report: the question of possible budgetary decentralization; the weak link
between the budget and the quality policy; price per case calculations as the basis of budget
planning and the taking into account of the workload by judge.
4.1. Towards Budgetary decentralization?
A movement towards budgetary decentralization seems to appear. This is positively perceived for independence of justice\textsuperscript{47}. The Netherlands apply what is called the «integral management» where each court is entirely responsible for its budget. This implies budgetary decentralization (‘integral budget’), due to the negotiation of the budget between the Ministry of Justice and the Council for Judiciary\textsuperscript{48}, then the distribution of the budget between the Council and each court (based on production numbers of cases, and some additional costs). After this, all Dutch courts directly manage their budget and are accountable for it. Furthermore, “Very recently, while discussing the bill for a new Accounts Act, an amendment was proposed to create a separate budget chapter for the judiciary. The Minister of Finance recommended rejecting this amendment, but the outcome is not known yet. The president of the Council started this debate in the annual report 2015, supported by an article in the Dutch lawyers’ journal NJB\textsuperscript{49}, by another Council member and by the Council’s research director”.
Finland, France and Italy do not apply this budgetary decentralization insofar as their management is still centralized, which has an impact on budgetary management. Nevertheless, these three countries are considering reforming this approach. In Hungary, the allocation of resources is centralized as the process is managed and controlled by two main actors: on one side by the political leadership and on the other, by the President of the National Office for the Judiciary. Courts themselves have very limited influence in planning and spending the budget.

4.2. The weak link between the budget and the quality policy
One could expect the current discourse on the necessary improvement of the quality of justice be accompanied by a real budgetary effort from public authorities. This is not the case. Decentralized or not, the budget allocation is not sanctified, insofar as it is everywhere a political and administrative competence, and the political will, or the economic context, do not allow to increase budgets for justice. In the Netherlands, it is clear that the budget allocation depends on the budget allocated to the ministry, and not of the courts’ needs or on the output based financing model. In spite of the start of the ambitious quality policy Rechtspraak, courts can no longer retain the money they have been able to save and use as they wish. In Finland as in France, the budget allocation is associated with a productivity-related system. However, no additional resources are available in France to encourage productivity. In Finland, additional resources can be acquired through justification: "In case of large changes in resource requirements, there are possibilities for applying supplementary budget." In Hungary, the National Office for the Judiciary has a little room for manoeuvre at its disposal. In Italy savings (and a fortiori bonus) are not possible, since court Budget is practically non-existent.
It leads to conclude that there is only little link between budget and quality policy. This is absolutely true in France, Italy, Hungary and the Netherlands. In Finland the first stage of budgetary negotiations is always related to societal effectiveness. One can also mention that in Hungary, in the last few years, some additional resources have been allocated to high-performing courts and judges within national projects aiming to cut the backlog of courts. Nevertheless, this system of remuneration has been applied only as part of temporary projects. So, in general, there is no connection between the budget and the quality of judicial work either.

\textsuperscript{47} Budgetary autonomy and autonomous appointment of judges, generally entrusted by a High Council for Judges, are considered as the characteristics of a court administration guaranteeing their independence. This is the model of the majority of Nordic countries.
\textsuperscript{48} See NL-3.5
4.3. Price per case calculations in planning the courts’ budget

Price per case calculations have been developed in many countries. It means that the budget is calculated on the basis of the number of cases to be disposed in the following year. In the Netherlands, the system is based on an average time spent by magistrate and administrative staff on a case. But a number of opinions (particularly judicial opinions) state that it compromises the quality of justice, either from a budgetary point of view (because sometimes it leads to disproportionality in the allocation of resources) or from a judicial point of view (because it drives judges to spend less time on difficult cases). France was inspired by this system and put it at the basis of its Budgetary Allocation System. In the same way, in Finland, the estimation of the courts’ workload is the main criterion for allocating resources. A pilot on weighted workload calculation is currently developed, where the different case groups have a weight score depending on the complexity and time/resource requirements. In this system, the case categories are divided in different complexity categories based on the approximate time they require. The weighted caseload system makes it easier to compare the performance of courts with different type of caseload. In Italy and Hungary, allocation is not based on such clear criteria as price per case.

4.4. Taking into account the workload per judge

Nevertheless, one has to mention a new trend which implies to take into account the workload per judge. The measurement of the workload of the judge (i.e. the time spent by a judge to handle a specific type of case) is becoming a new relevant practice. In Finland, is being developed a very interesting analysis at the level of each judge to find out why one judge is slower than others, and whether the reason for lagging behind is that she has more difficult cases to work with. Finland is developing the "time-frame alarm system" as an innovative tool for taking into account the workload of the judges that permit them to control their “workload situation and plan the work according to the age of the cases”. This is a managerial tool intending to better organize the judges’ work and to relieve pressured personnel. Without the system being as refined as in Finland, projects of calculation of the workload are also developed in Hungary and in France. In Hungary, case weights were established a few years ago and are used in the process of case allocation, particularly in large courts, in order to ensure a balanced workload among judges. In France, some courts develop projects in this direction, the aim being to improve the judges’ well-being at work. The question is then: is the new trend only intended to correct the case allocation system determined by the budgetary logic that puts sometimes too much pressure on judges, or is it intended to be a real part of quality policy, what will be more beneficial for the promotion of quality?

5. Developments in governance related to the evaluation and promotion of the quality of justice

The requirements for improving the quality of justice have led to important governance reforms. Indeed, the new methods of evaluation and promotion of the quality of justice have had political and administrative implications; the question has been raised about the protection of the independence of the judiciary. While a number of innovations in Governance for more independence and/or more effectiveness and efficiency can be observed in the five countries, a criticism of the ineffectiveness of the relationship between the Minister and the Judicial Council is emerging. Yet this relationship is the major reform in governance. The increasing involvement of local or private actors is the subject of a number of questions.

50 Italy does not have such kind of system. In the best case, they measure the caseload (i.e. the number of cases dealt with by a unit per different types of cases).
5.1. Innovations in Governance for more independence and/or more effectiveness and efficiency

There is a first common trend in some countries at the managerial level. Indeed, there are reforms and debates for more administrative decentralization. This new trend in governance has two main goals: a greater judicial independence and/or a greater judicial effectiveness and efficiency. In Italy, the Local Judicial Councils have been established to support the “central” judicial council in dealing with a huge number of affairs, particularly evaluation of judges, and court planning. They are decentralized governance bodies, with, in particular, the role to evaluate magistrates. Indeed, individual evaluation done mostly by the president of the court is considered as inappropriate in Italy, while the Judicial Council at central level – that is constitutionally entrusted of this function – is not in the condition to evaluate 10,000 magistrates every 4 years. The creation of Local Councils for Judges in Italy can be conceived as the first steps in the direction of the decentralization. In Hungary, the Ministry of Justice does not have meaningful managerial powers with regard to the judiciary; since 1997, judicial administration is clearly separated from the executive branch. The Ministry is responsible primarily for law-making. Since 2012, the National Office for the Judiciary is in charge of the judicial administration, and the President of the National Office for the Judiciary, who is appointed by the Parliament for 9 years, is the head of judicial administration. In theory, the President works under the supervision of the National Committee of Justices whose members are elected by the members of the judiciary. Although bottom-up initiatives for managing courts are in principle encouraged, the system is, de facto, highly centralized: a single-person leadership prevails, and organizational and managerial issues are decided at the central level. The “checks and balances” power of the NCJ provided by the law is weak. The Netherlands have introduced the Council for the Judiciary which acts as an independent intermediary between the judiciary and the government. As indicated by the Dutch report: “The creation of the Council aimed at increasing the independence of the judiciary and was part of a far-reaching reform of the judiciary system that took effect in 2002”. Furthermore, they also introduced the “integral management” for courts. France is a real exception here despite the existence of a High Council for Judges. This country is historically known to have a very centralized State Model. Particularly, this council has little power since it has only disciplinary functions and some functions in the career of some judges. Finland is also a centralized system, but there is a current debate about the establishment of a judicial administration council (based on the Nordic Model), in particular to better take quality objectives into account in a national discussion.

The arguments for such administrative separation from the Executive are generally the improvement of the independence and the effectiveness of justice.

Indeed, there is a second interesting trend: the increasing separation of the judicial camp and the administrative camp within the judicial system, and also at court level, delimiting their respective roles.

The role of manager is more and more important. The head of courts and heads of sections have seen their role evolving from that of “manager judge” to “judge manager”. But some countries have also created functions of managers under the authority of the ministry or Council for the Judiciary51. In the Netherlands, the “director of the court” is a member of the board of the court52 and the entire board of the court is under supervision of the Council for the Judiciary.

Generally, the reforms seek to find a balance between judicial actors and managerial actors in evaluation. In Finland, the Ministry of Justice only controls the effectiveness objective. The rate of quashing or appeal is not included in the evaluation by the Ministry of Justice. However, it exists in the discussion between the lower court and the Court of Appeal. This means that the quality policy is the responsibility of judges. In the Netherlands, we find also an interesting division between the

51 Nevertheless, the importance for the courts president’s credibility to be a judge is explicit.
52 In the Netherlands, judges have a role in the management of the court, and there is an administrative court-director.
evaluation of the quality of the organization and management by the Council for the Judiciary and
the evaluation of the legal quality by the courts (explicit division explained by the law). In the
Hungarian judicial system, one can differentiate between professional and administrative court
leaders. Chairs of judicial panels in appellate courts belong to the former group while all the other
court leaders exercise administrative competences. Within the latter group there are leaders who are
responsible primarily for the professional quality of adjudication. They are the heads of departments.
“The other type of administrative leaders is court presidents and deputy presidents who take
primarily the task of running the court organization they preside (managerial and administrative
issues). All court leaders in the judiciary must be a judge (with the exception of the deputy president
of the NOJ who can be other court employee). There are no professional managers amongst court
leaders, but managerial trainings are organized for court leaders at the Hungarian Academy of
Justice (see-HU 2.3.3.)”

5.2. Lack of coordination between the Ministry and the High Council for
Judges/Judiciary
In this context of governance reforms, there is a regular criticism against the lack of coordination
between the Ministry of Justice and the High Council for Judges/for the Judiciary. This leads to the
conclusion that the dyadic governance structure is not always an efficient governance structure.
This is an interesting trend insofar as the search of relevant structures for judicial management is
one of the major issues in democratic countries and the dual structure is considered the best
guarantee of independence of justice.
Both in Italy and in the Netherlands, this criticism can particularly be heard insofar as such councils
do exist and really have managerial competences. As we have seen before in France, if such bodies
do exist and are not in charge of judicial management, the criticism is the same, even if for other
reasons. In France, a number of judges claim much managerial competences for the High Council
for the Judiciary without ever getting it. In Hungary, dualism exists legally but is reduced in
practice by strong centralization. The National Committee of Justices has only a moderate power to
check the managerial activity of the President of the NOJ.
So, does this criticism question the value of the dyadic model? Certainly not, but it leads to the
belief that this model is not attractive if it serves mainly the objectives of effectiveness and
efficiency, without creating a fine balance between judicial independence and accountability.

5.3. Involvement of local and private actors
Above, we have shown that despite some favourable trends – such as establishing communication
teams and press officers within courts – there is only a limited interaction between courts and the
outside world. We have also found that external perspectives exert only a narrow influence on
evaluating courts performance, since user’s surveys are not systematically used in most of the
countries. These findings indicate that enhancing judicial cooperation with external actors would be
desirable.
However, we can see some newly established ways for involving the local actors into the
functioning of the judicial organizations. Some of them can certainly be considered as positive
developments, while others seem to be rather dangerous practices. In the Netherlands, for example,
the participation of local actors is related to the search of a better administration of justice and is
little controversial. The tax administration, the social insurance institute, and the public prosecutor’s
office collaborate regularly with courts members. This is more disturbing in the case of the
participation of local actors in the financing of the courts, which has been the case in Italy even if in
very rare cases and even if the external resources have been used for only financing innovation
projects or specific best practices project. This could be disturbing in the area of court management.
In France, the creation of the « Courts Councils » illustrates the increasing role of political/administrative authorities and civil society in judicial management. The creation of Courts councils must be handled with care as stated by several French experts worried about the independence of justice. In particular, the French judges' unions claimed that the main difficulty arises from the invitation of State representatives, local authorities and representatives of associations that may be challenged in a case which is handled by the host court. This is the reason why the holding of such a court council in administrative courts is considered impossible in so far as these public authorities are usually defendants in administrative lawsuits. In Finland such cooperation between courts and local and private actors does not seem to occur, and exist only in sporadic forms in Hungary.

6. Conclusions

The introduction of new evaluation methods in the 2000s were influenced to a great extent by budgetary developments that in their turn influenced themselves changes in governance. The methods of assessing the quality of justice in the five countries cannot be analyzed without taking into account the budgetary context and its administrative implications, as well as the political-administrative evolutions that these evaluation methods implied. The evaluation reforms put more pressure on judges, therefore, governance reforms have been introduced to protect independence.

The trends show also that quality objectives are becoming more and more precise, leading to evaluation mechanisms that are themselves more and more precise but not always relevant. New criteria for the quality of judges come forward from the analysis. Today judges must not only be aware of their professional environment, but also of the social and economic context of adjudication. These aspects of judicial work are currently reflected in the selection procedures and judicial trainings. However, methods of individual evaluation undergone little change and remain dominated by quantitative indicators. Tools to promote individual quality have also not been so innovated. This contrasts with the criteria for the quality of the judges, which are constantly developing, as has been said. It is interesting to note that the criteria of individual quality are determined in relation to the criteria of the quality of justice. Two decades ago, timeliness was in the center of evaluation of the judicial activity in most countries. Today, adjudication still has to be fast but also to be in phase with society. Thus, judges must be aware of the world around them and expected to be sensitive to the social context of the cases they decide. It is open then to question whether performance indicators are relevant to this type of criteria, and the comparative analysis unfortunately shows that such indicators, that are targeting the societal aspect of adjudication, are underdeveloped.

The criteria for evaluating the performance of the courts remain highly quantitative, and thus more limited in scope than the individual criteria of quality (even if the quantitative approach is also influential in the latter case). The tools applied to promote the courts quality are mainly managerial, which therefore reflects the perspective of the actors involved in this evaluation. However, innovative tools to promote the quality of courts tend to appear, such as the creation of communication teams inside the courts, the efforts to open courts for the society, and the development of professional standards by judges. These tools are new and need to be tested to see if they are reaching their effectiveness in terms of quality. Moreover, the criteria for determining the

---

53 According to the code of the judicial organization: “The Court Council, […], is a place of exchange and communication between the court and the city. It meets at least once a year. […] The Court Council is composed of judges and officials of the court […] and, […] in particular: 1° Representatives of the prison administration and the judicial protection of youth; 2° Local representatives of the State; 3° Representatives of local and regional authorities and elected parliamentarians in the jurisdiction; 4° persons carrying out a public service mission to the courts; 5° Representatives of the professions of the law; 6° Representatives of associations. This authority has no control over the judicial activity or the organization of the court, nor does it refer to the individual cases before the court”.

295
quality of a court are much more limited than the individual criteria, which explains why the evaluation methods of courts are more limited too. The criteria are much more quantitative than the individual ones because they are closer to quality objectives of justice at national level, which are themselves often more quantitative than qualitative.

The evaluation of the judicial system is indeed very limited to quantitative objectives and indicators, and ideas for promoting the quality of the system are also very limited. Little innovation has emerged at this level. This certainly explains the development of local quality initiatives that seems to rely no longer on the central level. It should be noted that the evaluation of the judicial system is limited by the budgetary variable, which has an impact on the application of evaluation and promotion methods.

This certainly explains, even if only in part, the innovations in governance, and in particular the demands for more decentralized management, whose primary aim is, on the part of the Judiciary, to develop their independence and effectiveness. The demands for decentralization, or at least for greater participation in management, has met considerable resistance among political and administrative leaders, one of their fears being judicial irresponsibility and establishment of corporatism. Whatever the chosen model of administration, centralized, dyadic or decentralized, the question that is posed in the five countries concerns the compatibility between the performance of justice and judges, and their independence. This has direct consequences on evaluation methods: how to evaluate the quality of a judge's work without risk of her independence? Taking into account the quashing rate of her decisions is very controversial. But pulling judges out of this kind of evaluation may weaken their accountability.
Performance management of courts and judges: organizational and professional learning versus political accountabilities

Philip M. Langbroek: Director of Montaigne Centre Rule of Law and Judicial Administration and Professor of Justice Administration and Judicial organisation at Utrecht School of Law, Utrecht University, the Netherlands
Rachel I. Dijkstra: Junior Researcher and Lecturer at the Institute for Jurisprudence, Constitutional and Administrative of Utrecht School of Law, the Netherlands
With the cooperation of
Kyana Bozorg Zadeh: Masterstudent and Student Assistant at the Institute for Jurisprudence, Constitutional and Administrative of Utrecht School of Law, the Netherlands
Zübeyir Türk: Masterstudent at Leiden School of law and student assistant at the Institute for Jurisprudence, Constitutional and Administrative of Utrecht School of Law, the Netherlands

1. Introduction

Over twenty years of experiences with performance management and measurement in judiciaries have not delivered a one size fits all methodology for assessing and improving the functioning of court organizations and judges. Neither in the world, nor in the EU. Judges work in court organizations. Court organizations, are a part of the state infrastructure, are financed with public money, and, as any public organization, need management and have to account for how the budget is spent.

Judges must be independent from the executive, meaning that they must not be pressured in any way towards a specific outcome in a case, while applying the law in deciding the cases brought before them. Rules of procedure to be applied by the judges and the court, and organization rules for the courts are the product of the legislative and consist of formal and delegated legislation, the latter usually produced by a ministry of justice.

All the same, they are part of the state infrastructure and work in an organization that is dependent on parliament, the legislative and an executive office in terms of organizational rules, budget and rules of procedure. The paradox here is evident; judges must be independent, but effectively they are not in terms of the organizations they work in and in terms of their salaries and the budgeting of the courts. In this context, judges cooperating intensively with court clerks, working in an organization that for its organizational rules (and rules of procedure) effectively depends on cooperation with a ministry of justice and parliamentary votes, are also subject to performance measurement and performance management. Indeed, court operations are monitored and accounted for.

In the debates about court management and court administration, the recurring question is how the interaction between organizational functioning and judges may evolve, both from a judicial impartiality and independence value perspective and a (democratic) accountability perspective. Effectiveness and efficiency are implied here. Also in those respects, performance measurement and management for courts and judges is complicated by the

1 We are grateful for the remarks on an earlier version by the members of the Handle with Care team (Caroline Foulquier, Mátyás Bencze, Agnes Kovács, Francesco Contini, and Petra Pekkanen)!
2 Shapiro, Martin, Courts, a comparative and political analysis, University of Chicago Press. 1981, p. 3.
paradox described above. Therefore, a principled question is: is it possible to conduct performance management in a judiciary without putting too much pressure on judges so that content and outcomes of judicial decision making are being influenced? And if so, how?

In this paper, we consider how these questions may be answered. We will first give an inventory and analysis of evaluation methodologies for the functioning of courts, judges and court administrations that are identified in literature. In the different contexts of judicial organizations the interactions between evaluation outcomes and efforts to improve the functioning of courts and judges often are marked by tensions between professional judges, court management, national court administration and national politics. The key to success and failure of policies, organization development and professionalization in judiciaries therefore is most likely to be found in the ways these tensions are mediated and balanced.⁴

Below, we will first describe more extensively the position of courts within the state, in relation to national court administration, and to judicial values and accountability of courts and judges. Second, we describe quality management, and third we will describe performance management methods, based on literature and on reports from Finland, France, Hungary, Italy and the Netherlands, and we discuss those methods in relation to their aims and in relation to judicial values. Fourth, we will give a comparative overview of actual performance management based on the five national reports. We will conclude this report with a discussion of our findings and give some recommendations for the development of performance management in court administration and for performance measurement of courts within the EU.

2. The position of courts and judges in the state and in national court administration

We should make a distinction between courts as organizations and courts as a collection of individual judges. The judiciary is the third state power, and judges are office holders within that power. From a constitutional perspective, judges must be independent from other state-powers, and ought to be impartial in their relations to the parties in the cases they decide. In the continental tradition of the rechtsstaat, judicial decision-making is bound by legislation while judicial discretion is (supposed to be) limited.⁵ The judges function in a hierarchy of first instance courts, intermediate courts and highest courts, often with a dichotomy between ordinary (civil and criminal) jurisdictions and administrative jurisdictions. The hierarchy’s main purpose is to guarantee to parties and society that the law is administered consistently throughout a country. The judges of the highest courts have the lead in achieving this, on a case by case basis. National legislation arranges for the rules of procedure to be used by the courts and the judges when preparing and deciding and executing cases. Usually there is a division in civil (trade and family), criminal and administrative law. Within these domains there may be further specializations. This is usually referred to as the civil service model.⁶

The national court administration and the courts are responsible for the organization of judicial work. Within the membership of the Council of Europe, most countries have a council for the judiciary with either a role in selection of judges and disciplinary supervision of the judicial profession, or a role in administration of the courts. All countries have a

⁴ Langbroek, Philip and Mirjam Westenberg, Quality work in four judiciaries, Justzimananagement Series, Stämpfli Verlag Bern, chapter 7, expected March 2018).
ministry of justice that is responsible for legislation in the field of court administration and the judiciary; in some countries, the administration of the courts is a ministerial responsibility (France, Finland). In many countries, the ministry of justice also plays a role in submitting budget proposals for the judiciary and the courts to parliament (Italy, France, Hungary, Netherlands, Finland). They depend on the ministry of justice and the government for primary and secondary legislation, because rules for court administration and rules of procedure need adaptation from time to time.

Hence, effective court administration always requires a close cooperation between the responsible court administration body and the department within a ministry of justice that is responsible for legislation. And usually, budgeting comes with accounts. In other words, the courts and the court administration somehow need to show to the government, parliament and the public what budget they need, how the money will be spent, and how the money has been spent, following general rules for budgeting and accounting.

National legislation arranges the rules of procedure, the judicial map, the jurisdictional organization of courts over topics and territory from first instance to the highest level, and for the budgeting and the financial and organizational accountability of the court organizations towards the political domain, either via a council for the judiciary, a Ministry of Justice (Finland) or a combination of both (Netherlands, Italy, France). In Hungary the Head of the National Judiciary plays a key role in this process. Typically, national court administration and judges participating there, may advise a ministry of justice or a parliament on legislation and secondary and tertiary legislation affecting the functioning of the courts, for example rules of procedure, changes in the judicial map, finances, but also administration rules and changes in legislation that may affect the amount of cases to be filed at courts.

In Europe, except for several Swiss cantons, where judges are elected by popular vote (for example Geneva, Aargau, St. Gallen) judges are appointed by a government or a parliament, following a selection procedure. In this selection procedure, judges and the government cooperate, one way or another, as judges participate in selection committee’s, and the government and in some cases the parliament appoints. Usually the government follows the preferences of the judicial selection commissions. The same holds for career decisions regarding judges.

Judicial independence and impartiality demand that the professional discipline of the judiciary is administered by a body that is independent from executive offices. This may be organized in a judicial council consisting of judges, lawyers and prosecutors, like in Italy, France and Portugal, but it may also be kept within the judicial hierarchy, where for example a court president may give a reprimand if a judge misbehaves (Netherlands, Finland). In exceptional circumstances a judge may be removed from office by the highest court or a high judicial council. Anyway an independent court should be able to have the final say in dismissal of a judge.

3. Quality management

3.1. Concept of quality management

The concept of quality management has been thoroughly developed by several well-known international institutions: The International Organization for Standardization, ISO⁷, with its ISO 9000 series for quality management; the European Foundation for Quality Management,

EFQM\(^8\); and the European Institute of Public Administration, EIPA with the Common Assessment Framework\(^9\). Each of those organizations has developed a framework for quality management in organizations.

The origin of quality management lies in the product-control approach that started in the Japanese trade and industry in the 1950s: Quality Control. It was a way to ensure that matching products always fit, for example ammunition for guns, tires for cars, and plugs for plug connections. Such products need to have product consistency. Quality control involves standardization of the production process in order to achieve product consistency. This is applicable to many products: e.g. earthenware, such as bowls, pots, cups and plates that need recipes for the baking and glazing processes. To ensure the quality of a product, not only its properties are to be specified beforehand but also the best way to realize these properties, like following a fixed standard recipe.

Continuing along the line of the example of earthenware, hand-made production would follow experience and routine, allowing for some variation in size, weight and color, but within a certain standard range. When scaling up production and developing machines to produce the pottery, the weight, sizes, colors, including their allowed statistical error margins, need to be defined beforehand. Next, checks are necessary to see if these standards are met during as well as after manufacturing. If product standards are not met, the production process has to be adapted; if product standards are met or exceeded, new targets may be set.

This is actually an application of a basic and well-known model for quality management: the quality cycle also known as the Plan-Do-Check-Act cycle (PDCA cycle), or the Demming cycle, named after its commonly presumed creator William Edward Demming who also played an important role in developing quality control in the trade and industry in Japan.\(^{10}\) The cycle is visually presented below.

Figure 1: Demming’s Plan-Do-Check-Act Circle

---

\(^8\) www.efqm.org.
\(^9\) http://www.eu/caf/.
\(^{10}\) The Plan-Do-Check-Act (PDCA) cycle is usually credited to William Edward Demming, who himself however called it the ‘Shewhart cycle’, referring to the work of Walter Shewhart who developed methods for statistical analysis and quality control. Demming later developed the cycle into the Plan-Do-Study-Act (PDSA) cycle, see: DEMMING (1993).
This cycle is also at the basis of the ISO, EFQM and CAF quality management models and the concept of Total Quality Management.

### 3.2. Total Quality Management (TQM)

After World War II a new management philosophy arose in the Western world, starting in the USA, which was based on the principle of quality control of products and production processes, as described in the previous paragraph, but involving a more comprehensive concept of quality, therefore called ‘total’ quality management (TQM). It is a broad and systemic approach to managing organizational quality, which became increasingly popular with businesses in the private sector in the 1980s. The keywords associated with TQM are efficiency, effectiveness, economy.

TQM recognizes that customers go to the competition if their product expectations are not met. This resulted in a customer-oriented evaluation of product quality and in a continuous effort to not only meet but to also exceed customers’ expectations, through continuous improvement. The leadership of the organisation was acknowledged to have an important role in seeing to continuity, i.e. the cyclical nature of improvement. This continuous improvement not only concerned products, but also the production processes, in which the employees (work teams) were attributed an important role.

The inclusion of organizations’ employees in the TQM philosophy reflects the recognition of the concepts of Organization Development, an academic discipline which originated in the behavioural sciences in the 1940s and by the 1980s had evolved into a multidisciplinary approach to achieving organizational improvement. This discipline sees organizations as networks of people, and studies how organizations can improve their efficiency and problem-solving ability through their employees.

Essential for organization development is the organization’s ability to learn. Argyris and Schön coined the terms ‘single-loop’ and ‘double-loop’ learning for organizations. Single-loop learning is about problem-solving by detecting and correcting errors related to fixed goals, values, plans or rules. Double-loop learning goes beyond this: it entails looking inward, for managers as well as employees, to reflect critically and identify the ways their reasoning and behaviour unintentionally contribute to the organisation’s problems. In particular, the very way they define and solve problems may actually cause problems. In other words, in double-loop learning, given or chosen goals, values, plans and rules are questioned rather than only operationalized and measured as they are in single-loop learning. Double-loop learning is much more dynamic than single-loop learning.

The classic example to capture this crucial distinction is the thermostat analogy: “When the error detected and corrected permits the organization to carry on its present policies or achieve its present objectives, then this error-and-correction process is single-loop learning. Single-loop learning is like a thermostat that detects when it is too hot or too cold and turns the heating on or off. The thermostat can perform this task because it can receive information (the temperature of the room) and take corrective action. Double-loop learning occurs when error is detected and corrected in ways that involve the modification of an organization’s underlying norms, policies and objectives.”

---

11 Its origin was the work of Kurt Lewin on group dynamics in the 1940s.
degrees?" and then explores whether or not some other temperature might be more economic to achieve the goal of heating the room, would be engaged in double-loop learning.\textsuperscript{14}

In an organizational context, this means that the monitoring of processes and results is accompanied by reflection on the aim of the organization and interaction with the environment, and, possibly, as a result, by adaptation of aims and standards, in order to achieve a better fit between organization and its environment. This shows that Total Quality Management may reach its purposes if organization aims and results are subject to ongoing evaluation processes. The TQM model was a main driver for the recognition of the concept of Organisation Development.

### 3.3. Total Quality Management in Courts.

Total Quality Management in Courts has been discussed in the USA, in the Netherlands and Finland, on various levels and it has been applied with various degrees of success. Already in 1994 David Aikman produced a small book on TQM in courts, discussing all the factors that play a role in the success or failure of quality management in this specific type of environment.\textsuperscript{15} In this small book, he typically focusses on internal processes in order to improve external relations and the public image of the courts. Typically, he also pays attention to the workforce.

Another USA example of TQM is the international court excellence model, that aims at empowering court management to measure performance in key area’s of the courts and use the measurement outcomes as information for organizing change for improvement. It promotes to use the following key area’s for court improvement:

- Court Leadership and Management
- Court Planning and Policies
- Court Resources (Human, Material and Financial)
- Court Proceedings and Processes
- Client Needs and Satisfaction
- Affordable and Accessible Court Services
- Public Trust and Confidence

The idea is, that a local court organization is able to measure and steer the organization development regarding these subjects.\textsuperscript{16} Beneath those themes are values: Equality (Before the Law), Fairness, Impartiality, Independence of Decision Making, Competence, Integrity, Transparency, Accessibility, Timeliness, and Certainty.\textsuperscript{17}

### 4. New Public Management (NPM)

New Public Management (NPM) is the management approach that was introduced to public administration in the 1980s. As it also involved quality management, it represents a management ideal for public administration. Until then, for about a century, public administration was based on a type of bureaucracy which had a central role in policy making

---

\textsuperscript{14} ARGYRIS (1991).
\textsuperscript{16} International Framework for Court excellence 2013, p. 5-13.
\textsuperscript{17} Ibidem p. 12
and implementation. Governments and semi-governmental organizations used NPM to modernize the public sector with the intention to make it much more citizen/customer oriented. It consisted of applying management knowledge and experiences from the private sector, including total quality management (TQM), to the public sector. Originating in the Anglo-American area, NPM spread to the Australasia and Europe during the 1980s and 1990s.

In the practice of public administration, the introduction of NPM for most organisations represented the first steps in quality management and organisation development. NPM is output-oriented and implies performance measurement, cost management, use of competition and contracts for suppliers, resource allocation and service delivery. In NPM, managers have control responsibility. This means they have to take action if performance measurement results are not in line with set targets. In that sense, they are on top of performance evaluation processes. However, there are differences between private-sector and public-sector organizations. Most notably, private-sector organizations are accountable to themselves or their shareholders mainly, whereas public-sector organizations are accountable to the authorities that may be held directly and politically responsible. The NPM approach to public administration has advocates and it has critics. It has been criticized most for its intra-organizational focus in an increasingly multi-faceted world and for its adherence to the application of outdated private-sector techniques. This has resulted in ignoring the linkages between different government services, thus adversely affecting the quality delivered to citizens, and leading to disasters.

It is important to note that ‘checking for performance targets’ may be qualified as quality management, but that for an organization to adapt itself to changing circumstances, it needs more than that. It needs the flexibility and agility to redefine its ‘underlying norms, policies and objectives’ and to change its internal functioning and the interaction with its environment, and therefore to change its standards of performance accordingly. In other words, ‘double loop’ learning within an organization is essential for effective quality management.

