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IMPROVING THE QUALITY OF COURTS

Summary. In this article I will describe the main results of the court performance evaluation project of the Ukrainian court in the context of European and international developments by making a reference to the work of the CEPEJ (European Commission for the Efficiency of Justice) – Council of Europe, the quality initiatives undertaken by a number of European countries, the United States and Singapore, as well as the publication of the international framework of court excellence.

Key words: courts, European Commission for the Efficiency of Justice, court excellence.

Introduction

For several years courts in Europe and other parts of the world are faced with many challenges related to various performance and quality aspects. A lack of independence of the judiciary, insufficient financial resources, difficulties with the implementation of court information technology (including case management information systems), a long duration of court procedures, combined with a growing demand for adequate dispute resolution mechanisms resulting in a rise of the number of incoming cases issued at the courts can lead to an erosion of the quality of justice, the quality of services delivered by the courts and a reduction in the public trust and confidence in the judiciary. To overcome these challenges and to improve the quality and performance of the courts court quality systems and court quality policies have been introduced in a number of countries. At a global level the international framework of court excellence have been developed to assist courts in the process of finding their way towards court excellence. Inspired by best-practices available in other countries and the work of the international consortium for court excellence, a number of courts of the Ukraine – as a part of the USAID Rule of Law project (currently the USAID FAIR Justice project) have participated in a pilot project to develop court performance evaluation (CPE) indicators and instruments and measurement tools to evaluate the work of judges and court staff in terms of quality and performance.

In this article I will describe the main results of the court performance evaluation project of the Ukrainian court in the context of European and international developments by making a reference to the work of the CEPEJ (European Commission for the Efficiency of Justice) – Council of Europe, the quality initiatives undertaken by a number of European countries, the United States and Singapore, as well as the publication of the international framework of court excellence.

The early adopters

When looking at the countries that have started at an early stage with improving the quality at the courts (the Netherlands, Finland, United States and Singapore) several motives played an important role for initiating reforms

in the judiciary. In the United States the introduction of the Malcom Baldrige quality award [1] resulted in the development of several quality programs in the public sector, including the courts. With the introduction of the US Trial Court Performance Standards (TCPS) in 1990 a comprehensive court quality instrument was launched which courts can use to assess their level of quality of services, based on 64 measures (quality is measured for the following areas: (1) access to justice, (2) expedition and timeliness, (3) equality, fairness and integrity, (4) independence and accountability, (5) public trust and confidence) [2]. One of the advantages of this model was that it entails a wide range of instruments and measurement tools. However a major drawback of the TPCS model concerned the fact that only a very few courts in the US were able to implement all the instruments listed in the model (e.g. the Los Angeles Municipal Court) [3]. Based on the lessons learned, in 2009 a number of simplified and more flexible instruments were developed under the name US Courtools [4]. The Courtools is comprised of 10 instruments ranging from the application of a court user satisfaction survey till the measurement of the average duration of court proceedings, backlog of cases (age of the pending caseload) and the costs per case. In contrast with the Trial Court Performance Standards these tools are widely accepted and used by the US trial courts.

On the other side of the continent, in Singapore, especially the critics about the long duration of the court procedures, resulted in a shift of orientation of the Singapore judges. Instead of only focusing on judicial quality (represented in high quality judgments) a court user orientation was introduced with the Singapore 'elustice Scorecard' Quality model [5]. Several new approaches were announced to offer better services to the clients of the courts, resulting in a higher level of court performance. For example electronic procedures for lawyers, an electronic mediation scheme (eADR) and more investments of the courts to raise their level of accountability (by publishing annual reports, relevant judgments on the website, etc.) was the outcome of a large number of quality initiatives in Singapore. Not only externally the Singapore courts improved themselves, but internally too. With a resilient focus on good/strong leadership at the courts, efficient internal work procedures and a high level of court automation the judiciary of Singapore is seen as one of the top leading court systems of the world. When looking at the Doing Business studies of the World Bank it is evident that their strong focus on a high quality judiciary is awarded with a top ranking position for economic development and investment climate [6].

In Europe, the Netherlands and Finland can be seen as one of the first countries that started with the development of their own court quality policies/systems.