For public-sector organizations this entails specific challenges. Quality management is an approach for any organisation to develop itself in interaction with its societal environment, as a result of ongoing evaluation processes. There are, however, marked differences between private-sector and public-sector organizations. Organizations in public administration offer services to users who cannot individually go elsewhere if quality is insufficient: the organizations’ accountabilities are public and political, governed by legal duties. Politics can be very dynamic, resulting in rapid-changing public policy. Consequently, public-sector organizations must be flexible and adaptable. This presupposes an organizational willingness to learn and to be flexible, in terms of action and development, in accordance with public and political accountabilities.

---

19 A book that inspired many in this context is: D. OSBORNE AND T. GAEBLER, Reinventing Government, how the entrepreneurial spirit is transforming the public sector, Boston MA, Addison Wesley. 1993,
5. Performance management

5.1 Performance management and evaluation

Where quality management is focused on organization development, based on several feedback loops between the (changing) societal environment to the organization, performance management focuses on improving processes and output in terms of efficiency and quality. Where Total Quality Management has evolved into a strategic concept of organization development in interaction with the organizations’ stakeholders and with society, performance management aims at enhancing production processes with a view to efficiency and quality. Of course, New Public Management also used performance measurement, especially with a focus on improving services to the public. Performance management is part of a strategic concept for an organization, both with a view to organization development and with a view to accountability. It is important to notice that performance management is based on information provided by performance measurement, a special type of evaluation. There may be, but need not be a special focus on relations between the organizations and citizens/customers. It is most likely that performance management in the public sector comes with a purpose: either organization development, human resources development or accountability for performance to the public and to political domains. Usually those purposes are combined.

To date, performance management not only encompasses performance from employees or departments from time to time; it also supposes an ongoing interaction between management and employees about their work and their needs to perform according to standards and policies.

Performance measurement generates the information necessary to conduct performance management. It involves the implementation of measurement devices, for measuring production and for measuring quality. Measuring production requires adequate registries and accurate registration procedures, both for quantitative and qualitative aspects. Even although performance management has always existed in some way or another, to date the buzz word is ‘evidence based policies’. The idea is that politicians and managers take well informed decisions based on accurate data.

Performance management based on performance measurement is not uncontested, because it may lead to perverse effects in the behavior of employees and to excessive administrative burdens. It takes a lot of time and effort, to have performance based management accepted in an organization. In professional organizations, economic focus on production and efficiency may lead professionals away from their basic values. Others warn for too much reductionism of reality in performance measurement, or find that the context where performances are measured make a difference. According to Abma and Noordegraaf, in professional working environments, performance measurement can be harmful, because there

is too much ambiguity in performances of professionals. For judiciaries, this means that there is not a common understanding of what a well-functioning judge is. One of the difficulties also being that judges working in different legal fields may do very different types of work, e.g. trade, versus insolvencies versus family cases. The differences are also in the ways they distinguish between complex and routine cases.

Contini and Mohr have written about performance measurement for courts and judges. They distinguish in the context of courts, four types of judicial accountability, each with its own ‘forum’: managerial (forum: managers, ministries, judicial councils), legal (forum: lawyers, other courts, superior courts), public (forum: media, organised groups, lobbies, individuals), and cooperative accountabilities (forum: quality conference, peer groups). Interestingly, as a forum for managerial accountability they mention not only office managers and judicial councils, but also ministries. This implies that managerial accountability may become political accountability. From a performance management perspective the type of forum for accountability is crucial. Quality management in court organizations generates large amounts of information concerning the performance of the courts and judges, especially where ICT’s are used for case management purposes. Delivering performance information to local court management is different from delivering performance information to a national court administration authority and to the political domain. Indeed, the latter’s scope is much wider than managerial only, it is also political.

Hanne Foss Hansen made an inventory of evaluation methods and their purpose in different circumstances. She discerns models according to a focus on:

- Results (goals and effects)
- Systems (performance as a whole)
- Explanatory process model (activity level, implementation problems)
- Economic (cost-effectiveness, cost-efficiency, cost benefit)
- Actor (clients, stakeholders, peers)
- Programme/theory

She combines those evaluation focusses with the aims or purposes of the evaluation at hand: control or learning. If the goal of the evaluation is to control, it is best to choose a goal-attainment model. Is it about learning, the option would be to choose for a stakeholder model, according to Foss Hanssen. Of course, this is also related to the type of forums. This also has implications for the preferred methodology. Top down control induced evaluations follow a quantitative mode; learning induced evaluations follow a qualitative process oriented mode. Typically, evaluations with a learning aim, have a focus on process; initiatives are often taken by stakeholders and the evaluation is conducted as self-evaluation by peers or by consultants, and the forum consists of peers and stakeholders. Evaluations with a focus on control are organised top-down, and use quantitative measurement methods, when the forum consists of supervisors and policymakers from the political domain. For evaluation of legislation as a

---

29 GAR YEIN NG, MARCO VELICOGNA AND CRISTINA DALLARA, Monitoring and Evaluation of Court System: A Comparative Study, CEPEJ Strasbourg, 2008, p. 47-48, point out that a lot of data are collected in Council of Europe Memberstates, but that they are based on different standards, and therefore not fit for comparisons.
31 Ibidem, p. 452.
product of democratic decision-making, Hansen asserts that the top-down result-oriented control model is appropriate, whereas when professional groups are involved whose autonomy should be respected, a peer review model should be appropriate.\textsuperscript{32}

Foss Hanssen speaks in her article about three rationalities when making a choice for an evaluation model.\textsuperscript{33} First of all, one can choose for a certain evaluation model because of the purpose of the evaluation to be performed. Secondly, an evaluation model can be chosen based on the characteristics of the evaluated program or organization, and thirdly, it can be based on the characteristics of the problem that the policy program or organization wishes to solve. There may also be multiple rationalities in an evaluation. In accordance with Foss Hansen’s model, that multiplicity should be reflected in the methods applied for those different purposes.

Based on the literature described, performance management and its related evaluation processes may not be applied unconditionally for courts and judges, because courts as organizations and judges as professionals combine routine work and non-routine work with multiple-sided interactions, and because courts interact with parties and lawyers of a highly differentiated character.\textsuperscript{34} They need enough time and leeway to decide how to deal with a case: routinely or expertly, both from skills and required knowledge perspectives. Nevertheless, also professional judges can be asked to adapt their work and organization to changing circumstances, also when technological and societal developments change.\textsuperscript{35} The evaluation methodology of Foss Hanssen may be able to solve the tensions between judicial independence and accountability, and preserve judicial professional autonomy while also allowing for public and political accountability, because it departs from different evaluation purposes. It allows for flexible approaches, depending on evaluation purposes, recognizing both the special position of professionals in organizations, and the need to inform the political domain about results and the ways in which public money has been spent, in representative democracies.

5.2 Performance Measurement and Evaluation Tools for Courts and Judges

During the past decades, quite some literature has been published on how to understand the position of courts and judges in the state organization, from a non-legal perspective. This literature has focused on reconciling constitutional demands for judicial independence and impartiality with accountability of the courts and the judiciary from a societal and democratic process point of view, and may have contributed to the development of tools for evaluations of courts and judges.\textsuperscript{36} We will not discuss this literature here; instead we will describe

\textsuperscript{32} Ibidem, p. 451-452.
\textsuperscript{33} Ibidem, p. 451
\textsuperscript{34} ABMA and NOORDERGRAAF 2003, p. 291.
currently developed tools for evaluation of courts and judges, and refer to literature when relevant for our descriptions.

Measurement tools for courts and judiciaries have been developed in various kinds and sizes throughout the past decades. We refer to the work of the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe\(^{37}\), the International Framework for Court Excellence\(^{38}\), to the work of the Finnish Rovaniemi Court of Appeal\(^{39}\) and the EU-Justice Scoreboard\(^{40}\), to the Lower Saxony Benchmark project, and to the Internal and External Dialogue of Marie Hagsgård.\(^{41}\) We reiterate here, that it matters what and whose performances are measured and how the performances are reported and to whom they are reported. Ownership of management information on performances of courts and judges is an issue, from a judicial independence and professional autonomy perspective.\(^{42}\) Purposes of gathering and sharing information can be very different: professional learning, organisation development & local management, or informing the public and policymakers. For each of these purposes providing different types of information are the result of balancing judicial independence and professional autonomy on the one hand and the purpose of the information provision on the other.

First of all, the CEPEJ has engaged since 2006 into publishing biannual reports showing the state of affairs of the judicial systems in the member states of the Council of Europe: *European judicial systems Efficiency and quality of justice*.\(^{43}\) Those reports compare for example the number of categories of cases, average times of specific court proceedings, the number of judges per 100.000 inhabitants, the budget spent on the courts, judicial salaries, judicial independence, the position of prosecutors and so on.\(^{44}\) The repetition shows the changes per country, and also makes comparison between the countries possible over time. The tools still have flaws, because the question list is answered by civil servants on a national level and the reliability of the data presented is not always clear.\(^{45}\) The quality of justice systems evaluation reports typically is an information tool for national policymakers in the justice field.

The CEPEJ does much more, however, also with a focus to the management of individual courts. For example, the CEPEJ has been working on *evaluation methods for courts*.

\(^{37}\) [www.coe.int/cepej](http://www.coe.int/cepej): European judicial systems Efficiency and quality of justice, CEPEJ STUDIES No. 23.  
\(^{39}\) How to Assess Quality in the Courts? Rovaniemi, 2006  
\(^{44}\) The youngest scheme for evaluating judicial systems 2016-2018 cycle counts 62 pages and 208 subjects.  
Examples are the court user survey by Jean Paul Jean and Helène Jorry and Martial Pasquier. Furthermore the CEPEJ recently published a document prepared by Fabio Bartolomeo from the Italian Ministry of Justice. This document proposes a set of quality indicators at the court level in order to facilitate court management both at the local and at the national level. It explicitly distinguishes measurement for inspection and performance measurement for management. Last, but not least important, the CEPEJ has set out since 2002 on improving timeliness of court proceedings in the SATURN project. Here the CEPEJ has developed guidelines for judges and for court management. The focus is almost exclusively on the court level.

The *International Framework for Court Excellence* also takes the autonomy of court organisations for granted. It starts from a set of values and then instructs court managers on how to measure performance on those values. These values typically are:

- Equality before the law
- Fairness
- Impartiality
- Independence of decision-making
- Competence
- Integrity
- Transparency
- Accessibility
- Timeliness
- Certainty

The International Consortium for Court Excellence gives also advice on how to operationalize these values in courts, so that performance in realizing those values can be measured, with a view to organization development and improving performance to a desired level. In an explanation on performance measurement and management it is stressed that these values not only apply to single courts but also to justice systems. Implicitly the scope of the IFCE is thus extended from a mix of professional learning, management information and organization development, towards informing policymakers with a view to policy development in the justice field.

The *Rovaniemi Court of Appeal Quality Benchmark system* is a tool developed to improve the services of the court to its customers, based on the CAF quality management system. Measuring performance on a set of pre-set values is essential with a view to see if interventions were effective. The points of attention are:

---

46 CEPEJ (2016) 15 HANDBOOK FOR CONDUCTING SATISFACTION SURVEYS AIMED AT COURT USERS IN COUNCIL OF EUROPE MEMBER STATES.
47 CEPEJ (2016)12, Measuring the quality of justice, Document prepared by the CEPEJ-GT-QUAL on the basis of the preparatory work of Mr Fabio BARTOLOMEO (CEPEJ member, Italy), 7 December 2016.
48 Ibidem p. 5.
50 CEPEJ (2014) 16, REVISED SATURN GUIDELINES FOR JUDICIAL TIME MANAGEMENT.
51 CEPEJ (2015) 18, IMPLEMENTING THE SATURN TIME MANAGEMENT TOOLS IN COURTS, A GUIDE.
52 International Framework for Court Excellence, 2013, p. 3.
• The process
• The decision
• Treatment of the parties and the public
• Promptness of the proceedings
• Competence and Professional Skills of the Judge
• Organisation and Management of Adjudication

The focus here is on judicial performance and the aim of the Rovaniemi tool is professional learning.  

In 2002, the courts in the German Federal State of Lower Saxony pioneered with *comparison circles for benchmarking*, starting with two pilots, one with six district courts and one with eight district courts (Amtsgerichte im Leistungsvergleich, AgiL). 56 This benchmarking project consisted of a zero measurement of court performance in a certain field, a workshop where practices were inventoried and compared, and another performance measurement after two years. This then has led to standard protocols for all the courts at the same level. 57 The enthusiasm of the participants and the success of the practical results combined with the support from the Ministry of Justice convinced all other district courts of Lower Saxony to take part in the project. This was later followed by comparison circles for the regional courts (Landgerichte im Vergleich, LiVe). Because larger courts have other issues to deal with than the smaller courts, separate comparison circles were started for the large district courts and also for the large regional courts. 58

The benchmarking projects were initiated by and conducted under the supervision of the three higher regional courts (Oberlandesgerichte). Other German federal states adopted the benchmarking method of Lower Saxony as well, and since 2007, the higher regional courts themselves also take part in nationwide benchmarking (Oberlandesgerichte im Vergleich, OliVe). 59 Clearly, those comparison circles have a focus on professional learning from best practices.

In Sweden and Norway, the Internal and external Dialogue has been used to organise feedback for court staff and judges, first, with a view to their cooperation and upholding judicial values. Second, to ask for feedback to judges and court staff from court users, advocates and so on. Dialogues are organized by the local court organization, the initiative is bottom-up. As the focus here is entirely on professional learning and organization development, the method is qualitative. 60 In order to come to a joint analysis of the situation and to an agreement of what should be done to improve the functioning of the courts,

---

55 For more information, see paragraph 3.1 in the report on Handle with Care National analysis - Finland
60 HAGSGÅRD 2014.
cooperation between court staff and judges is necessary. The president of the court has to fulfil a leading role here, to persuade both judges and court staff to leave their comfort zone.\(^{61}\)

A similar tool has been developed in the Netherlands, with the so-called ‘mirror’-meetings, where court users can discuss amongst themselves their experiences with the court and the judges, while the judges and court staff are listening.\(^{62}\)

Not long ago, more than ten years after the creation of the CEPEJ by the Council of Europe, the EU Justice Scoreboard was introduced by the EU Commission.\(^{63}\) It is presented as a statistical information tool on the efficiency of member states’ judicial systems.\(^{64}\) And as an information tool its announcement in 2013 carries the explicit messages that courts in EU member states also function as EU courts, are important for mutual trust in the EU, and that courts also have a crucial role in economic stability:

*Citizens, businesses, judges and authorities are expected to trust, respect, recognize or execute decisions taken by the justice system in another Member State*\(^{65}\)

This makes sense, as mutual trust has become a legal obligation for courts in the EU in transnational cooperation in the fields of criminal law (for example, European arrest and evidence warrants) and transnational execution of civil judgments. The program has been established by the Commission in an open dialogue with many authoritative policy makers from different Member States in order to achieve a safe (secure) investment climate, to stimulate economic growth and to maintain the rule of law.\(^{66}\) The focus is on the efficiency, quality and independence of the judiciary by means of indicators:

- The length of the proceedings expresses the time (in days);
- The clearance rate (the ratio of the number of resolved cases over the number of incoming cases in a year/month)
- The number of pending cases expresses the number of cases that still have to be treated at the start of a period (e.g. a year)
- The monitoring and evaluation of courts' activities by means of performance indicators and standards
- The perception of the independence and impartiality of the judiciary by the public.
- ICT systems for courts: the availability of ICT systems for registration and management of cases, and for communication and information exchange between the courts and their environment
- Alternative Dispute Resolution methods (ADR)
- Training of judges: initial training and continuous training

---

\(^{61}\) Ibidem p. 1008-1109.

\(^{62}\) Jitta Miedema, Abeltje Hoogenkamp, Cora van Steenderen Koornneef, Maria Mul (2015), Spiegelbijeenkomsten, de stand van zaken na 5 jaar, Feedback vanuit de relevante buitenwereld, Tijdschrift voor de Rechterlijke Macht, p.315-320.

\(^{63}\) The EU Justice Scoreboard, A tool to promote effective justice and growth, Brussels, 27.3.2013 COM (2013) 160 final.


\(^{66}\) Adriani Dori, 2015, p. 13.
• Resources: the budget for courts, the number of judges and lawyers provide information on the resources used in the justice systems.67

Many data are collected and assessed against these indicators.

“The Scoreboard provides a comparative overview of the quality, independence and efficiency of national justice systems and helps Member States to improve the effectiveness of their national justice systems. This makes it easier to identify shortcomings and best practices and to keep track of challenges and progress. In the context of the European semester, country-specific assessments are carried out through bilateral dialogue with the national authorities and stakeholders concerned. This assessment takes into account the particularities of the legal system and the context of the Member States concerned. It may lead to the Commission proposing to the Council to adopt country-specific recommendations on the improvement of national justice systems.”68

Also the perception of the public of judicial independence is being monitored. In conclusion, the Justice Scoreboard is a measuring device of the European Commission to inform policymakers about the performance of justice organisations and best practices within the EU member states, with the intention that national policymakers in the justice field try to improve their justice systems in fields with shortcomings. In that sense, it is also both a comparative instrument and an instrument of control.

Within the EU-context, a positivist, quantitative approach is dominant in policy evaluations.69 EU policy makers do not have a lot of control over policy implementation in the different member states. Hence, hierarchical evaluation methods are most likely to deliver results that may be comparable cross national borders. Monitoring typically belongs to the evaluations with a view to control. Within the EU, monitoring typically serves comparative purposes. For the European Commission, “Quantitative data is suitable and convincing, allowing for easy aggregations, comparisons, and generalizations.” 70 This explains why qualitative, constructivist approaches for EU policy evaluations are scarce, and it shows that the Justice Scoreboard fits the EU evaluation pattern.

Apart from performance information for policy development (and for informing politicians and the general public) there may be a need for information for different purposes: professional learning, local management information with a view to organization development and performance information on an individual level for initial appointment and promotion decisions, upholding judicial values, and legal accountability concerning a courts’ judgments.

6. Inventory of evaluation subjects, methods and actors in the National Reports

Based on an inventory and qualification of performance evaluations in the national reports, we try to come to a conclusion and discussion of possible ways to measure court and judicial

67 The EU Justice Scoreboard, A tool to promote effective justice and growth, Brussels, 27.3.2013 COM (2013) 160 final, p. 4-5.
68 Ibidem p. 3.
70 HOERNER AND STEPHENSON 2012, p. 712.
performance in combination with enhancing judicial independence and impartiality. So far, we distinguished between performance measurement for evaluation of court work with a view to:

- Professional learning
- Upholding judicial values
- Human Resources Management
- Quality of decision making, consistency of case law, timeliness
- Court management and organization development
- Accounting towards the general public and for policy development

The national reports show several methods of evaluation that apply to different subjects of evaluation. All national reports distinguish between the evaluation of judges and the evaluation of the courts. The following highlights the evaluation mechanisms in place in subsequently Finland, Hungary, Italy, France, and The Netherlands.

Judicial main tasks are to hear cases and to deliver judgments. Conducting a court hearing and delivering judgments implies very different skills: communicating with parties and their councils, managing the case and the exchanges of documents and planning a hearing from a time perspective, writing a judgment alone or in interaction with judicial colleagues and court clerks. This presupposes a high level of expertise on the rules of procedure and the law that is applicable in a case, including on the development of case law and on other legal and societal developments, including expertise on the subject matter. The perspective of the parties on the case is highly relevant, not only to inform the judge, but also from a procedural justice perspective, indicating that judicial behaviour does matter very much for the acceptance of the judgement by the parties. Comprehensibility of judgment texts is also a topic in explaining the legitimacy of judgments. Monitoring techniques here may be peer review on the judge level and on the team level, and also evaluating interactions with stakeholders and court users is possible.

Appropriate methods are:

- Exchanges between judges, court staff and stakeholders on the court level (Hagsgård71) Stakeholders at the court level are the prosecutions office, the police, lawyers, parties, bailiffs, the youth protection agency, mediators and the press;
- Case law review (also concerning reversals in appeal);
- Mirror sessions (Miedema and Mul72);
- Individual peer review (court hearings, judgments);
- Court user satisfaction surveys and discussions on actions to be taken, because of the outcomes;
- Judicial participation in training courses (in order to keep their knowledge and skills up to date).

Such methods are used more in Finland and the Netherlands, compared with Italy, France and Hungary. But also there, court user satisfaction surveys are locally implemented, sometimes with national coordination. Peer review on case law is a point of attention everywhere, but not implemented frequently in Italy and France at the local level. Training courses are organised

72 JITTA MIEDEMA, ABELTJE HOOGENKAMP, CORA VAN STEENDEREN KOORNNEEF, MARIA MUL, 2015.
everywhere, and it shows that national court administrations go through a lot of efforts to stimulate judges to follow courses.

Conditions here are, that judges and judicial management are in charge. Within the available time judges can shape their own professional space by participating in those activities. From a performance measurement perspective, registrations can be designed that for example show how many judges of a court participated in what activities and when. From a performance and quality management perspective, standards should be set for the registration, with minimum performance requirements. For example, each court should do a court user satisfaction survey at least once every three years. Or: at least 50% of judges should spend 30 hours per year on judicial training courses.

If measurement shows inadequate activities, the courts’ management or the national court administration should analyse its causes, and take action. A question is, in how far this management information should be reported to the general public and the political domain.

6.2. Registration of judicial performance with a view to upholding judicial values

Judicial values are a mix of constitutional, professional and economic values. Judges are to be independent and impartial; they need to work with their peers, and with representatives of parties, with the parties themselves, with court clerks. To enhance their role of judges, they must behave impeccable. Furthermore, they need to be well advanced in their field, knowledge wise, and also apply the law in a consistent way. Last but not least important, they should work efficiently and organise the management of their caseload in such a way that delays are an exception, regardless the agendas of the parties. Timeliness of judgments and quality of judgments is an issue everywhere.

Upholding judicial values does touch upon professional judicial ethics.

A question is, what methods are used to uphold judicial values. The answer is: judicial values can be upheld in many ways, also beyond control mechanisms and management information. Usually they are ingrained into judges during their training on the job, as a part of the professional socialisation process. It may help to formulate those norms explicitly, for example in a code of conduct. Upholding judicial values is not only an issue of the individual judge’s conscience. For example, timeliness of judgement is a judicial value, but for case management, upholding this value is also a matter for the court or court division. We think the following mechanisms for registration and feed-back are in place to uphold judicial values:

- Complaints procedures; usually the president of the court is in charge of them. Complaint procedures are not about the case content, but usually about what a judge did or said before or during case management and hearing;
- Challenging judges, before or during proceedings, because there is an (appearance of) bias towards one of the parties in a case;
- Judicial Personnel Supervision by a judicial council, or other independent body where the majority consists of professional judges;
- The possibility of disciplinary sanctions, with as ultimate sanction removal from office (with an eventual check by a court of independent judges); Professional Peer review;
- Professional Peer review;
- Appeal to a higher court with a case, if legal argumentation about judicial bias or prejudice was not effective in first instance.

It makes a difference in what context those activities take place. The hierarchy of checks on judicial behaviour as in Italy and France is different from the working relations between judges and the courts’ boards in Finland and the Netherlands. When the professional norms
are clearly formulated, it can also make sense to register the activities in this regard, and show the outcomes on the court and at the national level and what action has been taken. From an organizational point of view, it is always interesting to know what a court or a national court administration actually did with the outcomes of quarterly or annual registrations, and what happened with complaints.

6.3. Measuring performance with a view to Human Resources Management (also: employee satisfaction survey)

The national reports pay a lot of attention to the professional evaluation of judges. Those evaluations focus on individual productivity, timeliness and quality of judgments, expertise, conduct in the court room, case management skills, and work attitude. The methods do differ considerably.

Italy employs a system of evaluating judges every four years and looks at professional skills (e.g. legal knowledge), productivity (e.g. number of cases dealt with), diligence (e.g. punctuality during hearings), and commitment (e.g. following extra trainings). In Italy, individual judicial evaluation is quite a bureaucratic process, with statistics on the productivity of the judge, evaluation reports by a judge’s superiors and the involvement of a regional Judicial Council. The Council for the Judiciary – a national entity – coordinates this process and takes the final decision on promotion or salary increase of the judge.

In Hungary the assessment is done on a regular basis by the Head of the competent division or a Judge appointed by her. The regular evaluation of judges is designed to check the judicial skills of the judges, including quantitative aspects (e.g. number of trial days), and qualitative aspects (e.g. thoroughness). Judges are assessed in the third and sixth year after their appointment and every 8 years following it. The Judge is evaluated through an assessment, which includes an analysis of a certain number of final judgments rendered by the judge, the annual professional activity of the judge, and the opinion of the Head of the division competent in the legal area where the assessed judge works, among other elements.

In France the immediate supervisors of a Judge also have a considerable role when it comes to measuring the performance of a Judge. They conduct individual evaluations every two years and incorporate a professional interview between the judge and the Head of Court (usually the direct supervisor), an overview of the Judge’s activities and trainings and a form filled in by the Head of Court on aspects such as the vocational skills and analytical ability.

In Finland a Judge has yearly development meetings with his or her supervisor and is also subject to a statistical check regarding workload.

The Netherlands do not have such a clear guideline on how frequently a judge has to be evaluated. As a matter of policy, judges have annual evaluation conversations with a managing judge. This is much more a professional conversation than a performance assessment. Even so, severely underperforming judges can be reprimanded or, in extreme cases even be dismissed by the Supreme Court. This actually never happens, as such judges usually are pressured in a friendly way to leave their position voluntarily. The Dutch system does have methods such as peer review, co-reading, and mandatory permanent education in order to safeguard expertise and legal quality. Judicial personnel policies are not very transparent however, the presidents of the courts play a major advisory role in promotion of judges.
Measuring individual judicial performance is a very sensitive issue, especially with a view to promotion decisions and judicial independence, also within the court. On the other hand, a rational approach is also necessary to select the best judges for promotion. Then the fairness and (internal) transparency of such assessment and selection processes is important, as preferences of executive office holders related to the content of past decisions of judges should not play any role. Questions here are in how far quantitative approaches or qualitative approaches to assessment or combinations of both are to be preferred. Anyway for the assessments judges – peers – should be responsible, regardless who takes the decisions to (re)appoint a judge in a higher judicial office (usually the government).

Apart from individual evaluations, there is the method of employee satisfaction surveys. These are part of the quality system in the Netherland, are used in Finland, and sometimes in France, but not in Italy and only sporadically Hungary. These surveys are an instrument that may give some insight for the management in the extent to which employees do engage in the work of the organisation, support its goals and feel recognized by their superiors.

Last but not least, it makes sense to measure the influx of cases and output of cases. This may lead to changes in allocation of judges and or court staff, or take measures that persons from other courts are (temporarily) moved to a court with a large influx of cases. Given the development of e-filing and electronic communications the transfer of cases to a court with lesser influx of cases may be an alternative consequence, also presuming such measures are in no way related to putting judges under pressure for career purposes. Monitoring the production, productivity and timeliness on the court level, on the national level and by case category is also very useful from a HRM perspective, as changes in caseloads may be connected to staff numbers and numbers of judges. On a national level, this presupposes common definitions and standardized registration methods. Standards should be defined when a case starts in a court and when a case leaves the court. It presupposes also adequate insight in the actual amount of personnel staff and judges in the courts, and in the amounts of money spent. This is easier said than done!

6.4. Measuring performance with a view to Management and organisation development

Every organisation somehow needs to monitor the flows of money and of the services/products delivered. For organisations in the public sector, this is not different, and this also applies to the courts.

It is possible to measure (average) productivity and (average) timeliness at different organizational levels from the court level to the individual judge–level, and different teams or departments in between, in a certain time period. Furthermore, it is possible to monitor court user satisfaction and also employee satisfaction. Organisations function in a context, and therefore the perception of the organisation by people in that context are important for receiving feedback. This may also involve periodic peer review: review of the functioning of a court by colleagues from other courts, and by some experts in for example business administration or public administration. It may also be handy to involve journalists. The tools developed by the CEPEJ apply on the court level and on the national level. However, as we have indicated above, this involves choices on what data should be shared between the local level and the national level.

Performance management and organisation development also require that for the measurements, certain targets will be set. Meeting those targets or not meeting those targets – and their explanation is most useful for management purposes.
The basic information concerns: court user and employee satisfaction surveys; production, production costs, productivity and timeliness of court decisions; number of successful challenges of judges; number of cases with exceptional long delays in a certain timespan. We do not approve of measuring the number of reversals in appeal. That information belongs to the judicial professional space. That indicator does not say much about the quality of judgments or about the professionalism of a judge, because reversals in appeal are also about differences of opinion on technical legal issues.

Usually, total quality management systems are very labour intensive, and in practice they have not been very successful (Norway, the Netherlands). Benchmarking based on local information, can be used by courts to share and apply best practices (Lower Saxony), or professional learning and organisation development (Rovaniemi) – and those have been successful.

In Italy court evaluation focuses on effectiveness and efficiency and aims at managing the courts accordingly. France focuses on speed of justice and productivity. Finland emphasizes productivity, economic efficiency, and timeliness, but adds also qualitative targets such as customer service. The focus on quality of the courts in Hungary also has a strong quantitative emphasis. The performance indicators for the courts are (1) incoming cases, (2) resolved cases, (3) backlog, (4) timeliness (length of proceedings), (5) workload, and (6) appeal ratio. However, practical difficulties can hinder the realization of targets. The Italian Judiciary does not have a workload measurement system (or a standard cost system) that clarifies the average working time needed to define a case (or its average cost). Due to this lacuna, all the planning is based on caseload measures that are just (rough) proxies of the workload of the unit. The Netherlands do have a very specific workload defining system that relates to each type of case.

It is important to notice that quantitative methods to measure performance on the level of a court or a court division usually has a strong control focus. Court managers need information about performance-to be able to take care of the well-functioning of the court organization. This does not need to be a complete overview of everything that can be measured. Organization development, or adapting work processes to new developments, usually are not a quantifiable process. For management purposes the required quantitative information needs to be limited, also in order to maintain enough professional space for the judges. Even so, candid communication between judges and management about ongoing concerns is necessary, and judges need to have enough organizational space in terms of time to focus on the content of their work. This means that it may also be useful to set standards for organization and management related activities for judges. An entirely different matter is, what information on the outcomes of these measurements, should be shared with the general public and the political domain.

6.5. Measuring performance with a view to accounting for public money spent (reporting to politics and to the general public) What are key topics for reporting to the public and to politics about the performances of courts and judges? What data should be in the annual reports?

Judicial organisations as part of the state organisation are full of paradoxes here. Judges should be independent, but in representative democracies, parliament is the ultimate authority with democratic legitimacy. Parliament authorizes legislation that judges should apply, the legislation for the judicial organization and the budget. Accountability and control are natural elements that are part of such systems. Reconciliation of accountability and judicial
independence is organized by putting judicial professionals in buffering structures, like an administrative council for the judiciary or a the management board of a court, together with management professionals. Another variant may be a separation of organisational responsibility via a ministry of justice and professional supervision via a council for the judiciary. Usually detached judges then take part in the work of the department at the ministry of justice. Legislation makes them responsible for the organisational functioning of the courts, and for the upholding of judicial values respectively. Such organisational patterns are normal within constitutional legal states. But that leaves the question open how the balance between informing policymakers, politicians and the general public with view to democratic control and preserving judicial independence should be struck. As the experience is, that also judges are sensitive to the normal managerial manipulation in organisations, we take a conservative stand in favour of judicial independence.

The first issue here is what information should be reported and the second issue here is at what level of aggregation the information should be reported.

Here we make a distinction between three domains: the political domain, the organisation and management domain and the professional judicial domain. The political domain should not know more than necessary to issue legislation and decide on the budget. The organisation and management domain should not know more than necessary to help courts and judges function impartially and independently, effectively and efficient from an organisation perspective. Because organisation and professionals interact, organisation and management should be dominated by judicial professionals. This also means that the information gathered by the organisation and management domain in judiciaries need not be shared with the political domain.