As a part of a large reform program (justice of the 21st Century) in the period 1998 – 2002 a dedicated project was initiated on court quality in the Netherlands. Inspired by the experiences in the United States with the US Trial Court Performance Standards, a measurement system was developed containing several indicators and instruments to measure the performance and quality of services of the courts (independence and integrity, timeliness of proceedings, unity of law, expertise, treatment of the parties). Pilot projects were launched in three district courts and on the basis of the results of these pilots the Dutch Council for the judiciary created at a national level a court quality policy for all the courts under the title 'RechtspraakQ' [7].

In Finland, at least in one of the jurisdictions, there was already a tradition at the level of the courts of appeal of Rovaniemi, discussions were organized (on a regular basis) about the subject of court quality and quality of the judiciary with the members of the judiciary. The results of these discussions were used to develop concrete measures of improvement, which were included in the annual court plans. At a later stage the orientation on court quality policies was formalized in the 'Quality Benchmarks' program. This program implemented by the courts of appeal in Rovaniemi, includes several measures and activities to improve the quality of services delivered by the courts in the Rovaniemi jurisdiction. Since the Quality benchmarks were seen at a European level seen as a 'best practice' example for innovation in the justice sector, the courts of Rovaniemi received in 2005 the Crystal Scales of Justice Award.

When looking at the quality models applied in the US, Singapore, the Netherlands and Finland, there are a number of similarities that can be identified. First of all, there is a strong orientation towards the users of the courts. Instead of only focusing on a high judicial quality, all the models described tries to incorporate the needs of the users of the courts in a system to measure the court quality and to improve this. A second similarity concerns the need to guarantee or to improve access to justice at the courts. Not only in terms of affordability, but also in the sphere of improving the easy access to court buildings and 'electronic' accessibility of the courts, by means of an intensified use of electronic exchange of information or information provision through court websites, the use of electronic forms and the application of videoconferencing techniques. The last point brings us also to the third similarity, namely the stimulation of internal organizational measures focusing on the strengthening of efficiency and productivity of the courts. Better work procedures, efficient and timely internal judicial procedures, strong leadership in the courts, good management of human, financial and material resources as well as a good working atmosphere and cooperation between judges and court staff will have a positive contribution to the quality of services at the courts.

European and global initiatives

At a European level the topic of court quality policies and improving the quality of justice is put on the agenda through the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe. This

Commission, established in 2002, promotes the efficiency and quality of justice via the publication of periodic reports about the composition and functioning of justice (reports 'European Judicial Systems'), the organizations of thematic meetings, working groups and the publication of guidelines that can be used by the member states of the Council of Europe to improve their national judicial systems. One of the most relevant working groups of the CEPEJ on the subject of court quality, concerns the GT-Qual working group (*Groupe de travail Qualité*). These working groups, composed of a limited number of national experts (often national members of the CEPEJ), discussed on a regular basis important topics on the subject of court quality and have produced a number of studies and/or recommendations for the member states to improve the quality of justice. For example in 2008 a checklist for promoting the quality of justice was released [8], to be followed by a comparative report about the application of court quality policies in eight Council of Europe member states [9]. A practical guideline on the development and use of court user survey was published in 2010. This guideline contains a model template for court user surveys and a working method for courts to implement a survey to collect necessary information about the level of satisfaction of the court users (litigants, lawyers, public prosecutors and other 'repeat players') [10]. The most recent publication of the working group concerns a guideline on the use of a court location policy to facilitate access to justice. In this guideline criteria are defined for a high level of geographical access to the courts, including norms for the travel time of a litigant for travelling to a court and the distribution of the workload of cases between the courts [11].

Besides the active involvement of the CEPEJ – Council of Europe in stimulating court quality policies in 2006 another initiative was taken at a global level with the establishment of an international consortium for court excellence. This consortium, represented by the US National Center for State Courts, the US Federal Judicial Center, the Singapore subordinate courts, the Australasian Institute for Judicial cooperation, supported by the CEPEJ and the World Bank, developed the 'international framework for court excellence' [12]. Based on best-practice examples described in the previous part of this article, the framework tries to present a solution for all courts in the world to assess the current situation in the courts (in terms of quality and performance) and to develop measures for improvement. Similar to the individual quality initiatives of several countries, the framework identifies seven areas of quality – or in terms of the framework: seven areas of excellence – namely: court management and leadership, court policies, court proceedings, public trust and confidence, user satisfaction, court resources, affordable and accessible court services. With the use of a comprehensive or simplified version of a self-assessment checklist courts can score their situation and are able to detect areas of improvements. Examples of courts that have applied the framework of court excellence are: the Land and Environment court of New South Wales (Australia), the Supreme Court of Victoria (Australia) and the Magistrate's court of Victoria. Moreover, workshops

about the international framework were held in the Philippines. The Abu Dhabi Judicial Department of the United Arab Emirates decided to introduce the international framework for court excellence in their department with a view of achieving world class standards in the judiciary and it is expected that in the coming years more and more countries will follow this path.