So for hierarchical control, reporting in numbers about performance is indicated. Regardless the possibility to develop quantitative tools to measure qualitative aspects of the functioning of a judiciary, we take the stand that this should not be done for reporting to the political domain where the subject of such measurements belongs to the professional judicial domain: knowledge management, consistency of judging, reversal in appeal, writing judgements, cooperation between judges and court clerks, peer review, and so on. What can be delivered are quantitative data on production, productivity and timeliness. The data may be presented per legal domain: trade, family, administrative, criminal and so on.

For this subject, we are aware that in some countries, like Hungary and Poland, a severe political distrust in the judiciary prevails, with efforts to achieve a strict control on appointments and on judicial performance also for the constitutional courts. In this report we do not go into the debate about the reforms in those countries. We just refer to our conservative stand that the political domain need not know everything that goes on in a judicial organisation and a court organisation, and responsibilities for management and organisation should be left with institutions like a council for the judiciary or the board of a court, trusting that they will act responsibly, also in light of emerging new circumstances.

One of the most important issues to be addressed here is the level of aggregation at which should be reported. This is not something to be taken lightly. Considering the level of IT automation in courts in many EU-member states, it is not difficult to measure individual performances of judges and court clerks, in terms of number of cases, number of judgments, timeliness of judgments and so on. We take the position that the level of the numbers reported on should be aggregated at the level of the individual court department (for example trade, criminal, family, administrative), so that court departments can be compared nation-wide, or that only aggregated numbers per legal field nation-wide should be presented. The question is
what a ministry of justice and members of parliament will do with detailed information, also in relation to the judiciary.

Of course, organization development in the judiciary may be reported upon on a general level to a ministry and to parliament. The data provided by the CEPEJ judicial systems report are on a national aggregate level. And so are the Justice Scoreboard data. Several countries publish information on the court level, so that comparisons between courts become possible. This may cause questions for explanations of differences in performances between courts. Because courts are very complex organizations, such explanations may be very difficult to accomplish accurately based on quantitative data only. We therefore take the stand that such comparisons do not belong to the political domain, if necessary at all, they belong to the responsibility of the management and organization domain of judiciaries.

The main method to report to politicians and the general public is reflected in the yearly target negotiations that are being held between courts and the Judicial Council and/or Ministry of Justice and/or Parliament. Finland employs yearly face-to-face target negotiations, and Dutch courts also have budget negotiations regarding their productivity with the Council for the Judiciary. In France the national court evaluation is primarily driven by the resource allocation process, to the point of being totally integrated to it. Hungary also has a central judicial administration, run by the National Office for the Judiciary, that electronically monitors all incoming cases and compares them to the number of resolved cases. Quantitative elements are most actively considered in the resource allocation. For the Netherlands, even monthly reports are sent to the Council for the Judiciary.

Another method employed to account for expenses to the general public are the annual reports on the performance of the courts by the courts themselves or by an inspectorate (Italy, Hungary, France, The Netherlands). Sometimes these reports are specifically aimed at a specific entity, e.g. the National Office for the Judiciary in Hungary, or the Council for the Judiciary in the Netherlands. It publishes annual reports with performance numbers for the courts. The above is summarized in the Table below, where evaluation methods are connected with the purposes of evaluations, in accordance with the scheme of Foss-Hanssen73 (see Table 1).

6.6. Reflection on performance measurement and management in judiciaries.
Considering the size and diversity within the EU, with (currently) 28 member states, it is quite problematic to measure court and judicial performance accurately in a comparable way, collecting reliable data that can be validly aggregated and compared. National court administrations use different definitions of performances and therefore, even if data have been registered accurately and reliably, they cannot be validly aggregated beyond the national level. From a data collection perspective, the CEPEJ judicial systems study depends on the voluntary cooperation of the member states, and the way the data are gathered are often not ideal. Also during our meeting with experts it was said that the collection of data according to the protocol is a cumbersome exercise.

The EU has limited competences in the national justice fields, but improving the effectiveness of national justice systems is a priority.74 This also implies the norms of the European Charter for fundamental rights, for example if it comes to fair trial rights and access to justice concerning the implementation of EU law in the member states.

---

Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice

### Table 1: Evaluation in the context of court administration and the judiciary

<table>
<thead>
<tr>
<th>Purpose of evaluation</th>
<th>Subject of evaluation</th>
<th>Evaluation method</th>
<th>Actors</th>
<th>Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional learning.</td>
<td>Professional knowledge (e.g. law, social map, technology) and skills (e.g. conducting hearings, writing judgments, peer review)</td>
<td>Qualitative, horizontal Peer review</td>
<td>Judicial professionals, judicial managers, HRM department</td>
<td>Judicial professionals, judicial managers, HRM professionals</td>
</tr>
<tr>
<td>Appointment, Promotion of judges</td>
<td>Professional Performance</td>
<td>Exams, peer review, personal evaluation, hierarchy</td>
<td>Judicial Professionals, Judicial managers, Judicial Council and/or Ministry of Justice and/or parliament</td>
<td>Judicial professionals, policy makers in court administration</td>
</tr>
<tr>
<td>Upholding Judicial values</td>
<td>Professional behaviour</td>
<td>Peer review, horizontal; supervision, hierarchy</td>
<td>Judicial professionals, judicial managers</td>
<td>Judicial professionals, Judicial managers</td>
</tr>
<tr>
<td>Consistency of case law, quality of judicial decisions</td>
<td>Case law</td>
<td>Legal analysis, on a case by case basis.</td>
<td>Higher courts, judicial professionals, Legal Academics, Lawyers</td>
<td>Judicial professionals, Legal Academics, Lawyers</td>
</tr>
<tr>
<td>Management, Organisation development</td>
<td>Functioning and performance of the organisation Service provision</td>
<td>Supervision; Combination of quantitative and qualitative performance monitoring; Horizontal and Hierarchical Complaints, court user satisfaction surveys</td>
<td>Professional management and Judicial managers, Judicial professionals, Court users</td>
<td>Judicial professionals and Judicial management</td>
</tr>
<tr>
<td>Enhancing efficiency and timeliness in case management</td>
<td>Cases flow and case management,</td>
<td>Registration and counting and calculations</td>
<td>Court director Judicial management</td>
<td>Judicial management, Councils for the judiciary, Ministries of justice, Judicial Professionals</td>
</tr>
<tr>
<td>Political control, policy development</td>
<td>Performance of professionals and courts</td>
<td>Supervision Quantitative, Hierarchical</td>
<td>Management and court administration services</td>
<td>Management and judicial professionals, policymakers</td>
</tr>
</tbody>
</table>
Clearly, the scoreboard has a political perspective, and therefore the quantitative approach seems justified. The subjects of the scoreboard concern subjects for justice policies – and those belong to the domain of politics, but they also touch on professional judicial matters. Often, to achieve policy aims, somehow some cooperation between the court administration and the legislators/politicians is necessary. Timeliness of court proceedings, for example, may depend on many factors such as the rules of procedure, case management capacity of judges, behavior (of representatives) of parties, availability of court rooms, flexibility of deployment of judges, adequate support staff in the courts, the functioning of automated case flow management systems, adequate number of judges and so on. And politicians cannot instruct judges on how to manage their cases, as this would be a violation of judicial independence, but they can take measures that enable judges to work more efficiently.

As a matter of course, judges can be asked to live up to their professional responsibilities. They may be asked, for example to take responsibility for necessary and inevitable innovations, for example with a view to ICT’s or to problem solving justice. Management of judicial performance and quality, however, should be in the hands of the judiciary, and also the evaluation of judicial professional performance. In this regard, it is also of importance on what level (individual, division, court, jurisdiction, national) data are gathered and shared with the political domain. Here, it may be helpful to discern between issues that belong to the political domain, issues that belong to management and organisation of the judiciary, the professional judicial domain, and issues that need cooperation between the political domain (a ministry of justice) and the judiciary. Usually, policy measures affecting judicial work are prepared while also asking the judiciary for advice. For example, new legislation may invoke a (temporary) growth of the influx of cases. All the more so, if policies aim at changes in, for example, access to justice, legal aid or changes in the judicial map, court fees and so on.

Summing up, measuring performance of courts and judges on the scale of the EU may be highly problematic from a methodological perspective, because the accuracy of the data gathered may be questionable and the data from one country may be not comparable with the data from another country – as is currently the case with data used in the Justice scoreboard. A (limited) unification of court statistics on the EU scale, of judicial performance standards and measurement and registration methods is indicated. The dearth of information assembled by the CEPEJ for the evaluation of judicial systems, therefore maybe flawed, because the required registration and data gathering processes are not standardized. For accurate information for policy development, the EU needs not only uniform performance standards and definitions, but also standardized data gathering and registration methods. The current methods for gathering data for the Justice scoreboard are not adequate.

A caveat is also indicated here. We have no clue whatsoever in how far all the measurement efforts in the countries we studied actually has contributed to policy measures. Often changes in justice policies, come from elsewhere: terrorism, austerity measures, problems with organised crime or transnational crime, coordination issues between the prosecutions office, the police and the courts; problems with family law, the development of ICT’s, European policies and so on. Then, the question becomes most relevant: why should measurements be shared on the national, or even at the EU level? Central governments used to be a threat to judicial independence and impartiality; in some countries in Europe that is true again, in other countries central government policies try to improve judicial functioning by fighting corruption in the courts. This, in itself, gives enough ground to only ask measurement results at the level of the EU that are a derivative of national and local measurements for purposes of
professional learning and organisation development – using qualitative methods. Such information, however cannot be compared quantitatively.

Even although on the continent of Europe, judges are generally seen as civil servants with a special status, political influence on the ways judges hear and decide cases is considered undesirable. Cutting back expenses for the courts, because they took decisions that contradict the parliamentary majority, is considered not done. Any pressure exerted by politicians on judges directly or indirectly, open or covered, to influence their decision-making is not allowed. Nonetheless, some coordination between managing judges in the judiciary, the national court administration and the ministry of justice (and parliament) is necessary. And this coordination should be informed with data that show the current condition of the functioning of courts and judges on the national level. This information may be based on quantitative measurements, and may also consist of qualitative information concerning issues and achievements of the judiciary.

Passing performance information on to a central level usually does not only aim to give management information to those at the controls of the national justice system; it is also a way to account for the functioning of the courts in the democratic process.\(^75\) That may involve acting strategically to prevent too much political intervention in court administration, and protect judicial independence.\(^76\) Of course, this may generate a debate about the obligations of courts and judges concerning transparency.\(^77\) And it is a task of politics to make choices on legislation and budgeting for the courts and the judiciary anyway. The quality of the information delivered to the politicians is crucial for the quality of their decision-making, and for the ways professionals in organizations may accept and react to political decisions. Furthermore, national court administrators may want to inform politicians about the (expected) effects of new legislation on the number of cases filed at the courts. Therefore a limited amount of information is necessary for coordination between managing judges, national court administrators and the ministry of justice (and parliament).

Below, we try a first answer on what should be measured and how, and for what purposes on the EU level.

### 7. Performance management and evaluation of courts’ and judicial performances.

As courts and judges in our study function in a national and European environment in different contexts of justice policies, organizations and management, we considered how the paradox between accountabilities and the demand of judicial independence may be solved. The solution, on the one hand is that politicians should be adequately informed about performances, with a view to development of effective policies in the justice field. On the other hand, court administration and court management should leave enough room for professional autonomy of judges and for independent and impartial judicial case work and decision making. The latter sets limits on the data that should be gathered and shared.

\(^75\) For a theoretical approach to accountability in general, see: BOVENS (2006).
Judges have their own domains of professional responsibilities; they fulfil their function also in a court organization, and this organization has to be administered and managed. This means that, in order to make both the political accountability and the management and organization development work, some interaction is necessary between judges and management, both with a view to professional performance and with a view to the management of the court organization. Furthermore, some interaction is necessary between the court administration and the political domain (ministry of justice, parliament) about the functioning of the courts, both organizationally and professionally. This can be done in many different ways, and the performances of the courts and judges are a subject in this interaction.

Generating enough information about the functioning of the courts to inform policymakers at the EU-level involves a standardization of norms for productivity and timeliness, plus a standardization of registrations. Other performance measures are to be derived of quality norms that relate to the services delivered by the courts: for example court users’ surveys and their follow up. Further norms should relate to selection and appointment and promotion of judges, to lifelong learning standards for judges, to innovation capacity, and to upholding judicial values of judicial independence and impartiality. Debates should take place about what will be reasonable norms to be set on productivity, timeliness, court services, innovation and judicial independence and impartiality.

For now, we think that the following indicators will not intrude into the judicial domain of case management and decision-making. They will deliver enough information for the European Commission to see how a national judiciary performs.

Quantitative information can be gathered on:
- Production, in case categories
- Productivity, in case categories
- Costs, in Euro’s
- Staff, and Judges in full time equivalents
- Timeliness, in case categories.

Qualitative information can be gathered on:
- Impartiality and independence - what indicators?
- Professional ethics and attitude – what indicators?
- Efforts to enhance judicial quality (within the judicial domain);
- Education permanente – what indicators?,
- Professional standards – what indicators?
- Efforts to enhance service quality (e.g. court user satisfaction surveys, mirror meetings)
- Quality of the interactions between politics, court administration, court management and judges.

This information can be gathered and reported on in annual reports, both in terms of numbers and descriptions of developments. For the gathering of information, definitions, and operationalization of definitions have to be designed, and standards must be developed for the reliable and accurate registration of data. Regular checks are necessary on the reliability and accuracy of those data. In order to reach this more restricted information should be gathered in a methodologically more sophisticated way than currently is being done for the Justice

scoreboard. We understand this is a challenge for the European Commission, that can be mastered with enough support from knowledge centers like universities and national court administrations.

References


CEPEJ (2016)12, Measuring the quality of justice, Document prepared by the CEPEJ-GT-QUAL on the basis of the preparatory work of Mr Fabio BARTOLOMEO (CEPEJ member, Italy), 7 December 2016.


Langbroek, Philip (2010) (ed) and research director, Quality management in courts and in the judicial organisations in 8 Council of Europe member states, CEPEJ 3


Mayne, John (2007). Challenges and Lessons in Implementing Results-Based Management, Evaluation, issue 13; p.87-109


Ng, Gar Yein, Marco Velicogna and Cristina Dallara (2008), Monitoring and Evaluation of Court System: A Comparative Study, CEPEJ Strasbourg.


Shapiro, Martin (1981), Courts, a comparative and political analysis, University of Chicago Press.


Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice
Something good? In search of new practices to improve the quality of justice in EU

Alina Ontanu: Researcher, IRSIG-CNR
Marco Velicogna: Researcher, IRSIG-CNR
Francesco Contini: Senior Researcher, IRSIG-CNR

1. Introduction

Research undertaken at national level is of key importance for promoting quality of justice not only at national level, but also at European level based on mutual learning and sharing of knowledge and expertise. This report is an attempt to fill in a current gap existing at EU. Until now most of the comparative efforts have been monitoring and providing data on the performance of national justice systems (e.g. the CEPEJ evaluation exercise and the EU Justice Scoreboard), but little has been done to identify concrete practices that are aimed at evaluation and improving the quality of justice with few remarkable exceptions. The present report is an attempt to move in this direction, providing a first reasoned collection of innovative practices that have been identified in the five member states considered by the research.

The present report relies on the same data that is used by the “Comparative Report” and the Report that discusses the methodological issues associated with quality evaluation and development to elaborate their findings. The report makes extensive use of the data regarding the national innovative practices individualised by the national experts as actions developed at local or central level to improve justice services. The ‘innovative practices’ are actions and approaches that have been identified at the forefront of evaluation and development of the quality of justice in the five analysed Member States (Finland, France, Hungary, Italy, and the Netherlands). While the Comparative Report focuses on making a systematic comparison and on identifying trends between national justice systems and the Methodology Report relies on the data to build up a discourse on methods of quality development and evaluation, the present Report relies on the national innovative practices (almost exclusively) to discuss how good practices can improve specific areas of court performance based on a theoretical framework.

National research has confirmed that innovative practices are context specific. First, innovative practice in one Member State may happen to be a well-established practice in another Member State. So, for example, while the weighting of cases as a basis for the allocation of resources is a ‘classic’ practice in the Netherlands, it is considered an innovation in Finland and it is not present in other countries. For this reason, while drafting the present


F. Contini (ed.) Handle with Care: assessing and designing methods for evaluation and development of the quality of justice. IRSIG-CNR. Bologna Available at www.lut.fi/hwc
report, the authors have decided to add some national experiences referred to in the National Reports as ‘classics’, as they add to the riches of existing practices and to the examples of activities that are undertaken within each analysed justice system to maintain and improve justice quality. They are all useful actions that can support the development of innovation across the EU, and a source of inspiration for all those involved in judicial reforms and quality of justice development. Second, although some of the innovations are common to more than one Member States, they should not be regarded as being generalised practices for all EU countries. There are preconditions that make a given practice work well in a Member States that may be absent in other cases. As this report reveals, new ideas and practices have found their way across EU justice systems, but the problem of knowledge and transfer of practices from local to national level and from national to EU level remains an open one.

Hence, the EU and national justice systems may benefit from further research aimed at investigating innovative practices and how these can be successfully implemented in other judicial context. This means to investigate and identify the critical factors that contribute to a successful innovative practice and facilitate its deployment at national level as well its transfer across EU Member States justice systems. From this angle, the variety of solutions found by the different judiciaries has to be seen as a source of richness and not necessarily as something to be harmonized. This richness has required some work to organise the practices in a meaningful way, so to provide a reasoned list of options that can be considered when assessing quality of justice or reflecting on how to develop in a given court or justice system. Practices have been developed to facilitate and support judges’ and clerks’ work, as well as users’ understanding of the judicial decisions and their satisfaction with the way they are treated in court. Other practices deal more closely with the optimisation of the use of limited resources, others address legal complexity and highly specialised areas of law. All these innovations focus on specific areas of judicial operation and their final aim is to improve some of the values that are at the bases of judicial administration.

Efficiency, timeliness, predictability (of judgements), competence, transparency, independence, fairness, appropriate treatment of the users are the values upheld by such practices. In order to keep comprehensive and straightforward the discourse on values in the national judiciaries, the report groups these values around three general principles that embrace multiple values. These general principles are legitimacy, legality, and economy. Section 2 explores their features and connection with the quality of justice. The following sections discuss national innovative practices looking at improving legitimacy (Section 3), legality (Section 4) and Economy (Section 5). Section 6 concludes on what the national innovative practices and actions reveal.

The initiatives presented and the analysis carried out is not intended to be exhaustive but to provide a step forward in the quest to better understand and share practices to improve the quality of justice. Additional research will be necessary and should be conducted in the future to analyse more in detail the innovative national practices and their outcome in terms of improving justice quality. This exercise should not be limited only to the practices the present report has selected to address, but broaden up the approach. The EU Commission is, probably, in the best position to support such effort.

2. Three general principles

Traditionally justice has been assessed from a legal perspective, meaning checking if the procedural and substantive law has been correctly applied in individual cases.\(^3\) In the mid-

1990s, the contraction of available resources and the expansion of new management approach have led to new challenges to European judiciaries expecting them to improve their efficiency, quality of services and accountability mechanisms.\(^4\) Delivering a good quality public service has to take into consideration not only the values expressed by the rule of law, but also organisational and managerial values such as efficiency, effectiveness, productivity, and user orientation.\(^5\) Hence, the evaluation of justice performance has undergone serious changes adding new forms of evaluation and accountability. The budget constrains have pushed for an evaluation and improvement of the performance of justice from a managerial approach.\(^6\) This has lead also to various tensions between professional groups (i.e., judges and managers) and basic values (i.e. independence and productivity), as well as conflicts between the public management approach and the different traditions of law and the judiciaries.\(^7\)

Still today a significant part of the evaluation of the functioning of the Member States justice systems focus on efficiency and/or effectiveness variables and indicators (e.g. the CEPEJ evaluation exercise, the EU Justice Scoreboard). However, the citizens and stakeholders perspective on the activity of the judiciary (other than timely adjudication) should not be put aside. As Contini and Mohr remark, in order ‘to understand and evaluate judicial work within its institutional context it must be assessed in accordance with the legitimate underlying expectations of the judiciary, the executive and the public.’\(^8\)

A very efficient (or effective) justice system could potentially suffer from a lack of an independent judiciary and/or miss fairness and/or deliver a poor treatment to court users. Hence, values contained within each of the abovementioned principles have their own place and importance in security a quality treatment of court users. An overweight or priority for the values of one of the principles – legality, efficiency, or economy - and actions directed to enhance only that perspective, while disregarding the importance of others can lead to imbalances such as high efficiency and effectiveness reached at the expenses of fairness, procedural justice, understandable and well-motivated judgement, or treatment of the users. The use of ICT tools for court case management systems have made initiatives to measure the quality of performance through systematic collection of statistics and quantitative data possible.\(^9\) This is effective in supporting or promoting managerial values that are easily measurable in quantitative terms (e.g. number of incoming, resolved and pending cases; time to disposition; clearance rate), but weak in promoting other crucial judicial values (e.g. rule of law, quality of judicial decision, protection of fundamental rights, fair


\(^6\) Ibidem.


Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice proceedings). **Legitimacy values** allow a **scrutiny** of the judiciary and the services it provides from the **public and/or user’s perspective**.

**Legality**

Judiciaries have a **long tradition of performance evaluation based on legal and judicial criteria**. Fairness, independence, impartiality and equal treatment have been promoted by specific institutional and procedural arrangements for the lawful appointment of impartial judges, the appeal proceedings, the judicial inspections or disciplinary boards. Tools such as dockets, folders, hearing records, have been consistently used to control the correct application of procedural and substantial laws.\(^{10}\)

In addition to this, **more recently**, codes of ethics and of discipline and complaints mechanisms have been established in many European judiciaries.\(^{11}\) Also, international courts, such as the European Court for Human Rights and the Court of Justice of the European Union, are offering venues of legal evaluation of judicial performance under the Article 6(1) of the European Convention on Human Rights\(^ {12}\) and Article 47 of the EU Charter on Fundamental Rights.\(^ {13}\) The performance evaluation based on a legal approach is well embedded in European judicial systems.

This well-established set of values, and the sound institutional and organisational arrangements supporting their application to concrete cases and the administration of justice in general, represent the **first general principle upon which judicial systems have to be based and assessed**. Examples range from the remodelling of the writing of court decision, with the introduction for example of the sentencing models developed in the Civil Justice Observatories in Italy, the development of statement of reasons and of a manual of methodology for the drafting of civil decisions in France, to actions to reinforce consistency of interpretation of legal provisions and developing common handling practices in court proceedings in the Netherlands, or for organising and sharing knowledge on EU law in Hungary.

**Economy**

In the last 20 years, many European courts adopted **managerial methods introducing goal-based performance evaluation approach**. In this case, evaluation is based on the definition of a well-established set of targets, reflecting values like efficiency, timeliness, economy, and easily measurable with quantitative indicators. Despite various tensions with the pre-existing legal approaches to judicial evaluation, the managerial approach is becoming a **key component of judicial evaluation**.\(^ {14}\) Economy, in its classical meaning of careful management of available resources, is now an established principle in judicial administration. Even the Commentary of the Bangalore principles of judicial conduct, an international standard written by judges for judges, acknowledge that: ‘The judge is responsible for the

---


\(^{13}\) Charter of the Fundamental Rights of the European Union, OJ C 83/389, 30.3.2010

efficient administration of justice in his or her court.\textsuperscript{15} This leaves room to the deployment of managerial techniques in properly functioning judiciaries. Examples range from the introduction of incentives to increase timeliness in the ‘Debrecen Model’ in Hungary, to the weighting of cases for resource allocation in Finland, to the output based financing mechanism built on standard costs, to budget negotiation between the funding body and the courts based on criteria such as the number of cases to be dealt with in a year in the Netherlands. This is the second principle contributing to upholding the balanced development of judicial systems and to their evaluation.

\textbf{Legitimacy}

The constitutions or constitutional principles of some European countries expressly affirm that ‘Justice is administered in the name of the people’,\textsuperscript{16} or the nation, or of some authority, as the Monarch, that on his turn represents the citizens. The \textit{principles of representation and democracy are relevant also to the judiciary}.\textsuperscript{17} Its legitimacy cannot be founded just on the principle of legality (lawful appointment of the judge, impartiality, pre-established legal proceedings, etc.). Some form of social responsibility and accountability strength its legitimation\textsuperscript{18}. Furthermore, the \textit{judiciary and the courts provide services to their users. Hence, citizens have the right to evaluate the judiciary and the services it provides}.\textsuperscript{19} The publicity of trials is an ancient practice instituted also to inform people about how justice is administered in single cases. Lay judges and jurors contribute to the involvement of external components into judicial administration.

More recently, \textit{various tools have been introduced to better grasp the evaluation of justice from a public perspective}. A growing number of judiciaries regularly conduct users surveys to assess the quality of the services they provide, or citizen’s surveys to estimate the level of trust or of legitimacy of the institution.\textsuperscript{20} At European level, a number of Eurobarometers have periodically collected the opinions of EU general public and businesses on the trust they have on institutions, including courts and judges. Some of the latest documents are the Flash Eurobarometers on perceived independence of the national justice systems in the EU among the general public and the EU companies\textsuperscript{21} whose results have also been taken over by the 2017 EU Justice Scoreboard figures (Figures 51-54).\textsuperscript{22}

Users can be interviewed in order to explore issues such as the waiting time, perceived fairness of treatment, if court proceedings were understandable or procedural justice clear. So,

\begin{itemize}
  \item \textsuperscript{16} For example, Art. 101(1) of the Italian Constitution.
  \item \textsuperscript{20} For example, research carried out by Italian National Institute of Statistics (ISTAT) in 2013 and 2015 on the experience of citizens with civil justice (documents available at http://www.istat.it/it/archivio/106081 and http://www.istat.it/it/archivio/190586).
  \item \textsuperscript{21} Flash Barometer 447 and Flash Barometer 448, April 2017.
\end{itemize}
for example, surveys are routinely used as part of innovative practices in the Netherlands, Finland, Italy, etc. A number of relevant improvements can be identified based on this approach. Hence, the ‘public perspective’ is needed to reconcile justice administration and democracy. This is relevant for a comprehensive evaluation of court performance, and represents the third general principle upon which the quality of justice should be understood, evaluated and developed.\(^{23}\) Additional examples of the attempt to provide better services and improve legitimacy range from the setting standards for public service delivery such as in the ‘Charte Marianne’ in France to the drafting of Social responsibility and Service charter by the Public Prosecutor Office of Bolzano in Italy, and to the stakeholders involvement for the services harmonisation and improvement in Rovaniemi in Finland.

The three principles seek to contribute to a balanced and inclusive evaluation of the quality of justice, weighing the economy principle with the legality and legitimacy principles. In looking to uphold and to develop the quality of justice all three principles – legality, economy and legitimacy – play an important part. A comprehensive and balanced approach needs to be followed in order to have an inclusive perspective on justice and justice evaluation. This three principles can be an inspiring solution in carrying out a justice system performance evaluation and cover a broad spectrum of values that are key in upholding quality justice services.

### 3. Legitimacy: focus on stakeholders and treatment of the parties

The opening of European courts to society is a relatively new phenomenon. Institutional autonomy is a guarantee of independence, and, hence, a pillar of the legitimacy of judicial institutions. However, autonomy can lead to isolation and the inability to tune up organisational behaviour and service delivery to citizens (users) needs, triggering public criticisms, and crisis of (social) legitimacy.

The national experts have identified several practices aimed at improving the interaction with users and establishing new venues of reflections between courts, users, and stakeholders, as well as new standards for service delivery. Some of the methods are the results of national initiatives and have been implemented on a top-down model across the country.

#### 3.1. Setting service standards for court users

A first way to improve communication with users is the establishment of front office and single access point within courts.

##### 3.1.1. Setting standards for public service delivery

A first French example is the ‘Charte Marianne’, which establishes criteria to be adopted to deliver high-quality reception services to courts and public sector users. The framework - developed in 2005 - has been revised in 2016 and now considers the opportunity offered by digital technologies (see FR-3.1.1.1)

The 44% of the ordinary courts are involved in this programme aimed at having courts ‘effective in responding clearly and systematically to the users requesting justice’ as with the Court of Appeal of Amiens. The Administrative Tribunal of Lyon provides a second example. The office facilitated the access to the courthouse in various ways. A staff member helps people with disabilities. Another one informs the litigant in simple and understandable terms,

---

identifies the person or the office in charge of the procedure, or the secretariat of the Chamber that deals with the case, and facilitates the preparation of files. Confidential discussion between lawyers and their clients can take place in dedicated rooms. The careful scheduling of the hearing reduces waiting times. Clear forms and letters, prompt feedback on the progress of the file add to an improved service for the court users. Information on the deadlines and the estimated date of rulings ease the planning of the proceedings. An annual online questionnaire provides the data needed to monitor the results reached in this field.

3.1.2. Implementing standards for interaction with court users
In a similar way, the ‘Single reception service for the litigant’ (Service d’accueil unique du justiciable - SAUJ) must be the first contact for litigants who come before courts, inform them about the proceedings and provide them with the relevant documents’ (see FR-3.1.1.1) A function not implemented yet, assigns to each SAUJ the duty of informing users and receiving deeds regardless the competence of the court itself. The ambition is to discharge the litigant with the searching for the right jurisdiction and the interaction with a potentially distant court. Nonetheless, two practical difficulties arise here. On the one hand, it is necessary to find a highly qualified staff, able to master the majority of the proceedings, and, thus, to perform a function previously attributed to multiple services.

3.1.3. Social responsibility and Service charters and guidebook
While the French examples are top-down, being SAUJ and Chartre Marianne part of centrally led reforms, Italy shows how bottom-up approaches can deliver similar results. Since 2004, the Prosecutors’ office of Bolzano implemented a project aimed at - among several other goals - improve the social responsibility of the organisation for the results and use of public resources (Progetto pilota di riorganizzazione e ottimizzazione della Procura della Repubblica di Bolzano). The project has been developed by the local prosecutors’ office and by a consulting company and has involved mainly prosecutors and clerks looking for better ways of service delivery. The Social Responsibility Report, the Service Guidebook and the Service Charter drafted within this initiative are the means used to improve the transparency but also the treatment of the users. (see IT-3.1) Various institutional players have considered this approach successful, and the Ministry of Justice succeeded in using European Social Fund to transfer the innovations to 200 Italian courts and prosecutors’ offices launching a large-scale action called ‘Deployment of the best practices project’. Despite the large-scale effort, the effects of the project have been ephemeral in most of the cases. The innovations introduced by the consultant companies, as the Social Responsibility Report, have been discontinued after the termination of the project and the Service Charters have not been updated in the majority of the offices involved. However, some positive side effects can be identified. Indeed, the effort contributed to change approach towards innovation of Italian judicial offices and triggered other initiatives.

3.2. Stakeholders’ involvement
Some other actions undertaken within the analysed Member States focus on upholding and improving legitimacy values through initiatives that seek to involve the local stakeholders in discussions and collaborations directed towards improving working practices for offering better justice services to users and improving working practices for stakeholders.

3.2.1. The redesign of service delivery in collaboration with stakeholders
The Tribunal of Monza (IT) is a remarkable exception to the short-lived innovations implemented by the ‘Best practice project’ mentioned above. One of the innovations
implemented in Monza is the reorganisation of the Voluntary Jurisdiction (i.e. guardianship cases) in which the judge is asked to issue protective and supporting measures defending vulnerable persons (usually physically or mentally disabled). Such cases - frequently dealt without legal representation - require the appointment of ‘legal guardians’ supervising the protected person. The involvement of local administration (social security services) may be needed to provide additional support. Newly dedicated web pages and electronic forms with barcodes allowing the automatic data upload into the case management systems support the procedure. Detached offices placed in seven cities inside the Court territorial jurisdiction offer information, assistance, expert advice and a digitally supported procedure to file the requests.

The collaboration within the Court and between the Court and external parties is the peculiar feature of the method used to redesign the system. Court staff, judges, lawyers as well as representatives of local administrations and NGOs worked together in two working groups to assess the system previously in place, to identify weaknesses and to redesign the service delivery. This approach eased internal collaboration and the mobilisation of external players now actively engaged in supporting legal guardianship cases in a classic co-production mode. Just apparently simple, this approach to quality evaluation (assessment of the previous system) and development of new working practices requires changes in deeply ingrained assumptions about the institutional identity of both courts and external parties. The traditional institutional isolation of courts and public bodies, and the belief that each institution is autonomous in organising and delivering their services has to be replaced by the understanding that services are the results of a collaboration between interdependent organisations. Hence new forms of cooperation between courts and stakeholders have to be pursued to improve service delivery. Of course, this has to be done in respect of the principles of impartiality and neutrality of the judiciary.

3.2.2. Collaborative services harmonisation and improvement

The well-known Rovaniemi project has contributed to generating new approaches to quality evaluation and the development of various areas of the national judicial system. The activities that it stirs have led to improvement of legal, economic, and legitimacy aspects. The approach (see FI-3.1) relies on annual quality cycles, steered by a Development committee composed of by courts' member and, after 2010, by representatives of stakeholders. Every year, four working groups with a mixed composition (judges, clerks, lawyers, prosecutors etc.) are established to assess and develop quality in four different areas. These are identified on annual bases together with quality targets that are ‘are kept small enough to make improvements in practice possible’. Most of the work takes place in the working groups through meetings and email communications. As other models described below, such working groups provides instances of self-reflection. The immediate result is a report that consider how to improve a given quality area.

The annual cycle is closed and re-opened by a yearly quality conference, during which reports are discussed, while new quality targets based on the improvement proposals of working groups are established and approved by the President of the Court of Appeal and the Chief Judges of District Courts.

Most of the work deals with improvement and harmonisation of procedures and legal interpretation, with various impacts on the treatment of the users. The focuses on the ‘conduct of the Judge in court as an element of procedural justice,’ (2004) or on ‘procedures when child is heard in trial’ (2007), and on the protection of ‘witnesses, parties and other persons to be heard during the different phases of criminal procedure’ (2009) have the goal of improving users' treatment. Also, the project has identified indicators of quality related to the treatment of the parties and of the public:
The participants in the proceedings and the public have been treated with respect to their human dignity

- Appropriate advice is provided to the participants in the proceedings, while still maintaining the impartiality and equitability of the court
- The advising and other service of those coming to court begins as soon as they arrive at the venue (courthouse etc.)
- The participants in the proceedings have been provided with all necessary information about the proceedings
- Communications and public relations are in order, where necessary
- The lobby arrangements at the court are in accordance with the particular needs of various customer groups.

3.3. Joint reflection
Professional dialogue and reflection on the courts’ activity are additional ways to improve legitimacy. A number of actions were identified in the analysed Member States.

3.3.1. Mirror meetings with court users
The Dutch Judiciary has been using Mirror meetings (spiegelbijeenkomsten) for more than 5 years to collect feedback from stakeholders. ‘In mirror meetings, customers of the judiciary can articulate their experiences with a specific court under the supervision of an independent moderator, while the judges and other staff of the court are only observing’. Such meetings can be organised to collect inputs from lawyers or citizens, hence allowing the collection of views from users with different needs and expectations. (see NL-3.3.1)

‘The mirror meeting has three rounds. In the first round judges and other observers [lawyers or citizens] discuss and come up with the agenda of the meeting. The second round is the actual mirror meeting. At this stage, judges are required to not engage in exchanges with participating respondents. The goal is to receive feedback. The observing stance of the judges increases the sense of safety and stimulates openness among the feedback givers, while the judges have room to listen and reflect.’

The third and last round includes a meeting with all observers (lawyers and citizens) to discuss and analyse the input received. In this way, the Court also provides feedback to lawyers and citizens involved in the mirror meetings.

In the Netherlands, the mirror meetings do not require the involvement or the support of the entire court, but ‘the support from the management and key figures in the judiciary’ is a minimum requirement. This seems to point out to the relevance of the legal and organizational context features for the potential uptake of innovative practices. The social context of this innovation must also be taken into consideration. In societies that are less open than the Dutch one, this type of meetings might be used to expose judges to stakeholders’ personal resentment and denigration or, in reverse, to glorify them hoping that will remember the appreciation in future legal procedures.

3.3.2. Peer review and intervension
As noticed in Italy, with the replica of Bolzano approach across the country (Best practice project), the transfer of good practices does not always work as hoped. In 2008, the École National de la Magistrature published the Intervision Charter, ‘a caring method of observation and reflection of the professional practices of judges, which is part of the improvement of the quality of justice’ (see FR- 2.3.1). Intervision is a kind of peer-review in which a peer evaluate behaviours or practices of a colleague. The assessment considers ‘what is seen (behaviour, listening skills, gesture...), what is understood (pedagogy at the hearing,
management of feelings, serenity during the hearing and the intervion, etc.) and other elements such as the management of audience time. Its main objective is not to show good practice but to allow the judge to consider her own practice.’ (see FR-3.1.2.1)

Hence the feedbacks provided by the peer are just used for improvement and are detached from formal professional evaluation mechanisms. The method and the Charter approved by ENM were inspired by the well-established use of intervision (or peer-review) made by the Dutch Judiciary (FR-3.1.2.1.; see also NL-3.3.4). However, the innovation was not supported by the Ministry of Justice, and has been discontinued despite the efforts of some Court presidents. The lack of funding to recruit experts to supervise the functioning of the intervision has been referred as other reason to explain the failure.

In Hungary, the ‘instructor’ judge has a peer review function for the apprentice judges. The ‘instructor’ judge will supervise the apprentice judge’s work. The latter can consult with the senior judge in their work, while the ‘instructor judge’ may attend the hearings held by the apprentice judge, read through the decisions of the apprentice, and give advices. In all this, the instructor will respect the judicial independence of the supervised judge.

3.3.3. Forums with stakeholders and community representatives

The implementation of Court Council (Conseil de jurisdiction for the French judiciary)\(^{24}\) is another measure of the Justice of the 21st Century programme (see FR-3.3.1.2). The Judicial Services Directorate tests such Councils in three Courts of Appeal and seventeen county courts since January 2015.

The Council is established by a legal provision – an amendment to the code of the judicial organisation – to open courts to society. The Court Council is co-chaired by the heads of the courts, and composed of judges and officials of the court and representatives of various bodies: the prison administration, the judicial protection of youth, representatives of the legal profession and NGOs, as well as elected and non-elected representatives (including member of the Parliament and of the local authorities).

Magistrates unions were sceptical about the measure, while the Courts Business Plan (another component of Justice 21) evaluation report, assesses positively the new forum. The report mention that court plans can be ‘enriched by [...] the collection of information on the situation of the territory, its dynamics and its burdens (state of the housing market, state of over-indebtedness, plans for dismissal, etc.). These are all elements that could allow the organisation of a service or require a transversal reflection on a dispute’. Also, the report suggests: ‘the court project might be presented to the members of the court council which moreover may, for some of its actions, be associated [involved] with its implementation’.

Even if this last possibility raised doubt about a potential threat to judicial independence, the Court councils - providing a forum for discussion with external parties - offers to the court a chance to better understand the context in which it delivers the services.

3.3.4. Joint reflection for shared solutions

The ‘Civil Justice Observatories’ (Osservatori per la giustizia civile) represent a bottom-up approach aiming for improvement in various areas of the justice system bringing together

\(^{24}\) Despite the similarity in the name, the French Court Councils (Conseil de jurisdiction) have very little in common with the Italian Local Judicial Council (Consigli Giudiziari). Indeed, the first is, a forum of discussion with local political representatives, without specific governance functions, while the Italian Local Judicial Council act as a decentralised governance body of judges and prosecutors, with precise tasks of judicial governance (career, transfer and appointment to managerial position). Local judicial councils in Hungary play similar roles to their Italian counterparts.
economic, legal, and legitimacy focused actions.\(^\text{25}\) The initiative relies on court groups organised at various tribunals. These groups manage to successfully bring together the entire spectrum of legal practitioners (i.e. magistrates, lawyers, clerks, Court managers, academics) organised on voluntary bases to analyse (observe) various fields of substantive and procedural law and establish common practices (see IT-3.2). The groups seek to address some (out of many) problems affecting the Italian civil procedures: legal uncertainty generated by continuous reforms, lack of resources, backlog, and public criticisms. These actions are carried out within the framework of existing resources of the judicial system.

The idea is that the collaboration between all those involved in the delivery of civil justice, an open discussion of the problems faced, and a joint search for solutions can lead to the identification of common practices that respect local constraints and are coherent with the existing regulatory framework. For this reason, the ‘Observatories’ should be better labelled as ‘Common praxis groups’.

The groups are based at the level of various Tribunals. They comprise some of the judges, members of the local Bar Association, court managers, and clerks. They work together to define and promote a shared interpretation of procedural or substantive rules, and address the multi-folded organisational problems that affect their court. Over the years they established standard practices in many areas including consistent application of substantive law in tort and divorce cases, hence increasing the consistency of decision making and the service to court users. Once a common solution is adopted, the agreement is brought to the attention of the president of the bar association and of the president of the court. It is quite common that the two apexes endorse the protocol with a formal signature. This reinforces the application of the protocol. The protocol is not mandatory, but being developed bottom-up and endorsed top-down (the two presidents) it provides a robust guidance for both judges and lawyers. Over the years, the court-based groups have established also some coordination mechanisms to share the analysis and the praxis (protocols) adopted at the level of different courts. The approach is now based on annual cycles of activities. The members (representatives) of the various court-based groups attend two or three national coordination meetings. This contributes to the promotion and coordination of the on-going initiatives at local and at national level. The ‘national laboratories’ are meetings on a specific topic (e.g. damage law (tort law), organisation and resources, family law, judicial and legal writings, hearing organisation) attended by all those interested in that argument. The coordination meetings are also the place in which the annual national assembly is organised. In such Assembly the work done in the ‘national laboratories’ is shared and further discussed, while new activities are identified and planned. As in other examples, the opening of courts to society occurs thanks to a joint inquiry and shared solutions between all those involved in the service delivery.

3.4. ICT for a better interaction with court users

The judicial digitisation in France (see FR-3.2.2.2) has entailed the development of digital instruments that can facilitate parties’ access to justice. In 2010 the ‘Portal for public access to justice’ (Portail d’accès grand public à la justice) was created. The Portail development allows an automatic processing of personal data and is part of a wider action that aims to achieve in the years to come (until 2021) a complete dematerialisation of the judicial process through the justice.fr portal. The complete dematerialisation looks to combine in a single ICT system the management of proceedings before all French civil courts and allow litigants and lawyers to follow the evolution of their proceedings by accessing an Internet portal. Justice.fr portal is conceived as a single entrance point for litigants offering free information 24 hours a

\(^{25}\) This project has led to the improvement activities that are related to more areas of the legal pillar as well as to the economic and legitimacy pillars.
day on legal proceedings, explanatory notes, making filing documents available for downloading, providing information on the competent court, calculating legal aid rights through a simulator, and allowing litigants to follow their civil or criminal proceeding online. In the long term, the portal should also create the possibility of filing a court case online, filling in online applications for legal aid, and receiving by email all documents of the proceeding. For administrative courts, part of these developments are already available for the parties through the Sagace application (i.e. parties can consult a summary of their file, have information on the events and the progress of the investigation, and the conclusions of the “public rapporteur” before the hearing).

In Italy lawyers and experts can interact with the court through the Italian Trial On-line infrastructure. In the case of the Offices of the Justice of the Peace (JoP), where parties can self-represent themselves, a dedicated on-line service has been developed. This service allows parties to have access to information on the status of proceedings in the JoP Case management system, fill in online appeals in opposition to administrative sanctions and injunctive decrees. The user can also provide an e-mail to receive communications and updates on the case. Furthermore, parties in a court procedure in the Tuscany region can, through a public access to the PCT and with the use of the National Services Smart Card or the Public System of Electronic Identity, access the court data associated to the party, in relation to the court registers of civil litigation, labor court, voluntary jurisdiction, Justice of the Peace, executions, real estate executions, and bankruptcy proceedings.

4. Legality: focus on decision making process

The analysis carried out in this Section focuses on one of the key areas of the legal pillar, the decision making process and judicial writing. The analysis of procedural rules, the assessment of their capacity to grant the due process of law, and the identification of methods to improve and sustain the judicial process is not part of the present endeavour. Indeed it would require a comparative judicial procedure approach that is outside the framework of this study.

In seeking to improve the decision making process a number of mechanisms and approaches have been identified at national level in the five analysed justice systems. Among the identified trends there are bottom-up or top-down initiatives to develop guidelines for judicial writing, achieving consistency in the decision making process, enhance the use of ICT to support judicial decision-making and judicial activity, and sharing of information and expertise. Most of the actions have a soft law approach regardless of their bottom-up or top-down development and secure a recommendation by professional organisations. The analysis of these convergent approaches and the sharing of common developments related to the legal principle can become a source of inspiration for various national and European actions that seek to enhance justice quality. They are not absolute solutions for securing justice quality, but their choice and consideration should be based on the appropriateness of specific actions within the architecture of the domestic justice system and national policy.

4.1. Remodelling the writing of court decision

One of the main national initiatives aiming to improve the decision-making process and to reinforce the legal pillar concern actions related to judicial writing. The actions undertaken in the five analysed Member States focus on providing support and orientation for courts and judges and/or making decision more accessible and easily understandable to the parties. The actions aiming to support court activities in drafting legal documents and decisions are based on drafting tools and models for decisions, statements of reasons, and procedural

---

26 This improved legal quality may in turn increase legitimacy.
documents (e.g. summons, hearing minutes, complaints, briefs), templates and pre-established structures or line of arguments for procedural documents, and style guides.

4.1.1. Sentencing models
Various national actions dedicated to improving judicial writing focus on establishing draft decisions models. Some developments have been established from a bottom-up approach by courts in collaboration with various categories of stakeholders (e.g. Civil Justice Observatories in Italy). Others have had a top-down path benefiting from the support of National School of Judiciary and/or Ministries of Justice (e.g. OARM and PERSEE in France).

As previously explained in Section 3.3.4 above, the Civil Justice Observatories in Italy (Osservatori per la giustizia civile) represent a bottom-up approach to the improvement of various areas of the judicial activity, including the drafting of judicial decisions (see IT-3.2). The court groups have contributed to the establishment of a number of model documents in the area of civil responsibility, family law, and tenancy law. These are available online for consultation and use by lawyers and judges.\(^{27}\) The models include a standard structure that the lawyers or the judges are expected to follow. In addition, the model documents that parties must submit to the court in matters related to civil responsibility include also example situations in order to facilitate the use of the documents and guide the party and his lawyer on the type of information they are expected to provide to the court.\(^{28}\) In family matters, some standard documents for the parties include a list of instructions that need to be followed (e.g. where the parties can obtain additional information, the steps they need to follow in case the conditions of the request change, where the parties should appear in court, information related to mediation the parties can decide to use).\(^{29}\) The model documents are set to streamline and facilitate the activity of the courts through uniform approaches to procedural steps that are necessary for the completion of court proceedings.

Innovative actions to support the drafting of court decision have punctually developed at various levels in France. One of these initiatives is OARM, an office support tool for decision drafting put in place by the Ministry of Justice to support lower courts (see FR-3.1.1.1). OARM was established in 2011 for family law cases and enables the judge to create models for their decisions relying on pre-determined formats and motivational blocks. Each judge can set his own data bank that he can use especially in handling repetitive type of litigation. PERSEE is a similar tool used in Nanterre for criminal judgments (see FR-3.1.1.1). It sets up a data bank containing: draft judgments, elements of decisions related to the substance of the law, and pre-determined questions of legal reasoning, as well as notifications that draw to the attention of the judge specific circumstances that might lead to the application of derogating rules in a case. The judge can thus make a pre-judgment. Besides, facilitating the decision making efforts of the individual judge and leading to a certain consistency of format, this approach speeds up the handling of disputes, especially repetitive type of claims.

4.1.2. Templates
These innovative approaches appear to rely on a top-down architecture initiated in a specific area of law (e.g. PROMIS developments in the Netherlands in relation to criminal judgments)

\(^{27}\) See www.osservatorino.it/modelli-atti/.

\(^{28}\) See, for example, 2052 – Citazione of the Tribunale di Torino; 2052 - Comparsa di risposta in materia in materia di responsabilità civile of the Tribunale di Torino; Indenizzo assicurativo – citazione of the Tribunale di Torino; available at www.osservatorino.it/modelli-atti/.

\(^{29}\) See, for example, Istruzioni e modulo per la separazione consensuale senza figli of the Tribunale di Torino; Istruzioni e modulo per la separazione consensuale con figli minori of the Tribunale di Torino; available at www.osservatorino.it/modelli-atti/.
or at a certain level of the court system (e.g. the development of statement of reasons in France). A bottom-up development has been established by the Rovaniemi project in Finland. The development of the statement of reasons in France was inspired by the case law of the European Court of Human Rights (see FR-3.2.2.1). This process concerns the decisions of the Court de Cassation and Conseil d’État. This process seeks to make decisions more understandable and acceptable for the parties. The Court de Cassation as well as the Conseil d’État have considered extending the statements of reasons of the decisions, provide a simpler presentation of the proceedings, make references to case law that is relevant for the decision, and even include a concluding section where the judge can explain to the parties the meaning of the decision. Another aspect of this approach has been the reshaping of the structure of the sentence, moving away from the traditional ‘unique sentence’ decision towards short sentences and paragraphs. In practice, the Conseil d’État has been more opened towards the development of this template.

In the Netherlands, PROMIS follows similar goals, namely: to improve the readability of the decisions and facilitating parties understanding of the arguments of the court, especially with regard to the evidence arguments and sanctions (see NL-3.3.4). The PROMIS method is an initiative of the Council for the Judiciary that requires the judgments to follow a particular template in their drafting (i.e. a particular order of discussed issues, facts). Officially, ‘fifty percent of all criminal judgments in the Netherlands must be conform the PROMIS-requirements’. Since 2010, a number of pilots have been established for enhancing the quality of civil judgments. These have distilled a number of elements for the quality of judgments, namely: legal thoroughness, readability and clearness, consistency, and procedural and material correctness. Together these lead to a judgment that is considered acceptable.

As previously explained in Section 3.2.2 above, the Rovaniemi project is a bottom-up approach to the improvement of various areas of the judicial activity, bringing together economic, legal and legitimacy focused actions. One of the most significant outcomes of this Quality project have been the Quality indicators among which categories of indicators related to the judicial decision. Among the quality criteria selected are: the justness and lawfulness of the decisions; the reasons used by the court to convince the parties and other interested subjects of the justness and lawfulness of the decision; the transparency, the level of detail and systematic presentation of the reasons, the comprehensibility of the decision; the clear structure of the decision, and the linguistically and typographically correctness of the decision; and the parties understanding the pronouncement of the decision. The process of implementation and development of customer or citizen oriented activities with the Court of Appeal in Rovaniemi involves actions to make the justification of the decisions transparent, logical and comprehensible for customers, as well as taking steps to make the decision

34 This project has led to the improvement activities that are related to more areas of the legal pillar as well as to the economic and legitimacy pillars. See further sections FI-3.1.
‘distinctly structured and detailed in terms of language and layout’. This uniformity of decisions is seen as promoting legal certainty.

4.1.3. Style guides

Identified practices have been developed by or with the involvement of the high national courts in France, Hungary, and Italy. The national initiatives dedicated to improving courts drafting techniques have also strong user orientation; hence, making the decisions more accessible for litigants and adopting a uniform language style. This also involved in some cases a process of moving away from strictly deductive statement of reasons of the judgment towards a reshaping the literary construction of the decision that would be more clear for the court user.

The Manual of methodology for the drafting of civil decisions (see FR-3.1.1.1) has been an action of the National School for the Judiciary (NSJ) in France. This initiative subsequently involved a process of obtaining feedback from the presidents of the Courts of appeal and the presidents of TGI. This was carried out on a guideline that was established by a working group involving members of the first instance court of Paris - a court which had already carried out a reflection on this topic and developed tools on this matter - a court of appeal adviser, and teachers of the NSJ.

After concluding this process, the manual was made available for the students of the NSJ, as well as on the intranet of the Ministry of Justice for all judges and clerks to be able to access it and read it. The manual establishes a set of main rules that should be followed in the drafting of decision, the legal and regulatory requirements, the clarifications provided by case-law that should be relied upon, and all elements drawn from good practices as well as some advice for the magistrates. This manual drafted for civil litigation allows new judges and more experienced judges to make use of various tools (e.g. drafted elements of motivation, elements of reasoning, methodological sheets presenting the applicable law). This document also led to the creation of a learning unit at the NSJ.

In Hungary, the ‘Stylebook’ is an outcome of the activity of a ‘jurisprudence-analysis group’ set up by the President of the Curia (see HU-3.3). A group was established to investigate and identify the shortcomings of the drafting practices for civil and administrative cases in 2013. One year later the assessment was extended to criminal cases as well. The initiative aimed to improve the drafting style and linguistic of judicial decisions (e.g. grammar, style, citations, structure, and the substance of the reasoning of the judgment). Curia’s institutional strategy emphasises particularly actions seeking to improve the structure of reasoning to facilitate the transparency and the persuasive force of the judgment, and to make use of arguments that are understandable for the general public.

Some samples of drafting according to the ‘Stylebook’ were published on the intranet of the courts. The ‘Stylebook’ is not compulsory for the judges, but ‘recommended for the Curia’.

It seems, however, that in non-criminal cases the judgments of the Curia now follow the same structure.

In Italy, the Observatories have also contributed to the establishing of guidelines on the drafting of judicial acts. These guidelines are the result of the work of several court groups.

36 Ibid. p. 50.
37 The Medium-Term Institutional Strategy of the Curia is available at kuria-birosag.hu/sites/default/files/allamprojekt/kuria_imprimaturahoz.pdf. In the medium term, the President of the Curia will determine the main principles of drafting and the fundamental standards of linguistic and stylistic clarity of the strategy. See further Section 3.3 of the National Report.
38 See HU-3.3.
39 On the actions of the Osservatori with regard to improving the decision making process, see also Sections 3.1.1 and 2.3.4 above.
Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice

and aim to enhance the clarity and concise drafting of legal documents to facilitate comprehension. Thus, seeking to avoid the use of repetitions, slang and old expressions, passive verbal constructions, long sentences, approximate punctuation, as well as maintaining a correct proportion between the number of questions to be examined and the consistency of the document that needs to be analysed.\textsuperscript{41} In May 2017, the National Assembly of the Observatories has agreed on 12 principles for drafting court documents. Some of these are dedicated to lawyers (e.g. a specific formatting of the text, citation of doctrinal works and case law, chronological presentation of the facts), while others regard the judges (e.g. drafting the decision in a manner that makes the reasoning the judge made clear, as well as the assumptions that led to the specific reasoning).

Although sometime the actions are directed towards the activity of certain courts or areas of courts’ activity, these national developments concerning drafting of court decisions are likely to have an impact directly or indirectly on the entire court structure. Furthermore, this contributes to an opening of courts’ activity to parties or potential parties’ needs, thus, reinforcing not only the legal elements but also contributing to enhancing the courts’ legitimacy.

**ICT for better judicial writings: the electronic judicial work-desk** is part of the development of the Italian Civil Trial On-Line (PCT). The Judge software interface has been provided with a drafting environment to support the writing of decisions, court orders and acts. This drafting tool has been realised within the MS Word/LibreOffice Writer and can be activated through the Judge software interface or directly by opening an existing document template.

When the judge generates a new document he or she can choose to use a document template depending on the act that needs to be drafted (e.g. court order, decree, injunction, minutes etc.). A document generated in this way draws directly information from the data present in the PCT court database, hence, the data available in the electronic case file, including, for example, the name and VAT number of the parties, their role in the proceeding, their legal representatives. The Judge can then add missing parts, make changes, or delete part of the text by making amendments as in the Word document.

The editing environment includes also additional functions such as the possibility to visualize all the summary data of the case file and of the selected template(s), it allows to insert the motivation points of the selected type of decision(s), the facts of the case, and the necessary references (from codes, law, court decisions), as well as carry out a check of the references and dates form the case calendar.

### 4.2. The rise of new judicial professional standards

In seeking to reinforce the decision issuing process, some national initiatives have focused on achieving a high level of consistency of decision and interpretation of legal norms. Such initiatives are the Professional standards in the Netherlands, the Civil Justice Observatories in Italy, and the jurisprudence-analysis groups in Hungary.

As previously explained in Section 3.3.4 above, the **Civil Justice Observatories (Osservatori per la giustizia civile)** undertakes initiatives with implications in various areas of the judicial activity. In seeking to improve the poor predictability of judicial decisions, practitioners, magistrates and academics meet regularly and work together towards the definition and

---

\textsuperscript{40} The **Osservatorio di Torino** has a prominent role in the development of guidelines regarding the drafting of procedural documents in the civil trial. See [http://www.osservatorino.it/protocolli/](http://www.osservatorino.it/protocolli/).

promotion of shared interpretation of procedural or substantive rules. When a common solution is agreed upon, this is usually endorsed by president of the bar association and of the president of the court. This reinforces the recognition of the standards and guidelines agreed upon by practitioners. Further, national coordination meetings promote local practices and seek to achieve coordination between initiatives.

Another national initiative that pursues activities involving professionals and stakeholders consultations to reinforce consistency of interpretation of legal provisions and developing common handling practices in court proceedings is the Professional standards in the Netherlands (see NL-4.1). The professional standards have been developed by criminal and administrative judges since 2012-2013 and embody the judges’ vision of quality of judicial performance. The standards have no binding force and judges are free to decide whether they want to follow them or not. They are designed as an instrument for the judges, not for the organisation or management. The standards have been developed and have evolved as a response to the tension between quality of judiciary work and the pressure to produce sufficient decisions in civil and criminal law. Their aims is to create professional space for judges as a reaction against too much managerialism in courts. Each court has its ‘implementation groups’ that confront the professional standards with the way the courts acts and whether this is according to the standards or whether additional change is necessary. The team coordinators will proceed to discuss with the court board the compliance with professional standards of the court and identify other professional standards towards which the activity of the courts should focus in the following year.

The professional standards have an influence on societal (e.g. legal unity), substantive (e.g. expertise) and institutional aspects (e.g. the judiciary as a branch) and function as a ‘facilitator for quality, regulation, and responsibility’.

In Hungary the legislation in 2012 established the institution of the so-called ‘jurisprudence-analysis groups’ within the Curia to address the uniformity of the Hungarian judicial practice. These groups typically consist of judges, law professors, other representatives of the legal profession, and at times other external experts as well. ‘The subject-matters are determined every year by the President of the Curia on the proposals of the departments of the Curia, but heads of the departments on lower courts, and other representatives of the legal profession and legal scholars may also make proposals to this agenda. The groups can analyze the practice of lower level courts and can identify and resolve (on a theoretical level) legal problems which not necessary reach the Curia in the ordinary way of appeal. In their published final report the groups can make recommendations in order to improve the quality of adjudication in a certain field.’

4.3. Knowledge Management

Organisation of knowledge and easy access to information and expertise can facilitate courts work, create transparency and contribute to consistency in the judicial process. National researchers in France, Hungary, and the Netherlands have identified and addressed specific actions directed towards enhancing access to legal knowledge.

---

42 The professional standards ‘have a societal (for example legal unity), substantive (for example expertise) and institutional relevance (for example the judiciary as a branch)’ and they ‘function as facilitator for quality, regulation and responsibility’. See further for examples of professional standards in criminal law, NL-4.1.
43 Changes related to professional standards might sometimes have financial implication for the courts’ budget. See further NL-4.1.
44 See NL-3.1.
45 Article 29 and 30 of the Act CLXI of 2011 on the Organization and Administration of Courts (hereinafter AOAC).
4.3.1. Channelling knowledge from outside

In France, Amicus curiae developed as an invitation of courts to professionals in various fields to provide their observations in cases addressing new or complicated matters that require the judge to have an in-depth understanding of, for example, ethical, economic, societal, environmental, etc. matters. Thus, an action whose objective is to facilitate decision-making through a better knowledge of the context that affects the decision and that is affected by the decision itself (see FR-3.3.1.1). The Conseil constitutionnel and the Cour de cassation have informally used this mechanism for many years, but its use has been institutionalised more recently (i.e. since 2010 for the administrative justice and since 2016 for ordinary courts, but limited to the Cour de cassation). However, the legislative text does not provide the means through which opinions and/or comments are to be brought to the attention of the parties whose case is handled by the ordinary courts. This makes it difficult for the parties to react to the opinions expressed by consulted experts in lower courts cases.

4.3.2. Channelling knowledge from inside

In Hungary, actions for organising and sharing knowledge took the form of EU law consultant network. Since 2012, this is organised and functions under the umbrella of NCJ (see HU-3.2). Originally, the network activity focused on providing training for the judiciary but then evolved also towards an informal group of information sharing. The President of NCJ gave this network a formal structure and the task to provide advice to local courts in matters affected by EU law, as well as continuing to provide compulsory training for judges in different fields of EU law. The members of the network are expected to undertake self-training actions, report on their activities (e.g. advices given, presentations, publication activity), and carry out an online self-assessment. The advising activities of the network provide indirectly a territorial and per court overview on the everyday EU legal problems the courts encounter.

4.3.3. Improved knowledge organisation within the judiciary

In the Netherlands the Organisation of Knowledge is part of the national move towards specialisation of knowledge (see NL-4.2) initiated by judges in 2015. Similar to the French Amicus curiae initiative the project seeks to address the increasing complexity of the cases and specialisation of litigation because information and knowledge is fragmented and not always clear where this can be found. The main objectives of this national actions are (a) establish knowledge networks; (b) organise the knowledge at local level; (c) arrange for (e-) libraries and central knowledge services; and (d) ICT innovations. Expert groups have been set at national level to organise knowledge networks in specific fields of law (e.g. international private law, civil procedure). ‘At local level the (national) expert groups correspond to knowledge groups. Some legal areas at some courts let their knowledge groups synchronize with the national expert groups’, but this is not the case for all groups. Furthermore, some knowledge groups are temporary while other are permanent, but the Organisation of Knowledge project looks to support the sharing of knowledge. The idea is to make all information available also digitally through a dedicated e-library. One of the main

46 CJA, Article R.625-3.
47 COJ, Article L.431-3-1.
48 This is not the case for the administrative courts for which the legal means for such exchanges are in place.
50 Ibid.p. 5.
51 Ibid.p. 5.
52 Ibid.p. 28.
approach is the idea of creating one central library instead of many local libraries and one digital library.\textsuperscript{53} ICT development should facilitate practitioners’ needs of organising and sharing knowledge in the future.

5. Economy: focus on timeliness and productivity

As clearly indicated in the Finnish national report, ‘delays in justice systems have been a matter of concern all over the world for a long period of time, but the reasons for delays are still little understood and proposed solutions have never kept up with the growth of the problem’ (see FI-3.2). Timelines and excessive delays are related to that of available resources, in terms of quantities available, but also of their more or less efficient use. The national case studies show how a consistent number of innovative practices have been developed in the attempt to improve the efficiency and timeliness of courts, hence improve the economy of the system. These initiatives go in the direction of increasing timeliness without increasing resources (number of judges etc.) but through incentives and case management improvement, through better knowledge (statistics, expertise) and better allocation of resources, and more active case management by the judges.