Experiences of the Ukraine: Rule of Law project and FAIR Justice

The influence of European and global initiatives to promote measures to improve the quality of justice at the courts resulted also in a number of activities in Ukraine to evaluate and improve the court quality and to enhance the public trust and confidence in the judiciary. An important role is played by the work of the USAID Ukraine Rule of Law project (2006-2011) and the USAID FAIR Justice project. FAIR Justice tries to support the development and implementation of key judicial reform legislation and improve judicial policies and procedures that promote a more effective, accountable and independent judiciary [13]. By contributing to a new legislative and regulatory framework to the judiciary, strengthening the accountability and transparency, professionalism and effectiveness of the judiciary, as well as strengthening the role of civil society organizations in advocating and monitoring the work of the judiciary, the project will contribute to a long term change of the judiciary into a legal organization that can meet all relevant European and global standards on quality and effectiveness of the judiciary.

In the sphere of improving the quality and performance of the courts a standard court performance evaluation framework has been developed by FAIR Justice in cooperation with the Council of Judges of Ukraine and the State Judicial Administration. The development of this framework started already in 2010 when a Court Performance Evaluation working group was established (CPE working group) to create tools for internal court performance evaluation focusing on the timeliness of the proceedings and quality of court decisions. The testing of these instruments took initially place in six courts. In 2012 the number of participating pilot courts was extended to 13 courts under the guidance of the CPE working group in cooperation with the State Judicial Administration Working Group on Innovation.

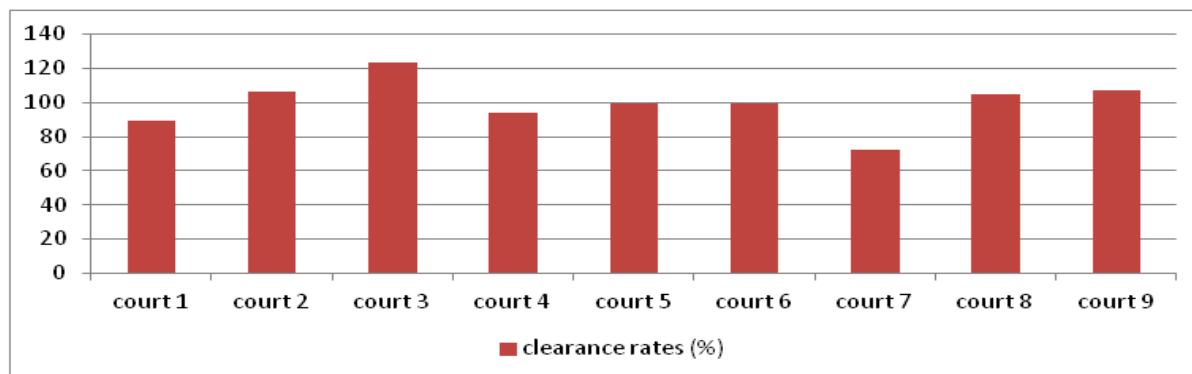
The Court Performance Evaluation Framework (CPE Framework) is composed of four evaluation areas: (1) efficiency of court administration, (2) timeliness of court

proceedings, (3) quality of court decisions and (4) court users' satisfaction with the court performance. For each of these areas several evaluation tools and criteria have been defined. There are a number of *internal court performance evaluation* instruments, such as a survey of judges and courts staff and an expert analysis of court decisions and timeliness of the proceedings. In addition to these internal evaluation instruments the CPE Framework contains also two *external evaluation* instruments, namely a court user satisfaction survey (Citizen Report Card) and an analysis of available court statistics [14].

As indicated earlier, the pilot testing of the CPE Evaluation Framework took place in 13 courts (nine first instance courts and five courts of appeal representing general, administrative and commercial courts of eight oblasts regions) [15].