5.1. Incentives to improve timeliness

The ‘Debrecen Model’, a bottom-up initiative developed by the District Court of Debrecen (Hungary) to promote timeliness, is an example of how incentives have been used to increase timeliness (see HU-3.4). This initiative, launched in 2014, was developed as a response to the negative court performance – in terms of pending cases and large backlog of the previous years. While we focus here on the components more strictly aiming to improve the timeliness, the initiative has a broader scope including also the quality of adjudication and the staff and court users’ satisfaction. One of the key actions was to change the case allocation criteria to incentivise judges to complete cases more speedily and to make their work more effective. According to the previous criteria, each judge had to deal with the same number of pending cases. This meant that judges were not motivated to resolve cases speedily, as the more cases they resolved, the more they got. To solve this problem, a new system has been put in place based on which every month judges receive an equal number of new cases – independently of the number of pending cases they are dealing with. The notion of equal number comprises that of the weight of the cases being assigned.

The project also introduced new tools for the monitoring and administrative control of judicial activities. These methods ‘include, for instance, the tight monitoring of old cases pending over 2 years before the court, inspection visit to the hearings by senior judges, informal discussions with judges on the adequate and effective methods of organizing work etc.’ (see HU-3.4).

In addition to the new system of case allocation, the ‘Debrecen model’ introduced incentives to motivate judges to deal speedily with cases. Judges whose performance is identified as outstanding are rewarded with extra holidays or time that can be spent on training, study trips etc.

As to the result of this innovation, ‘[s]tatistical data reveal that the number of cases pending over 2 years has dropped significantly since the model was introduced, namely from 8.6% to 2.79% in a two-year time. Further figures show that beside the substantial decrease in the old cases, the backlog of the court in general has been reduced considerably in the last few years. (The number of pending cases was reduced from 1812 to 787 by the beginning of 2016.) The spectacular performance regarding case completion concerned both easy and complex cases’ (see HU-3.4).

\textsuperscript{53} Ibid,p. 22.
5.2. Taking advantage of existing statistical data

The Italian Strasbourg Projects, which have been presented in the Italian case study as classic examples of use of available data, show how the question of timeliness can be addressed through a change in the use of statistics at court and individual judge level and through a more proactive case management. The initiative was launched in the Tribunal of Turin as a new method of court management, based on constant monitoring of the pending cases, active case management for cases exceeding the established timeframes and professional leadership. It was called ‘Strasbourg programme’ because it was intended to reduce the risk of sanctions for the excessive length of proceedings by the ECHR. ‘The successful experience of Turin was an influential message to other courts, the Ministry of Justice, and the Judicial Council. It showed that remarkable results can be achieved also without major changing in the law by “just” applying good managerial practices and a strong commitment to fighting delays’ (see IT-2.4.3).

Building on this experience, the Ministry of Justice launched two Projects, Strasbourg 1 and 2 to tackle the excessive time delays in the disposition of cases through a more precise statistical analysis and a strategy customised on the specific reasons of delay. The system takes advantage of a new data warehouse which extract data about the cases from the court case management systems databases. These data are used as part of the electronic procedure workflow. Through this national database the Ministry of Justice has the possibility to monitor the caseload and caseflow of all Italian courts. The system was initially developed to monitor the civil litigation, and then it extended to criminal litigation as the electronic procedure was broaden to the court proceedings in this area. In addition to the caseload and caseflow data (number of filing, disposition and pending cases), the system provides data on the human resources employed by each court. The main result of this system is the possibility to rank the offices based on time to disposition, and to use the data for symbolic initiatives such as ‘visits of the Minister of Justice and the top echelons of the Ministry to the slowest courts’ (see IT-2.4.3). In relation to the possibility of using it as a basis of budget allocation, the system maintains some methodological limitations, ‘mainly due to the lack of the data needed to estimate the workload and correlate it with resources properly’ (see IT-2.4.3). While the system has a good caseload and workflow data, a weighting of the cases is missing and human resources data provides just an indication of the number of units but without differentiating between part-time and full-time. As a result, it is not possible to know if courts with better disposition time have better productivity or if delays are the consequence of an inadequate human resources or excessive workload (see IT-2.4.3).

5.3. External expertise for delay reduction

The Finnish Ministry of Justice implemented a different approach to delay reduction, based on idea of combining a new and fresh perspective of external expertise, internal participation and case statistics in 2006. This idea shaped up as a judicial process improvement and delay reduction projects carried out in several court of different instances following similar working methods procedures.

In the projects, which typically lasted between 2 and 4 years, the court procedures and practices are analysed with cross-scientific perspectives by improvement teams composed by external management experts and courts management and employees, thus combining knowledge and ideas of management and law.

54 This is constitutionally acceptable since the Ministry of Justice has the ‘responsibility for the organisation and functioning of those services involved with justice’ (Art. 110 Constitution), and should not hamper judicial independence since the officials do not discuss the handling of specific cases or their decisions on the merits.
The projects activities are developed in slow phased stages, including a preliminary analysis of the existing processes and improvement needs, planning the improvement initiatives, implementation of the improvement actions, and evaluation of the results. A key component was to give ‘the opportunity to different employee groups to participate in designing the improvement initiatives’ (see FI-3.2).

As a result of these projects, the courts implement new procedures such as:

- The definition of prioritization rules and handling time objectives for different typologies of cases.
- New work planning practices to manage the more complex cases, with initial scheduling and resources estimation, followed by a handling process of such schedule.
- The development of an ICT-based monitoring system, which provides time limits for each of the three handling phases and includes automatic alerts for when a case draws closer to or exceeds them. The system can be used as a tool for work planning and for manage the file since the early handling stages it signals the situations in which the cases are showing delays compared to the time-frames developed by the project. This system allows to ‘equalize throughput-times and reduce the number of cases pending’ over a reasonable time.55

Apart from the objectives directly seek, an important change concerned the attitudes of the personnel towards timeliness and excessive delays. Time is now perceived as part of the quality of the justice service and ‘handling time objectives have become an automatic part of everyday work’ (see FI-3.2).

This is clearly linked to the fact that the majority of the court personnel accepted the changes introduced and valued them as sensible. According to the Finnish report, the use of external expertise, systematic procedures for improvement, the active involvement of court managers and time given for the personnel to adjust to and influence the changes have played a crucial role in the success of the various initiatives.

5.4. Weighting cases

An approach developed in Finland focuses on the allocation of resources based on a weighted caseload system. The idea behind this initiative is that ‘workload and time needed to dispose of a case varies considerably between case groups and case types in courts’ (see FI-3.3). In Finland the system is used only to compare the workload between courts for resource allocation purposes and not to measure the individual workload or productivity of the judge or of the administrative personnel.

The weighted caseload system for the courts of general jurisdiction has been established for a long time. It is based on a division of existing case categories56 in one, two or three

---

55 ‘With the help of the alarm-system symbols and listings, a person can easily control his/her workload situation and plan the work according to the age of the cases. The data system also enables the managers to monitor the overall situation of pending cases and inventories easily online, as the pending case listings are available from the data system by the whole court, the departments, persons, subject groups, complexity, priorities and decision divisions’ (See FI-3.2).

‘As an addition to these symbols, also the whole time period of pending gets updated daily to the listing. The case lists in the order of age and the exceeding of alarm-levels are the following: first are the priority cases with three exclamations marks in the order of age, then normal cases with three exclamations marks in order of age, and so on. With the help of these different symbols it is easy to control the overall situation of different pending inventories: the exact age of cases, the number of cases over time limits, the number of priority cases, and complex cases’ (FI – 3.2).

56 Coercive measures, crime, summary, civil, land court, petitionary and insolvency cases (FI-3.3)
complexity sub-categories. The system also takes into account the ‘duration of the hearings and the composition of the adjudication body. According to the opinions of the court personnel surveyed on the topic, the system ‘is a reasonable base for resource allocation’. At the same time, critiques were raised in relation to ‘the lack of details and lack of consideration of the special features of different cases in the measuring system’ (see FI-3.3).

The weighted caseload system for the Administrative Courts was introduced more recently. Its design began in 2010 with a survey asking court personnel the time required in the various types of cases. This data was used to create four categories of cases according to the average time consumption, and involved an attribution of scores to these categories. Once again, ‘the overall opinion of the courts is that the system is appropriate and has potential to improve the accuracy of the performance measurement and the comparison between courts. Nevertheless, the categories and scores still needed to be tested in practice in order to get information and experiences about their actual functionality’ (see FI-3.3).

One important indication emerging from the Finnish experience is that ‘the appropriateness of the case categories and scores need to be constantly updated based on practical experiences’ (see FI-3.3). At the same time, ‘even a rough and approximate weighted caseload system is better than not weighting the cases at all’ (see FI-3.3).

The weighted caseload system is used as a tool to analyse the court’s productivity and backlog situation with better detail than just comparing the number of cases. It also provides the opportunity to better compare the productivity and resource utilization of the different courts. While the system can also be used as a guideline in allocating resources, The Finnish report stresses that it cannot be used as the only basis, as the court specificities need to be taken into account (see FI-3.3).

A somewhat different approach to the weighting of cases as a basis for the allocation of resources to the courts has been developed in the Netherlands. The resources allocation system has been developed as a two steps process. On one step the Council for the judiciary negotiate the budget with the Ministry of Justice on the basis of the quantity of cases to be handled proposed by the Council and the cost per case determined by the Minister every three years (after negotiation with the Council) on the basis of 11 groups of case categories. On the other the Council allocates funds to the courts in accordance with their production and considering other factors. At court level, for each case category (53 in total), the Dutch system provides an estimation of the average judge and judge legal assistant time that is needed to handle a case. The ‘cost per case’ is then calculated by multiplying the minutes estimation for the tariff per minute for each staff category involved. While court ‘production is not the only basis for the financing of the courts, but 95% of the budget for the courts comes from production’ (see NL-3.5.2).

Case weights based on the subject matter and complexity of cases have been established also in Hungary at the national level aiming to provide a tool for workload measurement, i.e. for comparing the workload of individual judges and ensuring a balanced workload between judges within one court organization. The system being implemented particularly by large courts since 2015 was welcomed by judges as it provides a more objective basis for case allocation. Case weights are not used in the resource allocation process. They are deemed to be an adequate means for workload comparison only within one court; each case weight is finally determined by the president of the court or those judges who are in charge of distributing the incoming cases (see HU-2.4.2.4).

57 A score of 1 was attributed to an ordinary criminal case. So, for example, an ordinary civil case weights 2,4, an average one 4,8 and a laborious one 9,5; while summary case can only weight 0,1 (See FI-3.3).
5.5. Empowering the role of judges in judicial proceedings

The role of judges in judicial proceedings tends to differ depending on the country and on the legal field. Innovative practices may go in the direction of changing this role where it is more passive to a more active one. This would allow the judge to be more in control of the tempo of the proceedings, avoid delays due to actions or inactions of the parties and therefore ensure timelines. In the Netherlands, for example, traditionally the judge is rather passive ‘in civil law proceedings (‘equal’ parties to the conflict) but a rather active […] in administrative proceedings (‘unequal’ parties to the conflict)’ (see NL-4.5). This difference derives from the current legislation, which attributes to the administrative law judge the competence to take such an active stance, for example by being able to add facts to a case on trial, but not to the civil law judge. This competence was given to the judges at the beginning of the 2000s in order to reduce court delay, but it took some years before the judges actively began using their power to manage the cases they had to handle. ‘To a certain extent, the QAI legislation will codify and streamline competences regarding the directive role [of judges] – e.g. asking questions to the parties, requiring more evidence, asking to hear an expert, making sure the proceedings do not drag on endlessly’ (see NL-4.5).

In addition of the possibility of a normative innovation, the Dutch case provides also for an organizational and managerial one, linked to the possibility for the judge to become a manager of the case, in line with the increasingly diffused principles of Caseflow Management. ‘The role of judges implies – mainly in the field of civil justice – managing judicial experts and the monitoring of their performances by putting more emphasis on the division of labour between judges and court clerks, and managing expert witnesses’ (see NL-4.5). This in the Netherlands is not just left to the individual initiative of the judge but is coupled with soft law tools. ‘The Dutch judiciary has drawn up detailed guidelines for expert opinions that concern the communication with the parties, the right to hear and be heard and impartiality’ (see NL-4.5).

5.6. ICT for the economy of courts proceedings

Distinct actions to interconnect courts and professionals have been undertaken in France (interconnection of the lawyers’ virtual private network - réseau privé virtuel des avocats (RPVA) with the courts virtual private network - réseau privé virtuel de la justice (RPVJ), and Judicial digitisation, Italy (PCT/TOL), and the Netherlands (KEI/QAI Legislation).

In France, the digitalisation process has been a somewhat fragmented process. Judicial digitisation, has led to an extension of the use of electronic communication since 2015, allowing a court to notify parties and transmit documents by email when consented by these. At appeal stage the filing leads to an the creation of an automatic virtual file that allows the lawyer to follow the case, for the judge to access documents of the proceedings electronically and sign the decision electronically, while for the parties it allows a direct access to a summary of the proceedings. An additional national innovation is the interconnection between the lawyers networks (RPVA) and the justice one (RPVJ) (see FR-3.2.2.2), which allows the secure exchange of documents and information between courts and lawyers, and have access to information about the schedule of court activities related to the case. A different approach has been followed by the administrative courts, through the development of the Télérecours application (see FR-3.2.2.2). The application allows the uploading of documents and access to the electronic case file and case data by lawyers and public or private legal entities providing public services. The use of Télérecours has become mandatory since 1 January 2017.

59 Lawyer connect through the RPVA
Mandatory digitalized procedures have been established through the **Italian Trial On-Line** (PCT in the civil justice domain and PPT for the criminal justice domain). The PCT infrastructure enables legally valid electronic communication and manages digital documents exchange using the standard national certified e-mail (PEC). The PCT integrates also with court case management systems and lawyers ‘applications, and allows remote data access for smartphones and similar devices. The case documents filed by the lawyers through PEC are stored in the court case management system. Acts so stored becomes available to the judge who can consult them and issue decisions through the Judge software application (Judge Consolle). Documents are synchronized and registers updated as the case progresses, in many cases automatically. Notifications from courts to lawyers also take place electronically, via PEC, with savings calculated in 55 Mln Euro per year. Lawyers can pay court fees through the PCT secure on-line payment system and serve documents via PEC to all parties present on public PEC on-line registers (which includes all professional orders, businesses etc.).

From February 2012 e-Communications from tribunals and Courts of Appeals in civil proceedings (from February 2016 for the Court of Cassation) can only be made electronically (19,290,586 of such communications were delivered in 2016). Furthermore, by mid-2014 it became compulsory for lawyers the e-filing of injunctions and pleadings in new cases in all first instance courts (by the end of 2014 for all pleadings) and by mid-2015 in all appeal courts. After the success of the Civil Trial On-line, also the Criminal procedure is going digital.

Another initiative in this area of national innovation is the **KEI/QAI Legislation** in the Netherlands. Presently the developments are in the implementation phase and share certain common aims with the Italian PCT. The initiative seeks to streamline processes and to digitalize legal proceedings, especially proceedings that occur regularly and routinely, making them quicker, simpler and more approachable.\(^6\) One of the key developments of this process is the ‘operationalization of “digital files” for all parties involved in specific proceedings’.

Recently, Hungary has also introduced electronic communication (and submitting case documents) between courts, lawyers and experts in civil cases. This will be extended to criminal cases in 2018.

### 6. Conclusions

The analysis of the practices implemented in the Member States to improve the quality of justice reveals a number of elements that can contribute to a better understanding of such initiatives, the current needs of the justice systems and justice service they seek to answer, but also aspects that have to be considered for their successful sharing and dissemination.

Many of these identified and analysed national practices have been developed as bottom-up attempts to address, at local level, weaknesses of the system. Such bottom-up actions are based on diagnosis – often made at court level – that identifies the quality areas that must (or can) be improved. They often rely on the use of already available resources (i.e. no – or very limited - additional funds are deployed for their implementation), and have managed to exploit the local reconfiguration potentials to improve certain aspects of the justice services. This is particularly evident in the Rovaniemi case in Finland, in the Debrecen Model in Hungary, and the Civil Justice Observatories in Italy, as well as in the development of new professional standards in Italy and the Netherlands, but can be traced also in other cases. Further, the fact that in many cases the innovative practices have been developed on the basis of local resources and peculiarities, resulted in problems with up-scaling these local actions.

---

innovative practices at national level. Often, this is due to differences concerning existing resources, organisational arrangements, commitment, collaboration between various stakeholders, etc. The possible implementation of the Debrecen model in other courts is open to question as the model is based on a complex managerial and motivational system, some elements of which reflect a new approach in performance management of the judiciary in Hungary. But the underlying conception of the model does not work for courts where the size of the judicial staff is too small to implement this weighted case allocation system. Other cases are provided by the Italian initiatives: namely, the ‘Strasbourg Programmes’, which is limited to statistical analysis, and the Turin Initiatives, which implement a broader set of case management principles. Similar, but even more pronounced problems can arise when an attempt is made to transfer an innovative practice from one national setting to another. This is especially the case when the minimal conditions for implementing such good practices are missing. As an example of such situation is the Mirror meetings in the Netherland. The minimal requirement for having Mirror meetings is having real functioning peer groups. In judicial systems where the courts organization is based on stronger hierarchical settings and where one or more participants in the meetings have the power to decide on the future carrier developments of the other participating members of the group. In such circumstances hardly, if any, critical thinking can be expected from these latter members. In these situations, the professional environment is not design or structured to allow a real open peer review or critical thinking, but it is likely to lead to actions that just attempt to please the hierarchy. The benefits of such innovative practice will not be actually transferred to an environment that does not have the right mechanisms and balances to allow a proper implementation of a particular practice. Thus, the French Intervision initiative, which was inspired by the Dutch Judiciary long established tradition of Mirror meetings, resulted in a failure and was discontinued.

When the Handle with Care project was launched, the researchers were expecting to identify a large number of initiatives focusing on improving the economy of judicial activities, this being the priority of almost any judicial administration in Europe. The research, however, traced initiatives addressed to develop other basic principles as legitimacy or legality. Furthermore, several practices identified by the study are developed to improve just one out of three basic principles. Looked at from this perspective, such initiatives can be seen as mono-dimensional, sensitive to the dangers of a tunnel vision or to zero sum games: namely, improving one value, but possibly affecting other that all together contribute to upholding justice quality. A practice addressed to improve economy, through better use of resources, can easily lead to a reduction of the time available to study the cases, and possibly to a reduction of the legal quality. This means that innovative practices which are directed toward improving a specific area that falls under one of the general principles may lead to neglecting values contained within the other two principles. Nevertheless, this danger of misbalanced actions to improve justice quality can be assessed only based on the realities of each national justice system and of each court. When this is the case, the actions undertaken can have a negative influence on the balanced construction of quality of justice. An innovation strategy too focused on partial interests may result in improvements in a narrow sense but also in a reduction of the overall quality of justice. The increasing attention towards establishing professional standards can be seen as a reaction to the growing number of actions seeking to boost the productivity dimension to the possible detriment of the quality of decisions and of the overall justice service.

The use of the three general principles as a comprehensive framework for diagnosis of the quality of justice when planning the implementation, monitoring or evaluating the outcome of
an innovative initiative may help to avoid this risk. This can be simply done through a joint reflection made within the court, through focus groups, or at national level taking advantage of surveys addressed to judges, clerks, and court users. Furthermore, some of the observed initiatives provide a more balanced and multidimensional (multi-principle) approach to the quality of justice. They offer more comprehensive actions addressing values that are framed within more than one of the three general principles. These are the Rovaniemi experience in Finland and the Civil Justice Observatories in Italy. Similar experiences exist also in other EU Countries outside the scope of the Handle with Care project, such as the Swedish quality work. Through their working method these initiatives seek to create forums of discussion and a dialogue process which involve court personnel and other stakeholders who participate in the co-creation of the justice service. These initiatives embed the idea of balancing values and work to improve at the same time more than one principle, and jointly supporting the social, the political, and the legal functions of the courts.

References

Supreme Court of the Republic of Latvia, Supreme Court of Lithuania, Supreme Court of Spain, Curia of Hungary.


Sapignoli, M. 2009. *Qualità della giustizia e indipendenza della magistratura nell’opinione dei magistrati italiani*, Padova, CEDAM.


Vecchi, G. 2013. Systemic or Incremental Path of Reform? The Modernization of the Judicial System In Italy. *International Journal for Court Administration*, 5, 64-87.

Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice
Annexes
The quality of justice in Finland: Executive summary

Petra Pekkanen

1. Classical judicial evaluation arrangements

This section provides a short summary of the main judicial evaluation arrangements in Finland.

Recruitment, training and evaluation of judges - An independent Judicial Appointments Board makes preparations and a reasoned proposal in co-operation with the court in question in filling of the permanent Judge and manager positions in the judiciary. Before making its appointment proposal, the board requests a detailed and versatile assessment concerning the applicants and an opinion about the nominee from the court that has opened the position. The focus is on the applicants' ability to perform the duties required in the position. A person appointed to a manager position need to have proven leadership skills and previous management experience in addition to judicial experience.

In Finland, judicial training has traditionally been based on practical court training in the courts and on the in-service training for Judges based on personal training needs and plans. From the year 2017, there have been special training-positions with comprehensive training program enhancing the career of a Judge. Judicial training board has also been established this year. The board is responsible for designing the in-house and internship training programs.

As independent and autonomous professionals, the Judges has the main responsibility for the quality and effectiveness of their work. The managers carry out monitoring activities regularly, but interventions are made only if clear problems or negative trends emerge. Productivity, timeliness and quality of judgments are the main subject of continuous evaluation of Judges.

The yearly development discussion between the Judges and the supervisors are central tool for evaluation. In the discussion the work and actions are evaluated and discussed diversely. The evaluation practices are directly linked to training and improvement. The evaluation data is used in assessing training needs and conducting personal training programs.

Evaluation of courts - The courts are independent in terms of quality evaluation. The external quality evaluation is concentrated on operational performance and legality control. The quality of court operations is evaluated mainly in the context of the national “management by results” system adopted for the courts in 1995. The budget and the performance targets for the courts are first negotiated and agreed on the level of the administrative sectors. After parliament’s confirmation of the annual State budget for administrative fields, the Ministry of Justice is responsible for drafting the overall budget and performance targets for the sectors. After the budget and targets are agreed for the administrative sector, each court has annual “face to face” budget and performance target negotiations with the Ministry of Justice representatives.

The main aims in the annual budget and performance target negotiations are to set performance targets and main actions for the following years, discuss the present state and results of previous year, as well as analyse improvement needs. As a starting point for the negotiations, the court management team prepares an overview and analysis of the results, basic statistics and situation in the court in the previous year and makes a justifiable proposal for the results, budget and resources for the following year. In the individual court performance negotiations, the protocol includes three main sections: 1) strategic framework, 2) performance targets and improvement actions, and 3) resources and budget.

The operational efficiency targets set and agreed as a part of performance targets and improvement actions in the negotiations are: productivity, economic efficiency and timeliness. There is a
weighted caseload system in use, where the different case groups have a weight score depending on the complexity and time/resource requirements. The accomplishment of the targets set are monitored statistically twice a year. The proportion of changed judgements by appellate court is a background information in the negotiation procedures. Statistic table of changed judgment in all district courts is conducted as an appendix for the negotiation document. Appellate courts controls the judgments by using 12 different codes on if and how the judgments have changed. The set targets and the system must not compromise the independence of the courts. This is why in the negotiations only the targets connected to service level and operational performance are set. The court sets independently other quality targets. Courts of Appeal have central role in evaluating the court activities in their jurisdiction. One is the inspection visits of the Court of Appeal to the courts in its jurisdiction from time to time (approximately every 1-2 years). The content of the inspection is to go through the quality and quality control, conformity of rulings, timeliness of decisions and discuss possible problems areas in the judgements of the given court. The Court of Appeal must make a report on the inspection. The reports are also provided to Chancellor of Justice and Parliamentary ombudsman. Practically all Court of Appeals have a quality improvement projects ongoing in their jurisdiction. Individual courts may also have their own quality projects. The projects vary in length and scope but are important frameworks and tools for court quality control, improvement and target setting. Often, the projects have yearly changing improvement theme and team. The most sustained and systematic quality project has been carried out in the jurisdiction of Rovaniemi Court of Appeal

**Resource allocation** - Resource allocation to courts is conducted under the same system of management by results and it is based on the same estimations of future workload and performance and agreed in the same negotiations. The number of staff (divided by tasks and permanent/temporary) and the amount of staff costs are the central resource negotiated in the process, but also other resources (e.g. equipment, rent, investments, and improvement) are part of the negotiations. Basis for the allocation are the current resources, pending workload situation and the estimation of the workload for the following year (using the weighted scores). The workload situation is relative settled and can be reliably evaluated based on historical data (thus only minor resource changes are usually required). The estimation of the weighted workload score for following year is the primary criteria in resource allocation. The weighted workload scores does not adequately cover the most complex cases, so the work time requirements for these and other possible special circumstances are customized and estimated separately. If large changes to estimated caseload or other circumstances happens between the negotiations, possibility for temporary extra resources is discussed and decided based on a justified application from the court. For Judges the cases are distributed randomly and evenly. In case of distribution the weighted workload scores are not used.

### 2. Innovative practices in quality evaluation and quality development

This section provides a short summary of three innovative practice carried out in Finland.

**Quality project in the jurisdiction of the Court of Appeal of Rovaniemi** - The quality project in the courts in the jurisdiction of the Court of Appeal of Rovaniemi was launched in 1999 and it is still on-going. All courts and most central stakeholders within the appellate jurisdiction participate in the project. The project has had changing themes throughout the years. Most famous report which presents the project is published in 2006: “How to assess the quality in the courts? Quality Benchmarks for Adjudication are a means for the improvement of the activity of the courts”. The core idea of the Quality project was to influence the most central factor from which the quality of justice depends: the expertise of the judge. As a result of the Quality project, collaboration between the courts in the jurisdiction has increased as well as peer-to-peer interaction between
judges. This has increased conversations between judges which helps to broaden horizons, maintain expertise and to advance the unity of judicial practices. During the Quality project personnel’s attitudes towards change has become more positive than before. The personnel has started to discuss more about the productivity of their work and the need for development has been assimilated. The Quality project has had the support of the judges and their utilization of the final reports have improved the unity of practices. Overall the Quality project has been successful and it has received both national and international acknowledgments (such as in 2005 The Crystal Scales of Justice Prize). The main reasons for the success have been the wide participation, bottom-up approach of improvement, strong practical relevance of themes and outputs and systematical approach for improvement.

Delay reduction projects – combining external expertise and internal participation - In 2006, the Finnish Ministry of Justice had the idea that totally new and fresh perspectives and expertise were needed in the battle against delays and for finding novel improvement solutions to the court system operations and processes. This idea was modified as a judicial process improvement and delay reduction projects, where processes are improved by melting expertise from operations management and law. As a result of the improvement projects, the courts have new work and management procedures in use. Examples of the new procedures include: work planning practices applying project control approach, follow-up and control system using time limits for each stage of the handling, procedures to plan and control the flow of complex cases and priorization rules for different case groups. The use of external expertise, systematic procedures for improvement, top management commitment and time given for the personnel to adjust to and influence the changes all helped the implementation of new procedures.

Weighted caseload system - In Finland, the estimation of workload of courts is measured through a weighted caseload system through which different time needs of the cases are recognized and taken into account. The weighted caseload system provides opportunities to compare the productivity and resource utilization of different courts more reliably and detailed. Naturally, the system cannot take into account all differences in the case requirements. It has been emphasized that the system can be used as a guideline in allocating resources, but the court specific situations need to be also flexible taken into account. It is also important that practitioners are involved in designing weighted caseload systems and that opportunities to give feedback are provided throughout the designing process.
The quality of justice in France: Executive summary

Caroline Foulquier-Expert

For historic reasons, the French judicial system makes a *summa divisio* between ordinary justice and administrative justice. The ordinary courts order is made of 168 first instance courts, 36 courts of appeal and a High Court (“*Cour de cassation*”), plus a number of specialized courts, while the administrative courts order is made of 42 administrative tribunals, 8 administrative courts of appeal and a Council of State (“*Conseil d’État*”). The Ministry of Justice is responsible for the management of the two orders but actually the Council of State is the real manager of all the administrative courts.

1. Classical methods for the evaluation of the quality of justice

1.1 Individual evaluation:

Selection:

Professional judges of the ordinary order are recruited as trainees to attend the National School for Judges (“*Ecole nationale de la magistrature*”). The selection is carried out by panels composed of ordinary judges and presided over by a Counsellor of the *Cour de Cassation*. The members of the administrative courts are recruited according to different processes. The members of the *Conseil d’État* are generally selected once they have graduated from the National school for administration (“*Ecole Nationale d’administration*”). Members of administrative tribunals and administrative courts of appeal are recruited through external or internal competition, or once they have graduated from the National school for administration. The nature of the procedure is not uniform and varies according to the method of selection. Concerning administrative courts, for instance, all competitions include eligibility tests, written tests and oral admission tests. Eligibility tests cover public law, economics, general culture, social issues and public finances. Admission tests are oral. They concern European Union law, international law, foreign languages and are complemented by an interview with the jury panel and a collective test of interaction. The aim is to ensure a satisfactory balance between the reviewing of knowledge, the evaluation of competencies and the detection of the aptitudes of the candidates. It is quite the same for ordinary judges. There is, in the two orders, a new trend concerning specifically the selection. To be sure of the “human” quality of the selected judges, some psychological questions are introduced for administrative judges and a psychologist is member of the panel for ordinary judges.

Continuous evaluation:

All the judges of the two orders are subject to a regular individual evaluation: every two years for the ordinary judges and each year for the administrative judge. In all cases, the assessment of judges takes the form of a professional interview. The interview gives rise to a discussion between the evaluation authority (heads of the court for “sitting judges” or general prosecutors for “accusing judges”) and the evaluated judge. It is then mainly the professional activity of the judge that is evaluated. For instance, in ordinary justice, the first step is to measure general skills such as common sense, strength of character, sense of responsibility, ability to decide, efficiency, initiative, respect for the litigant, availability, quality of relations with other judges, capacity to represent the judicial institution, etc. The evaluation authority shall then measure the legal and technical professional skills such as accuracy and extent of legal knowledge, ability to use and update legal
knowledge, analytical and synthesis ability, written expression, computer skills, etc. Skills that are specific to certain positions (head of court for instance) are measured by more specific criteria such as the capacity to implement judicial policies, organize and conduct meetings, etc. The results of the continuous evaluation have an impact on the assignment, promotion, transfer, mobility or secondment, and even, in some cases, the payment of “performance” bonuses in ordinary as in administrative justice.

One can regret that the individual evaluation in France is only a managerial evaluation, even if the manager (head of court) is also a judge. A few years ago, some judges try to introduce peer review but it was a failure due to the absence of will to spread the practice by the Ministry of Justice.

Judgments evaluation:
There is no evaluation of the content of the individual decision apart from the appeal way, but the evaluation made by the managerial authority on professional skills lead indirectly to an evaluation of the quality of decisions. Indeed the individual evaluation of the ordinary judges assesses the “overall appreciation of the analytical and synthesis abilities” or the “quality of the judge’s written expression”. It is the same in administrative justice where the authority in charge of evaluation assesses “how the law is applied, the quality of the written expression, the ability to decide, the understanding of the context of the contentious activity or even the efficiency and work capacity”.

1.2 Courts evaluation:
The evaluation of court activities in France is also of a managerial nature. The evaluation of courts by the litigants themselves is not a tradition in France. A users’ satisfaction survey was carried out in 2001 by the Mission of Research Droit et Justice (under the supervision of the Ministry of Justice and the National Center for the Scientific Research) and made by the Institute Louis-Harris. The objective was to determine the level of satisfaction of people who had to deal with justice (only citizens, not judges or lawyers) and to identify the hierarchy of factors that contributed to their final opinion. Another survey was carried out only 12 years later.
Moreover, the courts evaluation process is lead by the budgetary process: every year, the Ministry of Justice must describe in an “annual performance project” (“Projet annuel de performance”) the performance objectives to reach by the courts as a whole, then an annual performance report (“Rapport annuel de performance”) describes the performance objectives set out by the courts. At the local level, the evaluation process is based on a larger variety of objectives and indicators that are essentially quantitative, focusing on the speed of justice and the productivity of the courts, like in the annual performance project. Actually, the first objective of this evaluation is the budgetary rationalization of the functioning of the courts. It is part of the resource allocation process, to the point of being totally integrated to it (see infra). Each head of ordinary or administrative court has to reach these objectives and is accountable before the Ministry of Justice or the Council of State.
Two authorities are also implied in the courts evaluation: the Directorate-General for Justice (“Inspection Générale de la Justice”) for ordinary courts and the Permanent Mission of Inspection of Administrative Courts (“Mission Permanente d’Inspection des Juridictions Administratives”) for administrative courts (only tribunals and courts of appeal, not the Council of State). These two authorities operate according to similar processes: sending questionnaires to the heads of courts, on-site visits (after a preliminary interview with the head of court for the administrative justice), interviews and verifications, discussions after sending to the heads of courts a pre-report containing recommendations and finally a final report distributed within the inspected court. For ordinary justice, this final report is also addressed to the Ministry of Justice.
In this process, the qualitative approach is not an essential lever and there is weak room for manoeuvre at local level to develop qualitative policy insofar as there is no money surplus.
1.3 Resource allocation:
As already mentioned, the judicial evaluation process is highly depending on the budgetary process. The judicial resource allocation is developed in the context of the new legislation governing public finance, in French Loi organique relative aux lois de finances (2001). Each year, an annual law on State Budget is passed by the Parliament and the budget is allocated to the ministries for the following year. The Minister for Justice is accountable for ordinary justice budget (Program 166), whereas the Vice-President of the Council of State is accountable for administrative justice budget (Program 165).

Budgetary resources are based on performance objectives and indicators. Variety of objectives and indicators are designed to meet objectives aiming at “satisfying the citizen, the user and the taxpayer”. These are largely quantitative indicators which do not exclude nevertheless a qualitative approach. Some quantitative indicators may tend indeed to measure qualitative objectives. For example: the objective of “improving the quality and efficiency of ordinary justice” measured by the “average time taken to process a case”; the objective of “maintaining the quality of administrative justice” measured by the “rate of quashed decisions”.

Resource allocation to the courts is implemented within the scope of management discussion (in French “dialogue de gestion”) between the Program manager and the heads of court. Financial resources are not equally allocated among courts as they depend on their specific situation, but they are based on the same criteria and are not dependent on any bonuses, incentives or rewards for best practices in efficiency or quality.

2. Innovative practices for the evaluation of the quality of justice in France

Traditionally in France, the management of justice is highly centralized, which implies the courts enjoy very limited autonomy, at the budgetary level but not only. However, for ordinary courts as well as administrative courts, there is a recent phenomenon of taking responsibility for quality actions at the local level because there is no longer a central quality policy due to the lack of money. The Council of Satet is never against local initiatives that allow administrative justice to “shine” and be exemplary. The Ministry of Justice seems more reluctant, probably because of its impossibility to assume financially their spread to other courts.

So the innovative practices are characterized by their bottom-up nature. One can particularly mention the participation of the National School for the Judiciary in legal standardization. This is an example particularly interesting because this school for the training of ordinary judges does not have in principle a role to play in legal standardization, only in legal training. Its guide on the drafting of decision in civil matters has involved a number of judges for the drafting and the validation, and has been a success. What is interesting is the bottom-up approach of the drafting and the Ministry of Justice’s consent to its diffusion on its intranet.

Local initiatives on the search of well-being at work have also been developed. This is also an interesting practice for the bottom-up approach and because it is a field that has not been explored yet. The aim is to improve the working conditions of judicial and administrative staffs as a condition of the quality of justice for users.

In the objective of “opening justice and judges to the society”, courts councils have been created by the Parliament. It is however controversial in terms of independence of justice because of the reception of political/administrative authorities and civil society.

---

2 According to the code of the judicial organization: “The Court Council […] is a place of exchange and communication between the court and the city. It meets at least once a year.”
The quality of justice in Hungary: Executive summary

Mátýás Bencze, Ágnes Kovács, Zsolt Ződi

1. Judicial structure overview

In Hungary a four-level judicial system operates. The system is unitary, i.e. there are no specialized courts outside of the ordinary courts. There is a horizontal division of labor amongst judges in each court. This kind of division of labor is reflected in the horizontal organization of the judicial administration: in higher courts criminal, civil, economic as well as administrative and labor judicial departments operate. The departments organize and support judges adjudicating in one of the aforementioned branches of the law.

The Curia of Hungary is the highest judicial authority in Hungary. It decides appeals and reviews final decisions of lower courts if these are challenged through an extraordinary remedy (the Curia has no right to select the cases to be dealt with). Besides, the Curia publishes judgements and delivers ‘uniformity decisions’ in order to guarantee the coherence of the judicial practice at national level. Uniformity decisions are binding for all courts.

The President of the National Office for the Judiciary (NOJ) who is elected by the Parliament carries out the functions of central administration of the courts under a weak supervision of a self-elected body of the judiciary called National Committee of Justices (NCJ).

As for the current issues, there is an “evergreen” problem, namely the timeliness of the administration of justice and the case-backlog accumulated before 2012. A similar problem is that there have been regions in the country (Budapest and the Central Region of Hungary) which have been tackling with disproportionately high workload. This situation was worsened in 2012, when the legislation forced to retire almost 300 senior judges. In the past few years the NOJ initiated some amendments to the law in force and organizational changes aiming at speeding up the court procedure. As many figures show this effort has proven to be successful. Quality of judgments and understandability of judicial writing is a growing concern amongst judges and court leaders.

2. Classical judicial evaluation arrangements

Evaluation of individual judges - In Hungary usually the first step to become a judge is to work as a judge trainee within the judicial system (after graduating from a law school). Although according to the law, every person who passed the Bar Exam can apply for judgeship, the figures show that the vast majority of successful applicants start their judicial career as judge trainees. Lack of work experience outside the judicial administration can be a point of criticism.

In the selection procedure of judge trainees and judges there is a growing emphasis on skills and competences (besides legal knowledge). There are some statutory criteria that determine the ranking of applicants. The minister in charge of the judicial system issued the number of points to be awarded for each of the criterion. The key actors in selection and appointment are the Local Judicial Council, the president of the affected court and the President of the NOJ. Another point of criticism may be that it is the judges’ perspective that dominates the selection process, and societal expectations toward prospective judges do not exert significant influence on it.

Judge trainees and apprentice judges have compulsory in-service trainings held by mostly senior judges focusing on competences such as understandability of judicial writing and legal knowledge.

A new development is that each apprentice judge has an “instructor” judge who supervises her work (while respecting the independence of the supervised judge).

Judges are assessed firstly in the third and secondly in the sixth years from their appointment and after that in every eighth year. The assessment is conducted usually by the head of the affected
Department (who knows the assessed judge personally). She evaluates the quality of the assessed judge’s work from three aspects: the quantitative and the qualitative aspect of the judicial work as well as judicial skills are taken into consideration (a detailed list of assessment criteria exists). According to the relevant law and regulation the proportion of the quashed/changed judgments of the assessed judge is not an explicit quality indicator, but in practice it may have an impact on the outcome of the evaluation. If the result of the evaluation is ‘incompetent’, the judge must be dismissed (legal remedy exists against that decision). It can be said that evaluation of judges is also dominated by the perspective of judges (for example, parties’ satisfaction does not play any role in the evaluation). Besides, evaluation conducted by the immediate superior of the assessed judge can threaten judicial independence.

Court leader positions are filled by the way of an application procedure. The key players of this process are the presidents of regional courts (in cases of lower court leaders) and the President of the NOJ (in cases of all other court leaders). Court presidents are not managers, they are judges, but managerial trainings are organised for them by the NOJ. It is hardly a positive phenomenon that a great proportion of the application procedures were declared unsuccessful by the President of the NOJ (in 2015 almost 20%, in 2016 36% of all calls). Some consider this tendency a sign of an increasing central control over court leaders.

Evaluation of court activities - In Hungary a heavy emphasis is put on monitoring the activity of courts. The evaluation is highly centralized: the aim of the evaluation is to meet those long-term strategic objectives (primarily effectiveness and productivity) that were established by the President of the NOJ, and the indicators were determined at the national level. The evaluation process is characterized by a statistical approach which shows that courts work under strict control. A wide range of information on the activity of courts is collected at the court level and sent to the NOJ on a monthly basis. This information encompasses the number of incoming and resolved cases, the backlog (special attention is paid to the “old cases” that are pending over two years before courts) and the workload (case/judge) of courts, appeal and reversal rates, and data on the length of judicial proceedings.

External actors are involved to a very limited extent in the process of court evaluation: the use of customer satisfaction surveys is in its infancy. Recently, new methods for workload measurement have been developed: case weights and so-called ratio tables have been introduced. Case weights are used in the process of case allocation and aim to make the workload of judges within one court more balanced. The figures of ratio tables (incoming cases per authorized judicial staff in each court) provide information about the workload of courts and are meant to be used when decisions need to be made on staff allocation (filling vacancies). The Hungarian judiciary is constantly facing the problem of huge workload imbalances between the central region and other parts of the country: the primary tool for reducing pressure on judges adjudicating in courts belonging to the central region is judicial secondment.

There is no direct link between court evaluation and the allocation of financial resources. Only temporary national projects provide some extra resources for well-performing courts. It is the court president who bears responsibility for the performance of the court. The president of the court can be subjected to disciplinary proceedings in case of serious malfunctions in the court.

Resources allocation to courts - The annual budget of the court system in 2017 is cca. 321 millions of euros which is 0.67 percent of the annual state budget. Though in the last few years there has been a slight increase in the amount of the budget of the court system, budgetary support for Hungarian courts is rather low compared to the general European level. The budget of the courts is a separate “chapter” within the state budget in Hungary. The ‘external’ budgeting (i.e. the determination of the main figures) is formally the task of the President of the NOJ, who prepares the budget plan independently from the government. However, de facto it is determined mainly by the previous year’s budget (‘base approach’), the political bargains behind
Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice

the scenes, and other determinations, like, that more than 70% of the total budget is spent on salaries, and taxes.

The allocation of the freely expendable resources (vacant positions, and some 20% of the budget) within the organisation (‘internal budgeting’) is nearly entirely in the hand of the President of the NOJ. She is deciding on the filling or the reallocation of the vacant positions, as well as all other minor budgetary issues, like renovations, extra remuneration etc.

3. Innovative practices

1) As a recent development in Hungarian courts a mentor-judge network operates. Junior judges that need legal-professional support may turn to senior judges registered as “mentors”. Unfortunately, we have no data on the number of junior judges who use this opportunity.

2) Since 2012 a special organization is functioning under the umbrella of NCJ, the network of EU law consultant judges. Their main task is the consultation Locally in legal matters affected by EU law. This system is not only a tool for improving the judges’ performance, but is also gives a territorial and per court overview on the everyday EU legal problems of the courts as well.

3) In 2013 a jurisprudence-analysis group was set up to deliver inquiries into the drafting practice of the Curia judges in civil and administrative cases. A similar group was created in criminal matters a year later. Since the structure of decisions and their linguistic and stylistic level varied from one judge to another to a great extent, the objectives of the working group were to improve the drafting-style, the uniformity and the comprehensibility of judgments in order to meet the expectations of the general public. Their report suggested, inter alia, the standardization of the description of the subject-matters of the cases, the rationalization of citing previous decisions, the introduction of an internal numbering to the reasoning part, or compliance with the linguistic demands of the heterogeneous target audience. The report also proposed some changes on the substance of the reasoning, but some of them – for instance, avoiding reference to legal literature or the establishment of novel legal doctrines, and refraining from addressing the parties’ arguments which do not affect the decision – were highly surprising. The “Stylebook” which contains some samples for drafting was published only on the intranet of the judiciary in 2016. The ‘Stylebook’ is not a compulsory tool.

4) In recent years, a new strategy aiming to improve the timeliness and the quality of adjudication has been developed in the District Court of Debrecen in cases belonging to the criminal branch. The project was launched in the early 2014 in a bottom-up way and is built on three pillars: (1) timely and effective administration of justice, (2) staff satisfaction and (3) customer satisfaction. The project targeted a comprehensive change in the attitude of the staff, in all segments of the functioning of the court. A novel method of case allocation was introduced to provide incentives for judges to complete cases and make their work more effective. The former scheme was based on the system of “case equalization” in the level of individual judges: each judge had to deal with the same number of cases which meant that judges were not motivated to resolve cases as the more cases they resolved, the more they got. This scheme was replaced by a case allocation system which builds on the idea that judges receive the average number of incoming cases in every month with special emphasis on the different difficulty of the cases to be assigned (the guiding principle is “equal number of cases with equal weight”). Besides, a complex motivational system has also been elaborated which is directly linked to the performance of the judges. Statistical data reveal that the number of cases pending over 2 years has dropped significantly since the model was introduced, namely from 8,6 % to 2,79% in a two-year time.
The quality of justice in Italy: Executive summary

Francesco Contini

1. Judicial structure overview

The Italian judiciary is split into two major branches. The ordinary judiciary is a classical three-tier court system: Court of Cassation, of appeal (26), and of general jurisdiction (135) plus Justice of the Peace Offices (handled by non-professional judges), and Juvenile Courts. The specialised jurisdiction is not considered in this report.

Article 110 entrusts the Ministry of Justice with the organisation and functioning of judicial services (financial provisions, procurement, human resources including court managers, ICT development and deployment etc.).

The Judicial Council is the self-governance body of the magistracy (judges and prosecutors). It is composed of 27 members. Two third of them are judges and prosecutors, one third layman. Article 105 of the Constitution entrusts selection, assignments transfers and promotions and disciplinary measures of judges and prosecutors to the Council. In each of the 26 judicial districts operate a Local Judicial Council, with consultative functions in areas like the individual evaluation of judges, appointment to managerial positions, case assignment, court monitoring and organisation.

2. Classical judicial evaluation arrangements

Recruitment - The recruitment of Italian judges follows the bureaucratic model: periodical public competitions open to law graduates, based on three written exams and one oral examination. The candidates are mainly tested looking at the knowledge of the law on the books. Previous professional experience is not relevant. Hence apprentice judges are (relatively) young law graduates with limited prior professional experiences.

Apprentice magistrates attend a six months training course at the School of magistracy and 12 months as on the job training at courts and prosecutor offices. The length of the training process has been temporarily reduced to 12 months to speed up their entry into service.

Individual evaluation - The Judicial council evaluates judges with the support of Local judicial councils, the Ministry of Justice is not involved. The evaluation occurs every four years, based on a schema that is identical for judges, prosecutors and magistrates engaged in non-judicial functions (for instance at the Ministry of Justice).

The evaluation considers various sources of information, including a self-evaluation made of the magistrate, case-load statistic, not less than 20 judicial documents (including minutes of hearings and sentences) and side jobs, a report made by the head of the office in which the magistrate works, that must also consider complaints or other inputs received by the Bar.

Criteria encompass three "prerequisites" to the fulfilment of the judicial function: independence, impartiality and balance. They must be rated as “nothing to remark” or the evaluation is negative. Then, the evaluation process considers four other criteria: professional skills, productivity, diligence, and commitment. The Council has approved a detailed definition for each criterion, with the goal of making the evaluation objective and consistent.

Judicial writings are evaluated considering the clarity, completeness and synthesis, and their appropriateness concerning the procedural or investigative problems dealt with in such documents. Appeal rate or reversal rate are not considered, except for cases explicitly reported by the President of the Court.
The Local judicial council considers the information provided in the dossier and expresses an opinion. Then, the (National) Judicial Council expresses the final evaluation that can be positive (in more than 98% of cases, and associated to a salary increase), non-positive (mostly side effects of disciplinary sanctions) or negative (0,6%). Considering such data, it seems reasonable to state that the evaluation is not very severe in filtering poor performing judges (and prosecutors) and that with few exceptions, magistrates collect a positive evaluation every four years.

**Appointment to managerial position** - The appointment of judges and prosecutors to managerial positions requires another evaluation that takes into account merit and aptitude. Merit should look at the whole quantity and quality of the judicial activities of the magistrate and should be a kind of ‘consolidated evaluation’ of the periodic professional evaluations. Aptitude must take into consideration previous experiences in managerial positions in courts or prosecutor’s offices. Several detailed items define merit and attitude. Prospective candidates must attend a course organised by the School for the Magistracy to apply to a managerial position. The Council makes the appointment with the “concerto” (endorsement) of the Minister of justice that however is not binding. The mechanism in place still lags the capacity to make an appointment based on merit and attitude; political sponsorship by the different components of the Magistrates association represented within the Judicial Council, are still considered very relevant.

**Court evaluation** - The court evaluation system is made of three different components address to design court organisation, and to establish annual plans and goal. Laws, bylaws, and circular notes regulate the entire planning exercise in a very detailed fashion. **Every three years** each court drafts the “organisational chart” (tabella) through which judges are assigned to the sections, the criteria to assign cases to judges are established (natural judge principle) and performance and goals are identified. The establishment of the charts is a lengthy process that requires judges’ inputs, the assessment of caseload, and the drafting of a proposal (justified by statistical data and various criteria). Then, Local judicial council evaluate the proposition that, as the last step, has to be approved by the National judicial council (often with considerable delay). Charts are public; the Ministry of Justice is not involved. Every year each court establishes an **annual activity programme** within the blueprint provided by the charts. Such programme identifies organisational goals, (ex. the number of cases to be handled or closed by each court section or by each judge or case disposal plans to tackle backlog). This second procedure involves just judges. Always on annual bases there is a third step: the definition of the **court action plan** in which the goals established by the annual activity programme are coupled with human, technological and financial resources provided by the Ministry of Justice as well as policy priority set by the Ministry. This third exercise involves the Court president and the Court administrator, a civil servant appointed by the Ministry that is formally accountable for the use of resources. Such planning is time-consuming and should have clear consequences as the reward for the achievement or the correction of errors, but its the implications are not clear. The exercise does not influence resource allocation and there is no gap assessment; even symbolic rewards are absent. The planning seems self-referential, ritualistic and not linked to consequences.

The “Strasbourg” projects and the statistical monitoring – Since 2014 the Ministry implemented a more accurate monitoring of Courts' caseload and procedural delays, adopting some of the best practices established by the CEPEJ. The system looks at effectiveness (time to disposition) and efficiency (case decided by each judge). Furthermore, the system has helped to increase courts' accountability providing, for the first time, caseload data (filing, disposition and pending) correlated with human resources employed by each court. The results of the monitoring are ranks of the Italian courts based on different indicators, and tables with some data about the resources available in each court.
The statistical analysis stated that the delay is associated with the programming of individual calendars, and poor management of caseload. Furthermore, the analysis pointed to abnormal rates of litigation in social security and welfare cases in specific areas and identified a group of underperforming courts. Specific corrective measures have been identified and – at least partially – implemented.

Surveys are the less developed area of court evaluation. Few courts have conducted them on experimental bases. Lawyers and court users remain outside official evaluation of courts efficiency and quality.

**Resource allocation** - Staff planning is the pivotal decision regarding resource allocation in labour-intensive organisations as courts and prosecutors. Judges and prosecutors' staff plans are established by decree of the President the Republic based on a proposal of the Minister of Justice” that gather requests and inputs from the Judicial Council. Staff plans establish the maximum number of magistrates working in each office. Staff plans are changed every few years but do not correspond to the real number of units operating in a given office at a given time. Indeed, the budget posts and the magistrates in service are regularly below the thresholds established by the plan due, mostly, to the lack of financial resources.

To fill the vacancies, the Judicial Council identifies the offices in which new staff units are needed (a selection of the courts in which there are vacancies) and publishes a “calls for vacant positions” open to all the magistrates with the necessary qualifications.

Then, a public competition (primarily based on seniority) is held to select the judges who will take that posts. Since some courts (placed in remote areas or with relevant backlog) are not appealing, there are incentives for judges appointed to those offices. However, such offices tend to remain understaffed. The same mechanism is in place for prosecutors. Staff plans works also for the administrative staff that are recruited and managed by the Ministry.

The procurement of ICT, equipment, facilities etc. is centralised. The budget the court can spend autonomously is short, and the outcry about insufficient resources is common. The expenses needed for the conduct of judicial proceedings (wiretapping, experts witnesses etc.) are however dealt with a different set of rules and are considerably under the direct availability of official in charge of the proceeding.

The process of resource allocation is the most significant weakness identified. Despite the efforts to provide technical justifications, political criteria seem to be at the bases of staff plan definition. The system creates overstuffed and understaffed courts. The range of court efficiency (cost per case) and effectiveness (time to disposition) is extensive; no clear link between resource allocation and quality dimension can be identified. The lack of resources pushed many courts to look for additional resources asking collaboration to local and regional administrations, bar associations, and other donors including banks and industry associations. Sometimes intermediate such as “judicial foundations” bodies have been established to receive and manage the additional finances used to recruit staff or to reimburse graduate students in training. With this approach, courts are necessarily pro-active and open to society, but at the same time makes courts vulnerable to external pressures and raises potential issues of judicial independence and impartiality, not well considered in the public debate.

**3. Innovative practices**

Many innovative practices have been promoted and implemented in the last ten years, up to the point that the Judicial Council has made an inventory and established dedicated web pages to upscale local good practices at national level.

There are bottom-up actions, launched to face the decrease of human and financial resources and primarily to improve efficiency and effectiveness through organisational and technological
innovation. There are also some national initiatives financed by EU structural funds. The latter, despite consistent efforts, have not left visible results in most of the offices involved, while bottom-up actions seem to be more promising. Among these, the “Civil Justice Observatories” (Osservatori per la giustizia civile) are court based groups of judges, lawyers, court managers, clerks and academics organised on voluntary bases to analyse various fields of substantive and procedural civil litigation and establish common practices. They manage to upscale from local to national scale thanks to different coordination mechanisms such as national meetings on given topics (family law, judicial writing, ICT) and the annual meeting of all the courts involved in the project. Also, they manage to define and agree shared interpretations of procedural laws, and sentencing grid. The Court of cassation endorsed the work of the Osservatori as the right sentencing schema to deal with compensation for personal injuries. Other benefits are improved uniformity in various practice areas, streamlined procedure and hence efficiency and judicial consistency. The understanding that justice is primarily the result of cooperation and co-production among judges, clerks and lawyers is a side effect of such action.
The quality of justice in the Netherland:
Executive summary

Philip Langbroek & Rachel Dijkstra

1. Judicial structure overview
The Council for the Judiciary (Raad voor de Rechtspraak) functions as the central management board of the judiciary and is part of the judicial system but has no competences regarding the content of judicial rulings. The Council for the Judiciary administers the courts and has organized the judicial system into three major types of jurisdictions: civil, criminal and administrative. The first two jurisdictions comprise three types of ordinary courts and the last one three types of special courts. The Judicial Organization Act (Wet op de Rechterlijke Organisatie or ‘Wet RO’) institutes the courts and determines their competences. The composition of the courts is different in each instance. Usually, district court judges hear cases on their own but a panel consisting of three judges must hear the most important or serious cases – this is decided by the court. The Ministry of Justice as co-legislator is responsible for the (delegated) regulations in the judicial field. These regulations comprise the court map, the legal position of judges, rules of procedure, the administration of justice, legal aid, court fees and so on.

The Dutch administration of justice has had to deal with several issues and changes over the years. First, an alteration of the judicial map resulted in a reduction of the total number of courts from 24 to 16. Second, the judiciary saw Rechtspraak decline. Rechtspraak is the common quality management system for the judiciary. Lastly, the judiciary criticized the complex financing system of the judiciary and budgetary reductions applied over the years. At the end of 2012 many Dutch judges signed the so-called Leeuwarder Manifest to protest against the aforementioned financing system. The main critique was the overly focus on production and targets. The judges felt like they did not have sufficient time to prepare their cases and that there was an overly focus on targets instead of quality. After the Leeuwarder Manifest the Council for the Judiciary has moved towards the judges. They asked the judges what they needed to provide high quality judgments. The judges responded with the drafting of professional standards [see Innovative practices].

2. Classical judicial evaluation arrangements
Individual evaluation - The Council for the Judiciary has the authority to recruit and select judges and other court officials. Judges in the Netherlands are appointed for life (till the age of 70) under the authority of the Minister of Security and Justice. The Council has instituted a national judicial selection commission in order to select and recruit new judges. The national judicial selection commission emphasizes the need for public engagement in its candidates, intellectual and analytical capacities and elements such as persuasiveness and empathy. If the judicial selection commission reaches a positive conclusion, they forward prospective judges to the respective courts. The courts make the final decision on whether to hire a new recruit and pay specific attention to potential for teamwork and collegiality.

After prospective judges are accepted they enrol in initial judicial training and become fully-trained judges after completion of the training. The duration of the training depends on the amount of previous legal experience. If a prospective judge has two to five years legal experience, the initial judicial training takes four years. If you have five or more years legal experience you can enrol in a different and shorter track.

There are no specific numbers on all diversities within the courts. However, in 2016 46 new judges started the initial judicial training program (RIO-training), of which 22 had substantial legal experience (more than 5 years). In terms of gender, at the end of 2015 the majority – 56 percent – of
the judges on the level of lower and higher courts were female. In terms of diversity there are no numbers, but several judges acknowledge the lack of judges with diverse (ethnic) backgrounds.

Once judges are a member of the Dutch judiciary, they automatically are subjected to the overarching quality system Rechtspraak. Each court is also subject to evaluation. The information generated by Rechtspraak is used by the boards of the Courts and eventually the Council for the Judiciary to improve the quality of the judiciary – both on the level of judges and the judiciary as an organization.

At the level of the judge, Rechtspraak focuses on impartiality and integrity and expertise. The following paragraph discusses Rechtspraak regarding courts. There are several indicators – from the system for measurement of judicial performance – in place to measure these values. Courts and the Council for the Judiciary assess the quality of these values in regard of judges. For example, there are specific norms for the required permanent education of judges. Courts measure and keep score on whether their judges comply with these requirements, which essentially lead or at least is supposed to lead to legal quality and expertise of individual judges. However, the information is not used for the systematic and individual evaluation of individual judges, but only for the whole of the court and as aggregated information on the level of court divisions and teams. Courts are only held accountable for the overall level of the judges, e.g. the fact that 80 percent of the judges in a specific court have met the permanent education threshold.

Hence, he specific effects of measuring the different indicators in light of the linked core value are not entirely clear on the individual level. If judges do not meet the required norm for peer-to-peer coaching and co-reading, the courts hardly ever address this issue. However, on the level of human resource management – which stands separately from Rechtspraak – there are consequences of the level of quality of a specific judge. If a judge does not perform his duties conform what is expected of him or her, this leads to improvement conversations with the supervising judges.

**Court evaluation** - The main actors in court evaluation are the Council for the Judiciary and the management boards of the respective courts. As mentioned before, Rechtspraak is the main evaluation framework. Generally speaking the measuring instruments reflect mostly on the performance of the judiciary as an organization, whereas the normative framework incorporates values and indicators to measure quality on the level of (individual) judges.

At the level of the court as an organization the focus is on the treatment of litigants and defendants, the consistency of jurisprudence, and speed and promptness. The instruments to measure these core values include a court wide position study every other year, audits, a customer evaluation survey, a staff satisfaction survey and visitations. In terms of speed and promptness the Dutch courts have national guidelines, or regulations on processes, that govern the moment of inflow and outflow of cases with the use of specific criteria.

The speed and promptness of completing cases is a major topic given its societal relevance. An issue with throughput times is the fact that some elements, such as illness of judges, is not always reflected in the process descriptions. Therefore the measured throughput time can be higher than is expected. In general it is very difficult to get cases registered properly, in terms of procedural steps, and this is a focal point for most courts. The results of the evaluation system are presented to the public through reports.

**Resources allocation to courts** - The Ministry of Security and Justice annually determines the budget for the judiciary, based on the financial budget of the Government. The Judiciary currently receives an annual contribution of around 1 billion euro’s. Negotiations about the budget for the courts are part of the negotiations with the Ministry of Finance, also based on the Government Accounts Act (GAA). The production of cases is measured at the individual courts by the courts themselves and the Council. Then these production results lead to a budgetary proposal from the Council to the Ministry, after which the Minister proposes the budget as part of the budget for the Justice department to Parliament.
Hence, the allocation of resources to the courts is mainly performance-based. Budgets for year x are calculated by allocating minutes to different categories of cases, and then by calculating the number of cases decided multiplied by the numbers of minutes (per category of cases) – \( p \times q \) (price x quantity). The ‘Q’ is (annually) proposed by the Council based on (1) the expected inflow from the forecast model; (2) the work stock at the beginning of the year; (3) The desired work stock at the end of the year.

3. Innovative practices

1) **Professional standards.** In addition to Rechtspraak judges have been developing so-called ‘professional standards’ since 2012/2013. These standards embody the vision of judges on quality of judicial performance. Professional standards are originally intended to be by and for the professionals and to provide a certain level of responsibility to each other. The agreements lack any binding force for judges and are meant for internal use. The standards therefore need a wide support among the professionals. The standards have evolved from the tension between the quality of the judiciary and pressure to produce sufficient cases or verdicts. The professional standards could be a ‘codification’ of existing, informal agreements to provide counter pressure to the existing workload and financial pressure. Moreover, in general society’s demands have increased, which means the judiciary does not longer have the surety of trust.

2) **Organization of Knowledge.** Another current development in the Netherlands is the move towards more specialization of knowledge. Judges in the Netherlands have started in 2015 to develop the so-called project “Organization of Knowledge” for and by the professionals. The problems this new project aims to address are the increasing complexity of cases and more specialized litigators. The idea is that the current body of knowledge is rather piecemeal and not always transparent in terms of where to go to get information. The main goals of the project are fourfold and intend to establish knowledge networks (a); organize knowledge locally (b); arrange for (e-) libraries and central knowledge services (c); and ICT innovations (d)

3) **Reflection meetings.** Another innovative practice is the use of reflection meetings (spiegelbijeenkomsten), of which there have been more than twenty-five across the Dutch courts. In reflection meetings customers of the judiciary can articulate their experiences with a specific court under supervision of an independent moderator, while the judges and other staff of the court are only observing. It depends on a specific reflection meeting who is invited to participate, for example lawyers or citizens, so where the reflection is coming from.

4) **Digitalization (KEI legislation).** A fourth innovative practice constitutes the KEI legislation, which stands for legislation on Quality And Innovation. The aim of KEI/QAI is to streamline processes and to digitalize legal proceedings, especially proceedings that occur regularly and routinely. KEI/QAI is in the process of implementation. The judiciary aims to be more accessible and understandable and KEI/QAI is supposed to make the procedures quicker, simpler and more approachable

5) **Directive role for judges.** Lastly, the Dutch courts have adopted the idea that judges need more of a directive role when leading court proceedings. Traditionally this role differs per type of legal field, for example a rather passive judge in civil law proceedings (‘equal’ parties to the conflict) but a rather active judge in administrative proceedings (‘unequal’ parties to the conflict). The current legislation incorporates competences to incorporate such an active or directive stance, for example by being able to add facts to a case on trial (administrative law judges)
The evaluation and development of the quality of justice in France: Annexes

1. The French Judicial System

FRENCH JUDICIAL SYSTEM

COUR DE CASSATION
(last APPELATE COURT)

1. Chamber CIVIL
2. Chamber Commercial et Immobilier
3. Chamber Social
4. Chamber Criminal

CONSEIL D'ETAT

COUR D'APPEL
(COURT OF APPEAL)

Administrative Court of Cassation

1. Chamber CIVIL
2. Chamber Commercial et Immobilier
3. Chamber Social
4. Chamber Criminal

1. Council of State (Conseil d'Etat)
8. Administrative courts of appeal (cours administrative d'appel)
40. Administrative Courts (tribunaux administratifs)
30. Specialized administrative Courts (Cour nationale du droit d'asile, etc.)