The efficiency of court administration is measured by looking at several aspects that are of main importance for a proper functioning of the courts. E.g. the adequate funding of the courts, the efficient use of the court resources, satisfaction of the judges and court staff with the working conditions, leadership and management of the courts en the efficiency of the judicial self-governance of a court. The results of the evaluation show that several pilot courts receive a (much) lower budget than was requested. This can have a negative impact on the court performance, since there may be lesser financial resources available for recruiting (new) judges and court staff. On the other side, the majority of the court staff and the judges is of opinion that the available court resources are properly used. In that sense, despite the situation that a number of courts receive a lower budget than was requested, the financial resources are adequately spending the management of the courts. With regards to the working conditions most of the judges and court staff of the pilot courts are satisfied with the courthouse premises and offices (a score above 4 on a 5 points ranking scale where the score 5 is the highest level of satisfaction and a score of 1 is the lowest). When asking the judges and staff about the quality of the management and leadership of the court president and the chief of staff, the majority of the pilot courts are reviewing them positively (with the exception of one pilot court where the head of the court staff was very negatively rated).

Besides the subjective rating of the efficiency of court administration, the court performance of the pilot courts was also analyzed on the basis of available court statistics and key court-performance indicators (e.g. average costs



Graph 1 Clearance rates of the pilot courts

per case, number of adjudicated cases per judge in the first half of 2012, the number of adjudicated cases per court staff member in the first half of 2012, number of pending cases older than one year, clearance rates (ratio between the number of incoming and resolved cases and the disposition time (to indicate the number of days that are required to resolve a case). Graph 1 shows the variety of the court performance of 9 pilot courts in terms of reducing/increasing the backlog of cases by presenting data about the clearance rates (this is the ratio between the number of incoming cases and resolved cases. A clearance rate above 100 percent implies a reduction of the backlog cases, whilst a figure below 100 percent indicates that the court is confronted with an increase of backlog/pending cases). The number of pending cases will have a negative impact on the average duration of procedures. The higher the number of pending cases, the longer the average durations of court procedures will be. As can be concluded from this graph, some of the pilot courts are confronted with an increase of the number of pending cases, whilst in other courts the backlogs are being reduced.

Another interesting instrument that is applied as a part of the Court Performance Evaluation concerns the court user satisfaction surveys, based on the citizens' report card method. At the pilot courts users were invited to fill in a survey about their level of satisfaction of a number of key aspects related to the quality and services delivered by the court. On the basis of a 5 point scale scoring mechanism the users of the court had to rate their level of satisfaction related to: court accessibility, level of comfort in the courthouse, completeness and understandability of information, timeliness of the court proceedings, satisfaction of citizens with the work of the judges and satisfaction of the citizens with the work of the court staff. As was expected, the scoring for the participating pilot courts varied on these various aspects ranging from an average score of 3.2 (not satisfied with the quality of services delivered by the courts) till 4.4 (the users are (very) satisfied with the court services).

This type of (perception) information is a valuable source to compare this with the objective court performance information (based on court statistics and the evaluation studies on the timeliness of the proceedings and quality of the judgments. The use of all these sources of information makes it possible to generate a balanced and complete picture of the court performance of individual courts and to compare the individual courts with each other as a part of a benchmarking method. Comparing the Court Performance Evaluation initiative of the FAIR Justice project with the international developments on court quality systems and court quality policies shows that – at least for the participating pilot courts – the quality-awareness is increasing in the Ukraine and that the participating courts are willing to take necessary steps to implement several measures to improve their performance and level of quality. The challenge will be though to expand this initiative to the national level. Already the strategic plan for the Ukrainian judiciary (2013-2015) approved by the Council of Judges (in December 2012) underlined the need for a national framework for court performance standards [16]. The work that has been conducted in the

recent past on the Court Performance Evaluation methods can contribute to this and must be seen as a valuable starting point for creating a national standard for court performance.

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Пім Альберс. Удосконалення якості судів

Анотація. У цій статті описуються основні результати оцінки ефективності проекту українського суду в контексті європейських і міжнародних подій, з посиланням на роботу ЕКЕП (Європейська комісія з ефективності правосуддя).

Ключові слова: суд, Європейська комісія з ефективності правосуддя, удосконалення суду.

Пим Альберс. Усовершенствование качества судов

Аннотация. В этой статье описываются основные результаты оценки эффективности проекта украинского суда в контексте европейских и международных событий, со ссылкой на работу ЕКЭП (Европейская комиссия по эффективности правосудия).

Ключевые слова: суд, Европейская комиссия по эффективности правосудия, усовершенствование суда.