2. Table presenting the number of administrative courts
3. Table presenting the number of French ordinary courts

<table>
<thead>
<tr>
<th></th>
<th>Ordinary Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cassation instance courts</strong></td>
<td>1 Cour de cassation</td>
</tr>
<tr>
<td><strong>Second instance courts</strong></td>
<td>36 Courts of appeal (<em>Cour d'appel</em>)</td>
</tr>
<tr>
<td><strong>First instance courts</strong></td>
<td></td>
</tr>
<tr>
<td>Criminal Courts</td>
<td>Civil Courts</td>
</tr>
<tr>
<td>106 Criminal Court of Law (<em>cours d'assises</em>)</td>
<td></td>
</tr>
<tr>
<td>168 Local Criminal Courts (<em>tribunaux correctionnels</em>)</td>
<td>168 County Courts (tribunaux de grande instance)</td>
</tr>
<tr>
<td>307 Police Courts (<em>tribunaux de police</em>)</td>
<td>307 Lower Courts (tribunaux d'instance)</td>
</tr>
<tr>
<td>210 Employment tribunals (<em>Conseils de prud'hommes</em>)</td>
<td></td>
</tr>
<tr>
<td>136 Commercial Courts (<em>tribunaux de commerce</em>)</td>
<td></td>
</tr>
<tr>
<td>307 Agricultural Land Courts (tribunaux paritaire des baux ruraux)</td>
<td></td>
</tr>
<tr>
<td>114 courts in charge of social security matters (<em>tribunaux des affaires de la sécurité sociale</em>)</td>
<td></td>
</tr>
</tbody>
</table>
4. Selection process of professional judges of ordinary courts

Selection as Court auditor

- Competitions
  - First competition (Master’s degree in law)
  - Second competition (4 years of work in public)
  - Third competition (eight years of experience in private sector)
- Selection on title
  - Doctor in Law
  - Master’s Degree in Law and 4 years of legal activity

Side selection by direct accreditation

- Direct accreditation on title
  - Seven years experience in legal fields (legal function, justice administration)
- Direct accreditation after competition
  - Master’s Law Degree and 7 years experience in the legal, administrative, economic or
### Table presenting the detailed training of court auditors

<table>
<thead>
<tr>
<th>Sequence</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immersion internship in a County Court</td>
<td>1 week</td>
</tr>
<tr>
<td>(tribunal de grande instance)</td>
<td></td>
</tr>
<tr>
<td>Internship in lawfirms</td>
<td>22 weeks</td>
</tr>
<tr>
<td>Studies</td>
<td>28.5 weeks</td>
</tr>
<tr>
<td>Penitentiary Internship</td>
<td>2 weeks</td>
</tr>
<tr>
<td>Judicial Internship (37 weeks in all)</td>
<td>1 week in registry service</td>
</tr>
<tr>
<td></td>
<td>5 weeks in lower courts (tribunaux d'instance)</td>
</tr>
<tr>
<td></td>
<td>8 weeks in county courts (tribunaux de grande instance)</td>
</tr>
<tr>
<td></td>
<td>7 weeks in Prosecutor service</td>
</tr>
<tr>
<td></td>
<td>4 weeks in investigation judge service</td>
</tr>
<tr>
<td></td>
<td>3 weeks as criminal judge</td>
</tr>
<tr>
<td></td>
<td>4 weeks as visiting magistrate (juge d'application des peines)</td>
</tr>
<tr>
<td></td>
<td>2 weeks in investigation service</td>
</tr>
<tr>
<td></td>
<td>4 weeks as minor judge</td>
</tr>
<tr>
<td>External Internship</td>
<td>8 weeks in probation service</td>
</tr>
<tr>
<td>Choice of the appointment</td>
<td>1 week</td>
</tr>
<tr>
<td>Theoric preparation to new functions</td>
<td>5 weeks</td>
</tr>
<tr>
<td>Court of appeal Internship</td>
<td>1 week</td>
</tr>
<tr>
<td>Preparation to new functions internship</td>
<td>12 weeks</td>
</tr>
</tbody>
</table>
6. Individual Judge Assessment

COUR D’APPEL D ANNEES 2015 & 2016
INSTITUTION DE DETACHEMENT

APPRECIATIONS DU CHEF DE JURIDICTION
ET RESUME DE L’ENTRETIEN PREALABLE

Nom :
Nom d’usage :
Prénom :
Situation de famille :
Fonctions exercées :
Juridiction :

______________________________

DESCRIPTION DE L’ACTIVITE DU MAGISTRAT
(à remplir par l’évaluateur dans la seule hypothèse où celui-ci ne serait pas totalement en accord avec la description opérée par le magistrat)

Le présent document, à remplir par le chef de juridiction, le directeur ou chef de service, est divisé en 2 thèmes et est clôturé par une appréciation d’ordre général.
Pour chacun des thèmes, il convient de rédiger une appréciation littérale, illustrée par un tableau.
Vous trouverez ci-dessous la définition des qualificatifs utilisés (exceptionnel, insuffisant…) et de certaines rubriques.
La colonne «non renseigné» de la grille ne peut être utilisée que très exceptionnellement (mutation très récente, rubrique non pertinente eu égard aux fonctions exercées).
Il convient ensuite de renseigner les rubriques spécifiques à la fonction exercée par le magistrat (chef de juridiction, ou secrétaire général ou MACJ…).

DEFINITION DES QUALIFICATIFS UTILISES

Exceptionnel : cette qualification doit être attribuée aux magistrats qui maîtrisent avec un degré éminent de perfection leurs missions et dans lesquelles ils sont parvenus à un parfait niveau d’efficacité. Il est impératif de motiver cette appréciation qui doit rester d’un emploi particulièrement restreint.
Excellent : cette qualification est attribuée aux magistrats qui maîtrisent leurs missions avec un très haut niveau d’efficacité. Cette qualification doit rester d’un emploi restreint.
Très bon : cette qualification doit être attribuée aux magistrats qui maîtrisent et accomplissent remarquablement leurs missions.
Satisfaisant : cette qualification doit être attribuée aux magistrats qui remplissent leurs fonctions correctement.

I - COMPETENCES PROFESSIONNELLES GENERALES, JURIDIQUES ET TECHNIQUES
I - A - COMPETENCES PROFESSIONNELLES GENERALES

Bon sens et jugement
Connaissance du contexte socio-économique dans lequel s’exerce l’activité
Force de caractère, maîtrise de soi
Capacité d’écoute et d’échange : ce critère recouvre notamment l’ouverture d’esprit, l’attention et le respect portés à autrui, dans l’exercice des fonctions.
Sens des responsabilités : traduit en particulier la manière dont le magistrat mesure les conséquences des décisions prises.
Capacité à décider : il s’agit, pour le magistrat, de la capacité à résoudre les litiges qui lui sont soumis, à prendre les mesures relevant de sa compétence ou à traiter les affaires après un délai de réflexion raisonnable.
Capacité à s’organiser et à respecter les délais
Capacité à gérer les situations dans l’urgence
Puissance de travail et efficacité : cette rubrique doit permettre d’apprécier la capacité du magistrat à traiter, dans les meilleures conditions, sur les plans qualitatif et quantitatif, les affaires dont il a la charge.
Capacité d’adaptation : ce critère permet d’apprécier la capacité du magistrat à assimiler et mettre en œuvre les évolutions législatives, à s’adapter à de nouvelles fonctions ou attributions, à faire face à des transformations structurelles ou conjoncturelles de son service, aux techniques nouvelles et à des situations imprévues.
Esprit d’initiative
Respect du justiciable
Disponibilité et engagement professionnel
Capacité à mettre en œuvre les moyens nécessaires pour réaliser les objectifs fixés
Aptitude à exercer des fonctions d’encadrement
Qualité des relations avec les autres magistrats
Qualité des relations avec les agents du greffe
Implication dans le fonctionnement des greffes
Qualité des relations avec les autres professions et institutions : cette rubrique vise à apprécier la qualité des relations professionnelles entretenues, selon les fonctions ou attributions du magistrat avec les auxiliaires de justice, les services de police ou de gendarmerie, les administrations, les collectivités territoriales, les associations, les services sociaux, etc…
Implication dans le fonctionnement de la juridiction : cette rubrique concerne le fonctionnement de l’activité juridictionnelle et extra juridictionnelle.
Capacité à exercer l’autorité
Capacité à représenter l’institution judiciaire

I - B- COMPETENCES PROFESSIONNELLES JURIDIQUES ET TECHNIQUES

Précision et étendue des connaissances juridiques
Capacité à utiliser et actualiser ses connaissances juridiques : ce critère permet d’appréhender la capacité à analyser et à apprécier une situation de fait et de droit et à lui apporter une solution par un raisonnement juridique approprié et actualisé. Elle permet aussi d’apprécier les besoins de formation pour actualiser ou perfectionner les connaissances ou les méthodes de travail.
Capacité d’analyse
Capacité de synthèse
Qualité de l’expression écrite
Qualité de l’expression orale
Maîtrise des nouvelles technologies de l’information et de la communication (NTIC)

II – COMPETENCES SPECIFIQUES A CERTAINES FONCTIONS

L’évaluation de ces compétences concerne plus particulièrement les fonctions spécifiquement exercées.
Pour les fonctions de chef de juridiction, de chef de service ou de secrétaire général :

Capacité à mettre en œuvre les politiques judiciaires
Capacité à animer une juridiction ou un service et à exercer l’autorité : cette rubrique permet d’apprécier la capacité du magistrat à maîtriser des fonctions d’animation en recherchant l’adhésion et en faisant, le cas échéant, accepter le changement.
Capacité à la gestion dyarchique : capacité de définir en commun un projet de juridiction et de le mettre en œuvre.
Capacité d’anticipation et de proposition
Capacité à élaborer et conduire un projet
Capacité à communiquer : cette rubrique concerne aussi bien la communication interne que la communication externe.
Capacité à fixer des objectifs et adapter des moyens
Capacité à organiser et conduire des réunions
Capacité à gérer les ressources humaines : capacité à porter attention au parcours professionnel des magistrats, capacité à conduire le dialogue social.
Capacité d’organisation et de planification
Capacité à communiquer
Capacité de gestion (budgétaire, immobilier, équipement, hygiène et sécurité…)
Pour procureur de la République uniquement :
Capacité à conduire des politiques pénales
Capacité à s’inscrire dans la relation hiérarchique statutaire

Pour les fonctions du parquet :
Capacité à gérer un service
Capacité à mettre en œuvre les politiques pénales
Capacité à s’inscrire dans la relation hiérarchique statutaire
Capacité à s’inscrire dans une relation d’équipe
Capacité à conduire un projet
Capacité à requérir et à débattre à l’audience

Pour les fonctions du siège :
Capacité à rédiger une décision claire et applicable
Capacité à gérer un service
Capacité à conduire une audience et mener les débats : cette rubrique permet de rendre compte de la capacité à s’exprimer avec clarté et aisance, à exposer les différents aspects d’une affaire, à conduire les débats.
Capacité à gérer les conflits
Aptitude à la collégialité
Pour les fonctions de MACJ ou de magistrat détaché :

Capacité à élaborer et conduire un projet
Capacité rédactionnelle
Capacité à conduire des réunions
Capacité d’adaptation à des fonctions extra juridictionnelles
Capacité à s’inscrire dans une relation hiérarchique
Capacité à s’inscrire dans une relation d’équipe
Pour les fonctions d’encadrement uniquement :
Capacité à mettre en œuvre des politiques publiques
Capacité d’anticipation et de proposition
Capacité à animer un service et à exercer l’autorité
Capacité à fixer des objectifs
Capacité à gérer les ressources humaines
Capacité de gestion (budgétaire, immobilier, équipement, hygiène et sécurité…)

Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice
### I - A - Appréciations littérales sur les compétences professionnelles générales

<table>
<thead>
<tr>
<th>Compétences professionnelles générales</th>
<th>Exceptionnel</th>
<th>Excellent</th>
<th>Très bon</th>
<th>Satisfaisant</th>
<th>Insuffisant</th>
<th>Non renseigné</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bon sens et jugement</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Connaissances du contexte socio-économique dans lequel s’exerce l’activité</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Force de caractère, maîtrise de soi</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité d’écoute et d’échange</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sens des responsabilités</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à décider</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à s’organiser et à respecter les délais</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à gérer les situations dans l’urgence</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Puissance de travail et efficacité</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité d’adaptation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Esprit d’initiative</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Respect du justiciable</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disponibilité et engagement professionnel</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à mettre en œuvre les moyens nécessaires pour réaliser les objectifs fixés</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aptitude à exercer des fonctions d’encadrement</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qualité des relations avec les autres magistrats</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice

<table>
<thead>
<tr>
<th>Qualité des relations avec les agents de greffe</th>
<th>Insuffisant</th>
<th>Non renseigné</th>
</tr>
</thead>
<tbody>
<tr>
<td>Implication dans le fonctionnement des greffes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qualité des relations avec les autres professions et institutions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Implication dans le fonctionnement de la juridiction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à exercer l’autorité</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à représenter l’institution judiciaire</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

I – B - Appréciations littérales sur les compétences professionnelles juridiques et techniques

<table>
<thead>
<tr>
<th>I-B Compétences professionnelles juridiques et techniques</th>
<th>Exceptionnel</th>
<th>Excellent</th>
<th>Très bon</th>
<th>Satisfaisant</th>
<th>Insuffisant</th>
<th>Non renseigné</th>
</tr>
</thead>
<tbody>
<tr>
<td>Précision et étendue des connaissances juridiques</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à utiliser, actualiser et perfectionner ses connaissances juridiques</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité d’analyse</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité de synthèse</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qualité de l’expression écrite</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qualité de l’expression orale</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Maîtrise des nouvelles technologies de l’information et de la communication (NTIC)  

II - Appréciations littérales sur les compétences professionnelles spécifiques (selon les fonctions ci-dessous suivantes) :

<table>
<thead>
<tr>
<th>FONCTION DE CHEF DE JURIDICTION, DE CHEF DE SERVICE OU DE SECRETAIRE GENERAL</th>
<th>Exceptionnel</th>
<th>Excellent</th>
<th>Très bon</th>
<th>Satisfaisant</th>
<th>Insuffisant</th>
<th>Non renseigné</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capacité à mettre en œuvre les politiques judiciaires</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à animer une juridiction ou un service et à exercer l’autorité</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à la gestion dyarchique</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité d’anticipation et de proposition</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à élaborer et conduire un projet</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à fixer des objectifs et adapter des moyens</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à organiser et conduire des réunions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

384
Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice

<table>
<thead>
<tr>
<th>FONCTIONS DU PARQUET</th>
<th>DU</th>
<th>Exceptionnel</th>
<th>Excellent</th>
<th>Très bon</th>
<th>Satisfaisant</th>
<th>Insuffisant</th>
<th>Non renseigné</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capacité à gérer les ressources humaines</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité d’organisation et de planification</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité de gestion (budgétaire, immobilier, équipement, hygiène et sécurité…)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à communiquer</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pour procureur de la République uniquement : Capacité à conduire des politiques pénales</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à s’inscrire dans la relation hiérarchique statutaire</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à gérer un service</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à mettre en œuvre les politiques pénales</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à s’inscrire dans la relation hiérarchique statutaire</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à s’inscrire dans une relation d’équipe</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à conduire un projet</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### FONCTIONS DU SIEGE

<table>
<thead>
<tr>
<th>Capacité à requérir et à débattre à l’audience</th>
<th>Exceptionnel</th>
<th>Excellent</th>
<th>Très bon</th>
<th>Satisfaisant</th>
<th>Insuffisant</th>
<th>Non renseigné</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capacité à rédiger une décision claire et applicable</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à gérer un service</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à conduire une audience et mener les débats</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à gérer les conflits</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aptitude à la collégialité</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### FONCTIONS DE MACJ OU DE MAGISTRAT DETACHE

<table>
<thead>
<tr>
<th>Capacité à élaborer et conduire un projet</th>
<th>Exceptionnel</th>
<th>Excellent</th>
<th>Très bon</th>
<th>Satisfaisant</th>
<th>Insuffisant</th>
<th>Non renseigné</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capacité rédactionnelle</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à conduire des réunions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité d’adaptation à des fonctions extra juridictionnelles</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à s’inscrire dans une relation hiérarchique</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à s’inscrire dans une relation d’équipe</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pour les fonctions d’encadrement uniquement : Capacité à mettre en œuvre des politiques publiques</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité d’anticipation et de proposition</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capacité à animer un service et à exercer l’autorité</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Capacité à fixer des objectifs

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
</table>

### Capacité à gérer les ressources humaines

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
</table>

### Capacité de gestion (budgétaire, immobilier, équipement, hygiène et sécurité…)

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
</table>

### Appréciations générales : elles porteront notamment sur les besoins de formation et les fonctions auxquelles le magistrat est apte ou aspire.

### RESUME DE L’ENTRETIEN PREALABLE
(rédigé par le supérieur hiérarchique)

Nom du supérieur hiérarchique rédigeant ce document :
Nom et prénom du magistrat évalué :

Conditions d’exercice des fonctions ACCOMPLIES PAR LE MAGISTRAT MISES EN PERSPECTIVE AVEC CELLES DU SERVICE

Bilan quantitatif et qualitatif DEPUIS LA DERNIERE EVALUATION

Objectifs quantitatifs et qualitatifs

Formations suivies et SOUHAITées
Fonctions ou responsabilités futures envisagées

Fait le :
Nom :
Prénom :
Qualité :
Signature :

Pris connaissance le :
Signature du magistrat intéressé :
7. Contents of the reference table of the control of functioning of the court of appeal (2016)

A. MISSION ADMINISTRATION DU RESSORT

<table>
<thead>
<tr>
<th>OBJECTIF A 1</th>
<th>Assurer le pilotage du ressort</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sous-objectif A 11</td>
<td>Organiser le pilotage du ressort</td>
</tr>
<tr>
<td>Point de contrôle A 11-1</td>
<td>Une organisation adaptée à l’administration du ressort</td>
</tr>
<tr>
<td>Point de contrôle A 11-2</td>
<td>Une démarche concertée des chefs de cour</td>
</tr>
<tr>
<td>Point de contrôle A 11-3</td>
<td>L’organisation du SAIR ou du SAR</td>
</tr>
<tr>
<td>Sous-objectif A 12</td>
<td>Contrôler le ressort et assurer le pilotage par la performance</td>
</tr>
<tr>
<td>Point de contrôle A 12-1</td>
<td>L’effectivité du contrôle du ressort</td>
</tr>
<tr>
<td>Point de contrôle A 12-2</td>
<td>L’effectivité du suivi statistique du ressort</td>
</tr>
<tr>
<td>Point de contrôle A 12-3</td>
<td>La définition et la formalisation d’objectifs locaux de performance</td>
</tr>
<tr>
<td>Point de contrôle A 12-4</td>
<td>Les modalités du suivi mis en place par les chefs de cour et leur périodicité</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sous-objectif A 13</th>
<th>Assurer la communication et l’insertion dans l’environnement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Point de contrôle A 13-1</td>
<td>Les modes de communication interne</td>
</tr>
<tr>
<td>Point de contrôle A 13-2</td>
<td>La communication institutionnelle</td>
</tr>
<tr>
<td>Point de contrôle A 13-3</td>
<td>L’inscription des chefs de cour dans l’environnement institutionnel</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sous-objectif A 14</th>
<th>Décliner au niveau régional des actions du programme 101</th>
</tr>
</thead>
<tbody>
<tr>
<td>Point de contrôle A 14-1</td>
<td>L’aide aux victimes</td>
</tr>
<tr>
<td>Point de contrôle A 14-2</td>
<td>La politique associative</td>
</tr>
<tr>
<td>Point de contrôle A 14-3</td>
<td>L’accès au droit</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sous-objectif A 15</th>
<th>Développer les nouvelles technologies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Point de contrôle A 15-1</td>
<td>Le plan de numérisation et de dématérialisation des procédures pénales</td>
</tr>
<tr>
<td>Point de contrôle A 15-2</td>
<td>Les liaisons électroniques avec les professions et la mise en œuvre de Comci</td>
</tr>
</tbody>
</table>

| Point de contrôle A 15-3 | Le développement de la visioconférence |

<table>
<thead>
<tr>
<th>Sous-objectif A 21</th>
<th>Ajuster les ressources humaines disponibles aux besoins régionaux</th>
</tr>
</thead>
<tbody>
<tr>
<td>Point de contrôle A 21-1</td>
<td>L’évaluation des effectifs nécessaires et de la disponibilité de la ressource</td>
</tr>
<tr>
<td>Point de contrôle A 21-2</td>
<td>L’utilisation des ressources humaines disponibles</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sous-objectif A 22</th>
<th>Gérer les personnels : déontologie et discipline, évaluation, formation, temps de travail</th>
</tr>
</thead>
<tbody>
<tr>
<td>Point de contrôle A 22-1</td>
<td>La déontologie et la discipline</td>
</tr>
<tr>
<td>Point de contrôle A 22-2</td>
<td>L’évaluation des magistrats et l’attribution de la prime modulable</td>
</tr>
<tr>
<td>Point de contrôle A 22-3</td>
<td>L’évaluation des fonctionnaires et l’attribution des réductions d’ancienneté</td>
</tr>
<tr>
<td>Point de contrôle A 22-4</td>
<td>Les actions de formation continue régionale</td>
</tr>
<tr>
<td>Point de contrôle A 22-5</td>
<td>Le contrôle du temps de travail des fonctionnaires</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sous-objectif A 23</th>
<th>Assurer le dialogue social</th>
</tr>
</thead>
<tbody>
<tr>
<td>Point de contrôle A 23-1</td>
<td>L’exercice du dialogue social</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sous-objectif A 31</th>
<th>Organiser la gestion budgétaire et comptable du ressort</th>
</tr>
</thead>
<tbody>
<tr>
<td>Point de contrôle A 31-1</td>
<td>L’organisation et le fonctionnement du BOP ou de l’UO 31</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sous-objectif A 32</th>
<th>Gérer le titre II</th>
</tr>
</thead>
<tbody>
<tr>
<td>Point de contrôle A 32-1</td>
<td>L’élaboration de la demande budgétaire</td>
</tr>
<tr>
<td>Point de contrôle A 32-2</td>
<td>Le suivi du plafond d’emploi et de la masse salariale</td>
</tr>
</tbody>
</table>

| Sous-objectif A 33 | Gérer les moyens de fonctionnement courant |

389
Point de contrôle A 33-1 : Le contrôle de l’adéquation des moyens budgétaires et de leur utilisation
Point de contrôle A 33-2 : La vérification de la fluidité de la consommation et de la maîtrise des délais de paiement
Point de contrôle A 33-3 : L’optimisation de la politique d’achats formalisés (marchés publics)
SOUS-OBJECTIF A 34 - Gérer les frais de justice
Point de contrôle A 34-1 : L’action de maîtrise des frais de justice et l’évaluation des besoins
Point de contrôle A 34-2 : L’organisation de la cour en matière de frais de justice et la maîtrise du circuit de la dépense
SOUS-OBJECTIF A 35 - Gérer les moyens relevant du niveau régional
Point de contrôle A 35-1 : L’informatique
Point de contrôle A 35-2 : L’immobilier
Point de contrôle A 35-3 : La sûreté
OBJECTIF A 4 - Assurer la mise en œuvre de l’aide juridictionnelle
SOUS-OBJECTIF A 41 - Suivre l’activité des BAJ du ressort
Point de contrôle A 41-1 : Le suivi des délais de traitement des BAJ du ressort
SOUS-OBJECTIF A 42 - Gérer les moyens budgétaires de l’aide juridictionnelle
Point de contrôle A 42-1 : Le suivi de la dépense de l’aide juridictionnelle gérée par la cour
Point de contrôle A 42-2 : L’amélioration de la mise en œuvre des mécanismes de subsidiarité de l’AJ

B. MISSION ADMINISTRATION DE LA COUR D’APPEL
OBJECTIF B 1 - Disposer des moyens nécessaires à l’activité de la cour
SOUS-OBJECTIF B 11 - Élaborer la demande budgétaire et suivre l’exécution du budget
Point de contrôle B 11-1 : Les magistrats
Point de contrôle B 11-2 : Les fonctionnaires 47
Point de contrôle B 11-3 : Les magistrats et fonctionnaires placés et délégués
Point de contrôle B 11-4 : Les agents temporaires
Point de contrôle B 11-5 : Les assistants de justice
Point de contrôle B 11-6 : Les réservistes des services judiciaires
SOUS-OBJECTIF B 12 - Élaborer la demande budgétaire et suivre l’exécution du budget
Point de contrôle B 12-1 : Détermination des besoins et construction de la demande budgétaire
Point de contrôle B 12-2 : Suivi de l’exécution budgétaire
SOUS-OBJECTIF B 13 - Maîtriser et contrôler la dépense au titre des frais de justice
Point de contrôle B 13-1 : Organisation du service centralisateur
Point de contrôle B 13-2 : L’organisation de la régie
Point de contrôle B 13-3 : Détermination des besoins, organisation du suivi des consommations et maîtrise des moyens budgétaires alloués pour les frais de justice
SOUS-OBJECTIF B 14 - Évaluer les moyens matériels et les services communs de la juridiction
Point de contrôle B 14-1 : La situation immobilière de la juridiction
Point de contrôle B 14-2 : Les mesures prises pour assurer la sûreté et la sécurité
Point de contrôle B 14-3 : Les équipements informatiques
Point de contrôle B 14-4 : La gestion des pièces à conviction et des archives
OBJECTIF B 2 - Organiser le service et assurer l’administration de la cour d’appel
SOUS-OBJECTIF B 21 - Assurer l’administration de la cour d’appel
Point de contrôle B 21-1 : L’organisation générale de la cour
Point de contrôle B 21-2 : L’organisation de la cour favorisant la qualité des décisions rendues
Point de contrôle B 21-3 : Le pilotage de la cour d’appel
Point de contrôle B 21-4 : La mesure et l’évaluation de l’activité
SOUS-OBJECTIF B 22 - Mettre en œuvre la concertation interne
Point de contrôle B 22-1 : Les assemblées générales et les commissions
Point de contrôle B 22-2 : Le niveau et la qualité du dialogue social
SOUS-OBJECTIF B 23 - Établir et gérer la liste des experts
Point de contrôle B 23-1 : Les experts
OBJECTIF B 3 - Faciliter l’accueil des usagers
SOUS-OBJECTIF B 31 - Accueillir et informer l’usager
Point de contrôle B 31-1 : L’organisation et l’évaluation du service de l’accueil
SOUS-OBJECTIF B 32 - Traiter l’aide juridictionnelle
Point de contrôle B 32-1 : L’organisation et le fonctionnement de la section cour d’appel du bureau d’aide juridictionnelle
Point de contrôle B 32-2 : Le traitement des recours contre les décisions des bureaux d’aide juridictionnelle du ressort
C. MISSION JUSTICE CIVILE
OBJECTIF C 1 - Assurer le pilotage de la chaîne civile
SOUS-OBJECTIF C 11 - Organiser le service civil
Point de contrôle C 11-1 : L’organisation du service
Point de contrôle C 11-2 : Organiser le service civil pour la perception du droit affecté au fonds d’indemnisation de la profession d’avoué.
SOUS-OBJECTIF C 12 - Suivre et animer le service civil
Point de contrôle C 12-1 : L’animation du service
SOUS-OBJECTIF C 13 - Garantir la qualité des systèmes d’information
Point de contrôle C 13-1 : Le logiciel WinCI CA
OBJECTIF C 2 - Maîtriser le traitement des procédures civiles
SOUS-OBJECTIF C 21 - Assurer une activité adaptée aux volumes des contentieux reçus
Point de contrôle C 21-1 : L’évolution du traitement du contentieux civil
Point de contrôle C 21-2 : L’analyse des flux par service
SOUS-OBJECTIF C 22 - Assurer la fluidité de la chaîne civile
Point de contrôle C 22-1 : L’état de l’ancienneté des stocks et des délais
SOUS-OBJECTIF C 23 - Délibérer dans des délais raisonnables
Point de contrôle C 23-1 : L’état des délibérés
OBJECTIF C 3 - Assurer le suivi des mesures d’instruction
Point de contrôle C 31-1 : La durée des expertises
Point de contrôle C 31-2 : Le suivi des missions
OBJECTIF C 4 - Assurer le traitement du contentieux de la juridiction du premier président
SOUS-OBJECTIF C 41 - Assurer le traitement des référés du premier président et des requêtes
Point de contrôle C 41-1 : Les référés du premier président
SOUS-OBJECTIF C 42 - Traiter les recours contre les décisions rendues par les JLD
Point de contrôle C 42-1 : L’organisation du service du premier président
SOUS-OBJECTIF C 43 - Traiter les recours contre les ordonnances de taxe
Point de contrôle C 43-1 : Le recours contre les ordonnances de taxe
SOUS-OBJECTIF C 44 - Traiter les recours contre les décisions des bâtonniers en matière de fixation d’honoraires
Point de contrôle C 44-1 : Les recours contre les décisions des bâtonniers
SOUS-OBJECTIF C 45 - Assurer la réparation du préjudice causé par les détentions provisoires
Point de contrôle C 45-1 : Les préjudices causés par les détentions provisoires
D. MISSION JUSTICE PENALE
OBJECTIF D 1 - Organiser le parquet général et assurer l’accomplissement de ses missions
SOUS-OBJECTIF D 11 - Organiser le parquet général
Point de contrôle D 11-1 : L’adéquation des effectifs de magistrats aux charges du parquet général
Point de contrôle D 11-2 : L’organisation du parquet général
SOUS-OBJECTIF D 12 - Animer et piloter l’activité du parquet général
Point de contrôle D 12-1 : L’animation interne et le suivi de l’activité du parquet général
Point de contrôle D 12-2 : La communication externe du parquet général
SOUS-OBJECTIF D 13 - Suivre l’action publique et assurer la surveillance de la police judiciaire
Point de contrôle D 13-1 : L’organisation de la permanence au sein du parquet général
Point de contrôle D 13-2 : Le suivi des affaires signalées
Point de contrôle D 13-3 : L’action publique et les pôles de compétence
Point de contrôle D 13-4 : Le suivi de l’entraide pénale internationale
Point de contrôle D 13-5 : L’emploi et la surveillance des services de police judiciaire
Point de contrôle D 13-6 : Le traitement des requêtes de particuliers et des recours contre les décisions de classement sans suite

SOUS-OBJECTIF D 14 - Animer et coordonner la politique d’action publique des parquets du ressort
Point de contrôle D 14-1 : La définition, l’animation, la coordination et l’harmonisation des orientations de politique pénale
Point de contrôle D 14-2 : L’évaluation des politiques pénales conduites par les parquets

SOUS-OBJECTIF D 15 - Assurer les missions juridictionnelles du parquet général
Point de contrôle D 15-1 : L’exercice du droit d’appel en matière correctionnelle et de police
Point de contrôle D 15-2 : L’exercice du pourvoi en cassation par le parquet général et par les procureurs de la République du ressort
Point de contrôle D 15-3 : Le traitement des dossiers criminels
Point de contrôle D 15-4 : Le traitement des affaires civiles et commerciales et le suivi des officiers publics et ministériels

SOUS-OBJECTIF D 16 - Assurer le fonctionnement de la chaîne de l’exécution des peines et le suivi des établissements pénitentiaires
Point de contrôle D 16-1 : L’organisation et le fonctionnement de l’exécution des peines
Point de contrôle D 16-2 : Le suivi par le parquet général de l’action des parquets du ressort en matière d’exécution des peines
Point de contrôle D 16-3 : L’exécution de la mission de suivi des établissements pénitentiaires du ressort

OBJECTIF D 2 - Assurer le contrôle de l’instruction et des mesures privatives ou restrictives de liberté

SOUS-OBJECTIF D 21 - Organiser le service de la chambre de l’instruction et assurer les moyens de son fonctionnement
Point de contrôle D 21-1 : L’adéquation des moyens humains à l’activité de la chambre de l’instruction
Point de contrôle D 21-2 : L’organisation du service de la chambre de l’instruction
Point de contrôle D 21-3 : Les outils de pilotage mis en œuvre

SOUS-OBJECTIF D 22 - Audiencer et juger les recours
Point de contrôle D 22-1 : Le volume et la structure du stock des affaires à l’audiencement
Point de contrôle D 22-2 : Les délais d’audiencement et de jugement des dossiers
Point de contrôle D 22-3 : Le suivi des dossiers relatifs au contrôle judiciaire et à la détention provisoire
Point de contrôle D 22-4 : Le traitement des référés en matière de détention

SOUS-OBJECTIF D 23 - Assurer le contrôle et l’animation des cabinets d’instruction du ressort
Point de contrôle D 23-1 : La mise en œuvre par le président de la chambre de l’instruction de ses pouvoirs propres et l’accomplissement de ses tâches annexes
Point de contrôle D 23-2 : Le contrôle des notices semestrielles par le parquet général

OBJECTIF D 3 - Organiser le service de la chambre des appels correctionnels et assurer son fonctionnement

SOUS-OBJECTIF D 31 - Organiser et piloter la chambre des appels correctionnels
Point de contrôle D 31-1 : L’adéquation des moyens humains à l’activité de la chambre des appels correctionnels
Point de contrôle D 31-2 : L’organisation et le pilotage de la chambre des appels correctionnels

SOUS-OBJECTIF D 32 - Gérer l’audience de la chambre des appels correctionnels
Point de contrôle D 32-1 : L’organisation de l’audiencement
Point de contrôle D 32-2 : Le volume et la structure du stock des affaires à l’audiencement
Point de contrôle D 32-3 : Les délais d’audiencement des dossiers fixés
SOUS-OBJECTIF D 33 - Juger les affaires
Point de contrôle D 33-1 : La tenue des audiences
Point de contrôle D 33-2 : La situation du greffe correctionnel
Point de contrôle D 33-3 : L’écoulement des stocks par la chambre des appels correctionnels et le traitement des intérêts civils
Point de contrôle D 33-4 : L’organisation du suivi des missions
Point de contrôle D 33-5 : La durée des expertises

OBJECTIF D 4 - Organiser le service des cours d’assises et assurer son fonctionnement
SOUS-OBJECTIF D 41 - Organiser et piloter les cours d’assises
Point de contrôle D 41-1 : L’organisation et le pilotage du service criminel
SOUS-OBJECTIF D 42 - Gérer l’audiencement
Point de contrôle D 42-1 : L’audiencement des affaires criminelles
Point de contrôle D 42-2 : Etat du stock des affaires criminelles
SOUS-OBJECTIF D 43 - Juger les affaires criminelles
Point de contrôle D 43-1 : L’activité des cours d’assises

OBJECTIF D 5 - Mettre en œuvre l’application des peines
SOUS-OBJECTIF D 51 - Organiser et gérer l’application des peines
Point de contrôle D 51-1 : L’adéquation des moyens humains au service de l’application des peines en appel
Point de contrôle D 51-2 : L’animation de l’application des peines et la coordination de l’action des JAP
SOUS-OBJECTIF D 52 - Assurer l’activité de l’application des peines
Point de contrôle D 52-1 : L’activité du président de la chambre de l’application des peines
Point de contrôle D 52-2 : L’activité de la chambre de l’application des peines

E. MISSION JUSTICE DES MINEURS
E 1 - Organiser le service de la chambre des mineurs et assurer son fonctionnement
SOUS-OBJECTIF E 11 - Organiser la chambre des mineurs
Point de contrôle E 11-1 : L’organisation de la chambre des mineurs
SOUS-OBJECTIF E 12 - Assurer l’activité de la chambre des mineurs
Point de contrôle E 12-1 : L’activité de la chambre des mineurs
Point de contrôle E 12-2 : L’activité de la chambre des mineurs en matière d’application des peines

OBJECTIF E 2 - Assurer l’animation et le contrôle du service de la justice des mineurs dans le ressort
Point de contrôle E 21-1 : La mise en œuvre par le délégué à la protection de l’enfance de ses pouvoirs propres à l’égard des tribunaux pour enfants
Point de contrôle E 21-2 : Le contrôle des lieux de placement et de détention des mineurs
Point de contrôle E 21-3 : L’animation du service de la justice des mineurs
Point de contrôle E 21-4 : La protection de l’enfant en danger par un traitement adapté des mesures d’assistance éducative
Point de contrôle E 21-5 : Le traitement de la délinquance des mineurs pour prévenir la récidive
8. Performance requirements

8.1. Table presenting the objective and indicators for ordinary justice

<table>
<thead>
<tr>
<th><strong>OBJECTIVE</strong></th>
<th><strong>N° 1</strong></th>
<th><strong>Improving quality and efficiency</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indicator n° 1</strong>: Average processing time for each type of court</td>
<td>measure of the average processing time of all completed cases in the year, from the application to the courts to the closing judgment, excepted short processings.</td>
<td></td>
</tr>
<tr>
<td>- this indicator should be read in parallel with the one related to the stock of cases</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| **Indicator n° 2**: Percentage of courts exceeding of 15% the targeted average processing time | this percentage allows the Ministry of Justice to identify courts which are in trouble; critical average processing are 13.8 months for the courts of appeal (37% of delay in 2015), 11.5 months for County Courts (tribunaux de grande instance; 27% of delay in 2015) and 6.7 months for Lower Courts (tribunaux d’instance; 15% of delay in 2015). |

| **Indicator n° 3**: Average processing time in criminal matter | average time from the beginning of investigation procedure to the decision ruled by first instance courts |

| **Indicator n° 4**: Numbers of civil cases dealt by judge | to calculate it, the number of cases terminated is divided by the number of full time equivalent of judge (98 for judges of the Cour de cassation in 2015 and 699 for judges of the County Courts (tribunaux de grande instance). |

| **Indicator n° 5**: Number of criminal cases dealt with by judge and public prosecutors | the numerator vary belong the type of the court, the divisor is the number of public prosecutor (196 for the Cour de cassation in 2015, 262 for the judges of the courts of appeals in 2015 and 387 for the public prosecutors of the cours of appeal in 2015). |

| **Indicator n° 6**: Number of civil and criminal cases dealt with by staff employee | 253 for staff employee of the Cour de cassation in 2015, 237 for staff employees of the County Courts (tribunaux de grande instance) in civil matters and in 2015. |

| **Indicator n° 7**: Rate of cassation | it is the percentage of the number of criminal and civil judgments quashed by the Cour de cassation in 2014, the rate of quashed judgement of courts of appeals was 2.1% in civil matters and 0.48% in criminal matter. |

<table>
<thead>
<tr>
<th><strong>OBJECTIVE</strong></th>
<th><strong>N° 2</strong></th>
<th><strong>Improving the efficiency of criminal justice response, the enforcement and arrangements of criminal penalty</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indicator n° 1</strong>: Rate of alternative to prosecution</td>
<td>percentage of the criminal cases subject to an alternative to prosecution (40.9% in 2015)</td>
<td></td>
</tr>
</tbody>
</table>

| **Indicator n° 2**: Average time for recording a judgment on the National Criminal Record | it is calculated on the time taken by the courts to register their judgments and on the time taken by the National Criminal Record to deal with it (for 2015, 4.8 months for the judgments of courts of appeal, and 4.2 months for the judgments county courts (tribunaux de grande instance)). |

| **Indicator n° 3**: Rate of enforcement | the rate is calculated per penalty type (unconditional prison, community work, fine,…); judgement in appeal, amnestied penalties, dead and pardoned persons are not counted |

| **Indicator n° 4**: Average time for enforcement | the time delay between the final decision and the first enforcement event is calculated on the penalty that are enforced during the reference year; the measure is also calculated for each type of penalty. |

<table>
<thead>
<tr>
<th><strong>OBJECTIVE</strong></th>
<th><strong>N° 3</strong></th>
<th><strong>Modernizing the ordinary justice management</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indicator n° 1</strong>: Average justice expenses by case which have been subject to a criminal justice response</td>
<td>347€ in 2015.</td>
<td></td>
</tr>
</tbody>
</table>
Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice

Indicator n°2: Number of dematerialized exchanges between courts and their partners:
actually, there is two indicators in one; the first is the number of exchanges between courts and lawyers that need a treatment by the registry officers, the second is the number of criminal proceedings sent to courts by police services (1,652,739 in 2015).


8.2. Table presenting the objectives and indicators for administrative justice

<table>
<thead>
<tr>
<th>Objective n°1: Reducing Judgment Time frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indicator n° 1.1: Average time taken to judge cases</td>
</tr>
<tr>
<td><strong>Observation:</strong> Since the 2017 Annual Performance Project, indicator 1.1 on the average expected time to judge cases in stock (number of cases in stock divided by the judgment capacity of each level of courts) is replaced by the average time taken to judge cases (average time to process cases from registration to notification). This replacement makes it possible to follow the timeframes set out in the law of 29 July 2015 on the reform of the right of asylum, which sets out targets in terms of deadline (5 months for ordinary procedures and 5 weeks for new accelerated procedures). This indicator also applies to the Council of State, the Administrative Courts of Appeal and the Administrative Courts, in order to maintain an identical time-of-judgment indicator for each level of court. Moreover, it is more representative of the citizen's perception of the time-of-judgment.</td>
</tr>
<tr>
<td><strong>Method:</strong> total of the timeframes for the cases of the year (including emergency procedures, orders, rulings and cases whose judgment is contained within specific time limits) in net data of series.</td>
</tr>
</tbody>
</table>

| Indicator n° 1.2: Proportion of cases in stock registered for more than two years at the Council of State, the administrative courts of appeal and the administrative courts and for more than one year at the National Court of Asylum Right |
| **Observation:** this indicator measures the age of the stock. |
| **Method:** For each level of courts, the proportion of cases in stock recorded for more than two years corresponds to the number of cases registered for more than two years divided by the total number of files in stock at the end of the year. For the National Court of Asylum Right, the proportion of cases in stock registered for more than one year corresponds to the number of cases registered for more than one year, divided by the total number of cases in stock at the end of the year. |

<table>
<thead>
<tr>
<th>Objective n° 2: Maintaining the quality of judicial decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indicator n° 2.1: Rate of annulment of judicial decisions</td>
</tr>
<tr>
<td><strong>Observation:</strong> The productivity effort required of the administrative courts must not result in judicial decisions of lesser quality. Compliance with this objective is measured, for each level of court, by monitoring cancellation rate of judicial decisions.</td>
</tr>
<tr>
<td><strong>Method:</strong> - the rate of annulment by the Administrative Courts of Appeal of the judgments of the Administrative Courts corresponds to the number of Administrative Court of Appeals decisions, on appeals against the decisions of the administrative courts, giving partial or total satisfaction to the applicant.</td>
</tr>
<tr>
<td>- the rate of annulment by the Council of State of the decision of the Administrative Courts of Appeal corresponds to the number of decisions of the Council of State, on appeals in cassation against the decisions and orders/rulings of the Administrative Courts of Appeal, giving partial or total satisfaction to the applicant.</td>
</tr>
<tr>
<td>- the rate of annulment by the Council of State of the judgments of administrative tribunals corresponds to the number of decisions of the Council of State, on appeals in cassation against the judgments and orders/rulings of the administrative courts, giving partial or total satisfaction to the applicant.</td>
</tr>
</tbody>
</table>
Handle with Care: Assessing and designing methods for evaluation and development of the quality of justice

<table>
<thead>
<tr>
<th>Objective n° 3: Improving Courts Efficiency</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indicator n° 3.1:</strong> Number of cases settled by member of the Council of State, by magistrate of the administrative courts of appeal and the administrative courts, or by reporter of the National Court of Asylum Right</td>
</tr>
<tr>
<td><strong>Observation:</strong> In order to measure the efforts of the members of the Council of State, the magistrates of the administrative courts of appeal and the administrative courts, as well as those of the court clerks, a productivity indicator is set up for each level of court.</td>
</tr>
<tr>
<td><strong>Method:</strong> Number of cases settled by the Council of State during the year (in net data of the series) divided by the average actual number of members of the Council of State allocated to the litigation section.</td>
</tr>
<tr>
<td>Number of cases settled by the Administrative Courts of Appeal during the year (in net data of the series) divided by the average actual number of magistrates of the administrative courts of appeal.</td>
</tr>
<tr>
<td>Number of cases settled by administrative tribunals during the year (in net data of the series) divided by the average actual number of magistrates of the administrative courts.</td>
</tr>
<tr>
<td>Number of cases settled before the National Asylum Court during the year, divided by the average number of rapporteurs in the National Asylum Court expressed in full-time equivalent.</td>
</tr>
<tr>
<td>The gross data refers to all applications registered and processed in jurisdictions during a period. Net data refers to applications registered and processed in the courts during a period except those referenced as belonging to the series (cases relating to a matter which has already been the subject of a judicial decision and which does not call reappraisal or qualification of facts).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Indicator n° 3.2: Number of cases settled by courts clerks</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Method:</strong> Number of cases settled by the Council of State during the year (in gross data, excluding appeals for taking-home orders) divided by the annual full-time equivalent of courts clerks employed in the Council of State's litigation section.</td>
</tr>
<tr>
<td>Number of cases settled by the administrative courts of appeal during the year (in gross data), divided by the annual full-time equivalent of court clerks employed in the administrative courts of appeal.</td>
</tr>
<tr>
<td>Number of cases settled by administrative courts during the year (in gross data), divided by the annual full-time equivalent of court clerks employed in administrative courts.</td>
</tr>
<tr>
<td>Number of cases settled by the National Court of Asylum Right in the year (in gross data), divided by the annual full-time equivalent of court clerks employed at the National Court of Asylum Right.</td>
</tr>
<tr>
<td>The gross data refers to all applications registered and processed in courts during a period. Net data refers to all applications registered and processed in the courts during a period except those referenced as belonging to the series (cases relating to a matter which has already been the subject of a judicial decision and which does not call reappraisal or qualification of facts).</td>
</tr>
<tr>
<td>In the case of court clerks, the use of gross data in the calculation method is more relevant than the use of net data, since the time spent on a case is the same (in terms of recording, monitoring and reporting) whether it is a serial case or a normal case. It seems therefore more significant to measure their productivity from gross data.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Objective n° 4: Ensuring Effective Advisory Work</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indicator n° 4.1:</strong> Proportion of texts examined in less than two months by the administrative</td>
</tr>
</tbody>
</table>

396
sections of the Council of State

**Observation:** It is a constant concern of the Council of State that the time taken to review texts submitted to the administrative sections is under control. The Council must be given sufficient time to provide real legal expertise on the texts submitted to it. At the same time, its intervention must not unduly slow the process of drafting laws and regulations. It thus appears necessary that the examination of the texts by the Council of State should take place within a maximum period of two months. This period should be exceeded only for particular difficulties, such as codes or certain bills with significant legal difficulties.

**Method:** Number of texts examined by the Administrative Sections of the Council of State in less than 2 months divided by the total number of texts examined during the year.


### 9. Evaluation grid of the MIJA (Frame Reference)

In the “Management” reference framework, the Objective 1 “Animation of the court - Circulation of information” records the number of general assemblies of magistrates and asks if an agenda and a report are drawn up. It also accounts for the frequency of meetings of heads of court / presidents of chambers and asks the reason for the meeting (organization of jurisdiction or judicial harmonization). He also asks whether there is an organization chart with photographs in courts of more than 50 magistrates.

The Objective 2 focuses on improving the management of judges and asks whether there is a professional interview, if the performance targets are set per room, per judge, if there is information on individual bonuses, if the cumulative activities by judges are authorized and how many hours it implies. It also asks for the number of training days per judge in the year.

The Objective 3 is devoted to improving the management of the Registry and calls for the frequency of meetings of the President / Chief Registrar, the subject of these meetings, but also for the meetings of the Chamber President / Clerk of the Chamber. It asks for the number of training days granted per Registry agent (average per agent).

In the framework about the “Management of court”, the objective 1 is devoted to the quality of administrative and financial management. It is interested, for example, in the average delay in the transmission of invoices and proofs of payment to the Council of State, or to the number of rejection of payments.

The objective 2 is devoted to “Improving working conditions”. It is interested in the functionality of the premises, the quality of the place of catering, the keeping of the security register, the accessibility of disabled judges and staff.

The Objective 3 “Providing the court with appropriate means” is concerned, for example, with the quality of the network, the quality of the library, the monitoring and dissemination of case-law. There are no indicators, only findings, when one could imagine appropriate quantitative indicators.

In the “Litigation Activities” framework, the Objective 1 is devoted to "Improving the overall quality of service rendered". It focuses on the evolution over a period of three years of the foreseeable period of judgment. It should be pointed out that there are no indicators here, the framework simply asks for findings and comments. However, it should also be pointed out that indicators exist because they are involved in the evaluation of the judicial system and the budgetary allocation (see 2.5). It also focuses on the evolution over 3 years of the input / output coverage rate, and to the follow-up of cancellations (who and how?).

The Objective 2 “Treating the old stock” is concerned, for example, with the stock percentage of more than 2 years, more than 3 years, at their foreseeable date of elimination, without any indicators, and with only findings and comments.

The Objective 3 is devoted to “Improving reporting delays”.

Objective 4 is devoted to “Equalizing the workload” and requires the number of entries per room
per year as well as the stock per room. 

Objective 5 is devoted to “Improving the treatment of emergencies”.

Objective 6 is devoted to “Dealing with specific disputes in a timely manner” (foreigners, hospital liability, urban planning, public procurement, dismissal).

Objective 7 is devoted to the “Treatment of social disputes”.

Other objectives are about the use of ICT and the monitoring of decision-making assistance (activity of legal assistants).

In the "Court and Users" framework, the Objective 1 "Ensuring the spread of administrative court" is devoted, for example, to the quality of the courtroom, the quality of the lawyers' room, the quality of the website (judges’ names, access plan, letter of jurisprudence, press releases...), organization or participation in colloquiums, relations with the University, with the Bar, with the prefectural services and / or administrations, with the press.

Objective 2 “Improving the quality of the reception of the public” focuses on the amplitude of opening hours to the public, the presence of a parking, the accessibility of disabled people, the availability of fact sheets and a number of forms ...

Objective 3 “Legal aid” is devoted to the number of applications, the agents assigned to this task...
The evaluation and development of the quality of justice in Hungary: Annexes

**Duties and rights of the President of NOJ**

(1) The President of NOJ, in his overall central administration responsibility:
   a) shall devise and update at least annually the long-term tasks of judiciary administration, including a program laying down the conditions for the implementation thereof;
   b) shall lay down statutory provisions - in the form of normative guidelines - for the judiciary in discharging his administrative duties, and shall adopt recommendations and directives;
   c) shall represent the courts;
   d) may introduce bills of legislation concerning the judicial system to the entity entitled to initiate legislation;
   e) shall provide an assessment of bills of legislation relating to the judiciary - excluding municipal decrees - relying on an analysis of the opinions of the courts, obtained through NOJ;
   f) shall be invited to participate in that part of the meetings of the parliamentary committees where bills of legislation concerning the judicial system are debated.

(2) The President of NOJ in his function related to the management of NOJ:
   a) shall direct the activities of NOJ;
   b) shall establish the organizational and operational regulations of NOJ; and
   c) shall make recommendations for the appointment and dismissal of the vice-presidents of NOJ.

(3) The President of NOJ in his function related to the budget of courts:
   a) shall prepare a proposal for the budget for courts following consultation with the NCJ having regard to the court chapter of the act on the central budget and the NCJ, and with the President of the Kúria having regard to the Kúria (Curia), including a presentation of their opinion, and shall prepare a report for the implementation thereof, and the Government shall present this proposal to Parliament unaltered, as part of the bill on the act on the central budget and the bill on the act for the implementation thereof;
   b) shall be invited to participate in the Government meetings and meetings of the Parliament Budget Committee debating the budget chapter on the judiciary of the bill on the act on the central budget and the bill on the act for the implementation thereof;
   c) shall perform the functions of the head of the body vested with powers to control the chapter having regard to the judiciary chapter of the act on the central budget, with the understanding that the interim budget appropriations of the Curia may be transferred with the agreement of the President of the Curia to the budgetary agencies under the same chapter, excluding the transfers required in connection with any changes in the staff headcount of budgetary agencies;
   d) shall manage the funds allocated under the judiciary chapter;
   e) shall oversee the internal control of the courts;
   f) shall define the annual amount of “cafeteria” benefits in collaboration with the interest representation bodies; and
   g) shall lay down the detailed conditions for and the amount of other benefits in collaboration with the interest representation bodies.

(4) The President of NOJ in his function related to collecting statistics, case allocation and workload assessment:
   a) shall define the headcount of judiciary and judicial staff of courts based on the staff headcount set out in the budget chapter on the judiciary of the act on the central budget, and on the average national workload indices for contentious and non-contentious proceedings, in the case of general

---

3 Direct citation of AOAC, Section 76 (with terminological modifications)
courts headcount is to be combined with the administrative and labor courts and district courts located in their area of jurisdiction;

b)  
c)  
d) shall define the main duties relating to the collection and processing of statistical data in the judicial system; and

e) shall devise and, if necessary, annually review the data sheet and methods for the assessment of the workload of judges, review at least once a year the charts on workloads and case load statistics at the national level, and shall define the national workload for contentious and non-contentious proceedings broken down according to judicial level and case types.

(5) The President of NOJ in his function related to staff issues:

a) shall publish tender notices to fill vacant positions of judges;

b) shall make recommendations to the President of the Republic for the appointment and dismissal of judges;

c) shall assign the judge - in the case provided for in the Act on the Legal Status and Remuneration of Judges - initially to the court indicated in the application;

d) shall assign judge advocates to military tribunals and to other judicial offices when their professional service relation with the Hungarian Army ends;

e) shall assign - in accordance with the Act on the Legal Status and Remuneration of Judges - judges for hearing the cases provided for in Subsections (5) and (6) of Section 17 and in Subsection (2) of Section 448 of the CP and the judges serving as court mediators, and, by recommendation of the president of the general court, the judges hearing administrative and labor cases in the general court, and shall, furthermore, decide on the withdrawal of appointment as provided for in the Act on the Legal Status and Remuneration of Judges;

f) may assign a judge to the Curia, the NOJ, and to the ministry directed by the minister in charge of the judicial system, and shall decide on the withdrawal of such assignment and transfer the judge back to his original judicial office;

g) shall decide on the transfer of judges;

h) shall decide on the secondment of judges to other post, if secondment does not take place between the general court and an administrative and labor court or district court located in its area of jurisdiction or between district courts located in the general court’s area of jurisdiction, or between the administrative and labor court and the district courts located in the general court’s area of jurisdiction;

i) shall decide on the long-term foreign service of judges;

j) shall decide whether to maintain the employment of a judge in the light of assessment of the realized loss of competence or jurisdiction of a court;

k)  
l)  
m) shall appoint and dismiss the court executives provided for by law;

n)  
o) shall determine the number of associate judges to be elected for any particular court taking into consideration the number of constituents in the nationality electoral roll and the entire constituency of the municipalities affected, where each nationality self-government shall be given the opportunity to elect at least one associate judge.

(6) The President of NOJ in his function related to the administration of the courts:

a) shall approve the organizational and operational regulations of courts of appeal and general courts;

b) shall direct and supervise the administrative activities of president judges - other than the president judges of district courts and administrative and labor courts -, including the monitoring of compliance with the provisions concerning the governance of the judiciary, administrative time limits and regulations, and conducting investigations and inspections in that respect;

c) shall perform the examination of court executives falling within his appointment authority; and
d) shall take the measures falling within his authority and which are deemed necessary based on its findings under Paragraphs b) and c) and supervise their implementation, and may initiate the opening of disciplinary proceedings.

(7) The President of NOJ in his function related to training:
   a) shall decide on training programs on a centralized level and supervise their implementation, and shall draw up the regional training program; and
   b) shall lay down the rules relating to the training framework for judges and for compliance with the requirement for further training;
   c) shall appoint the head of the Magyar IgazságügyiAkadémia (Hungarian Academy of Justice);
   d) shall define the central consolidated training regime for court clerks.

(8) The President of NOJ in his function related to information:
   a) shall inform the NCJ semi-annually on its activities;
   b) shall inform the President of the Curia, and the presidents of courts of appeal and general courts annually on its activities;
   c) shall report annually to Parliament on the overall situation of the judiciary and on the administrative activities of the courts, and also to the Parliament’s Judicial Committee once in between the yearly reports;
   d) shall provide for the publication of the BíróságiHatározatokGyűjteménye (Register of Court Decisions);
   e) shall order - at the request of the minister in charge of the judicial system - the collection of data at the courts required for the preparation of legislation and for monitoring the enforcement of law; and
   f) shall provide information - at the request of the minister in charge of the judicial system - relating to the organization and administration of courts and on issues related to judicial practices to the extent necessary for legislation purposes, upon obtaining the opinions of the courts where deemed necessary.

(9) The President of NOJ in his other functions:
   a) shall execute the functions relating to the financial disclosure statements submitted by the president judges of courts of appeal and county courts;
   b) shall recommend to the NCJ the award of the title of “honorable general court judge”, “honorable high court judge”, “honorable Curia judge”, “Curia counselor” if the decision lies with the NCJ according to the Act on the Legal Status and Remuneration of Judges, or the title of “principal counselor” or “counselor” in the case of judicial staff, as well as the award of any decoration, citation, merit or plaquette, furthermore, if the President of NOJ is delegated by the Act on the Legal Status and Remuneration of Judges for awarding titles, shall decide on the award of the title of “honorable general court judge”, “honorable high court judge”, “honorable Curia judge” or “Curia counselor”;
   c) provide for the exercise of rights of interest representation bodies; and
   d) discharge other duties conferred under his competence by law.

(10) The President of NOJ shall be entitled to use data from the records of budgetary agencies under the same chapter to the extent necessary with a view to discharging his functions relating to:
   a) overall central administration;
   b) the management of human resources;
   c) the budget for courts;
   d) collecting statistics, case allocation and workload assessment;
   e) personnel issues;
   f) the administration of courts; and
   g) training.
**Duties and rights of the NCJ**

In the area of **general central administration** the NCJ
- shall examine the central administrative activity of the President of the NOJ and signal any problems,
- shall propose to the President of the NOJ on initiating legislation affecting the courts,
- shall express opinions on the rules and recommendations issued by the President of the NOJ.
- shall approve the rules of procedure of the service court and publish it on the central website.

In terms of **budgets** the NCJ
- shall express its opinion on the budget of courts and the report on the implementation thereof,
- shall examine the economic and financial management of courts, and
- shall express opinions on the detailed conditions and levels of other benefits.

In the areas of **statistical data collection, the distribution of cases and the measurement of workload**, the NCJ
- may, in especially justified cases, order the adjudication of cases concerning a broad spectrum of society or cases of outstanding importance with a view to public interest as a matter urgency,
- shall determine the principles to be applied by the President of the NOJ when appointing a proceeding court in the context of the use of the power to appoint a different proceeding court in the interest of adjudicating cases within a reasonable period of time.

In the area of **human resources** the NCJ
- shall express a preliminary opinion on persons nominated as President of the NOJ and President of the Curia on the basis of a personal interview,
- shall determine the principles to be applied by the President of the NOJ and the President of the Curia when adjudicating the applications in the context of using their power to award a position to the applicant in the second or third position in the rankings,
- shall have the right of consent in the adjudication of applications where the President of the NOJ or the President of the Curia wishes to award a position to the applicant in the second or third position in the rankings,
- shall exercise the right of consent regarding the appointment of court leaders who did not receive the approval of the reviewing board,
- shall decide on the approval to the renewal of the appointments of Presidents and Vice Presidents of the regional courts of appeal, tribunals, administrative and labor courts and district courts if the President or the Vice President has already served two terms of office in the same position,
- shall publish its opinion annually on the practice of the President of the NOJ and the President of the Curia with respect to evaluating the applications of judges and court leaders,
- shall appoint the President and members of the service court,
- may grant a derogation in the case of a conflict of interest between a court leader and his/her relative adjudicating in an organisational unit under the leadership of the court leader,
- shall carry out inspection procedures relating to financial disclosure statements of judges,
- may award, upon initiative of the President of the NOJ titles of “honorary/titular tribunal judge”, “honorary/titular judge of the regional court of appeal”, “honorary/titular judge of the Curia”, “councillor of the Curia”, the titles of ‘chief councillor’, ‘councillor’ in the case of judicial employees, furthermore, based on the initiative of the President of the NOJ, it may propose the awarding of decorations, prizes, diplomas or plaque, and may approve the awarding of prizes, plaques, diplomas by others,
- in the case of resignations of judges, it may approve a notice period shorter than 3 months, and may relieve the judge from his/her work related duties for the notice period in full or in part, and

[4](http://birosag.hu/en/NCJ/structure/tasks-and-duties) (direct citation)
- in the case of a judge retiring or reaching the upper age limit he/she shall make a decision concerning the relief of the judge of his/her duties during the notice period in line with the Act on the Legal Status and Remuneration of Judges.

In the area of **training** the NCJ
- shall make a proposal for a central training plan, and
- shall express opinions on rules of the training system established for judges and the completion of training obligations.

The NCJ shall perform other duties referred to its scope of activity by law.

### Duties and rights of the plenary session of judges and Local Judicial Councils (chamber of judges)

The **plenary session of judges** shall:

a) elect delegates for the election of members to the NCJ;

b) form an opinion on the applications submitted for court executive positions specified in Paragraphs a) and b) of Section 131, and may move to initiate the examination of such executives;

c) elect the members of the chamber of judges and shall hear its report on its activities at least once a year;

d) decide to terminate the membership of any member of the chamber of judges;

e) decide on lodging a motion for the dismissal of court executives originally appointed by the President of NOJ; and

f) propose items for which the NCJ is responsible for the agenda of an NCJ meeting to be discussed by the NCJ.

The **chamber of judges**:

a) shall express its opinion on the appointment of a judge and - except where this takes place upon the judge’s consent - on the assignment, transfer and secondment of a judge;

b) may initiate the investigation or dismissal of the president, vice-president, head of group or deputy head of group of district courts, and the administrative and labor courts;

c) assess the court’s annual budget proposal and the appropriation of funds approved; and

d) evaluate the court’s organizational and operational regulations and case allocation regim

---

5 Direct citation of AOAC, Sections 144 and 151 (with terminological modifications)
The book presents the results of an in-depth investigation of the methods currently used in Finland, France, Hungary, Italy and The Netherland to evaluate and develop the quality of justice. The analysis considers the "classical" evaluation mechanism in place for assessing the quality of justice as well as the innovative practices emerging in these judiciaries. Classics entail the evaluation and actions undertaken at three levels: individual level (e.g. the judge), organisational level (e.g. the court), and national level (i.e. the entire justice system). Innovations include bottom-up approaches, as initiatives promoted by small groups of professionals or at court level, as well as new policies endorsed by the Government or the Judicial Council. A Comparative analysis, an assessment of the methods used to improve the quality of justice and a discussion of innovative practices developed at national level contribute to the understanding of the current challenges of European judiciaries. The work highlights the richness of the methods adopted but warns that some of the approaches currently used, while improving a particular quality area have harmful side effects on other areas. Also for this reasons, the evaluation and development of the quality of justice must be ‘handled with care’