

# The assessment of court quality: hype or global trend?

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## 1 Introduction

In the private sector there is a long tradition in paying attention to quality improvements and quality measurement of the delivery of goods and services. This tradition started in the '50ties when Japanese enterprises were criticized for the bad reputation of the quality of their products. As a response to these critics 'total quality control' (TQC) was introduced<sup>1</sup>. In TQC quality development, maintenance and quality improvements are integrated into one comprehensive system, where customer satisfaction is taken into account as well. During the period 1980 – 1990 the concept of TQC was replaced by the terminology total quality management (TQM). To follow quality initiatives undertaken by Japan the US Congress adopted in 1987 a special Act (the Malcolm Baldrige National Quality Improvement Act of 1987) to stimulate American companies to establish a practice of effective quality management. As a part of this Act (small) businesses and public sector institutions are awarded for the achievements in the area of quality. In Europe a similar initiative started in 1992 when the EFQM (European Foundation on Quality Management) excellence model was introduced. As is the case with the Malcolm Baldrige Quality Award, companies and public institutions are yearly selected to receive the EFQM excellence award.

Next to TQM, the Malcolm Baldrige Quality Award and EFQM there are over the years many other general quality models developed. Examples are the Six Sigma model (based on the identification of 'defects' in products), the Balanced Scorecard method (with four areas of attention: finance, learning and growth, processes and customer) and the ISO 9000 Quality Management standard. Many of these models form an integral part of the management principles applied by public and private institutions. However, what about a specific branch in the public sector: the judiciary? Do they also use quality principles and quality systems or is the judiciary just at the beginning of their journey towards 'court excellence'? To answer these questions it is necessary to explain the origins of court quality systems and to make a distinction between judicial quality and court quality.

## 2 Judicial and court quality

When discussions are followed amongst judges quality is often narrowly defined. It is related to decisions made by judges, the existence of appeal and the independence of the decision making process of judges. In that sense the notion of 'judicial quality' is in the same way defined as was the case at the beginning phase of quality

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<sup>1</sup> A.V. Feigenbaum, *Quality control; principles, practice and administration*, 1951.

management in companies, namely that it is primary oriented at the final product: the decision rendered by the judge. For many years a court user perspective was in the judicial practice not taken into account. However this changed in 1987 when the US Trial Court Performance Standards (TCPS)<sup>2</sup> were introduced. As a part of these standards special attention is given to the expectations and the level of satisfaction of the users of the courts. This development must be seen as the first steps from judicial quality towards the introduction of principles of court quality.

### **3 The first steps towards court quality systems**

As has been indicated in the previous paragraph a commission of leading US trial judges, court managers and (legal) scholars took in 1987 the initiative to develop a measurement system for enhancing the provision of a fair and efficient adjudication and disposition of cases. This resulted in TCPS, which includes 68 measures and 22 standards, clustered around five areas of measurement: (1) access to justice, (2) expedition and timeliness, (3) equality, fairness and integrity, (4) independence and accountability and (5) public trust and confidence. For the collection of data different methods varying from observations, simulations, structured interviews to case and administrative record reviews and surveys are used.

The feasibility of TCPS was tested in twelve courts. Despite the fact that the system was endorsed by many US Trial courts only a limited number of them were able to evaluate *all* the 68 measures and 22 standards<sup>3</sup>. Most of them could evaluate only a selection of the measures and standards. Notwithstanding the fact that the measurement of court quality was facilitated by TCPS many courts were not able or willing to institutionalize the system. There were several factors that contributed to this effect. For example the system was perceived as too complex (too many measures and standards) and the process of data collection was too time or resource intensive<sup>4</sup>.

In the same period when the US TCPS system was developed, Singapore (1990) initiated a reform plan to reduce the backlog of cases and to set in place a court charter aiming at timely proceedings and a proper treatment of parties. Part of the reform plan included also the promotion of visionary leadership and strategic planning in the courts, a more efficient use of human capital, an intensified use application ICT and a regular measurement of the expectations and level of satisfaction of the users of the courts. At the end of the 1990s the Singapore Subordinate Courts launched the *Justice Scorecard*. Inspired by the Balanced Scorecard principles introduced by Norton and Kaplan, the Singapore judiciary developed a specific variant for their courts. Similar to the Balanced Scorecard data is collected on four perspectives (community, internal processes, learning and growth and financial). The Justice Scorecard is used as an important information tool for the management of courts.

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<sup>2</sup> National Center for State Courts, [http://www.ncsconline.org/D\\_Research/tcps/index.html](http://www.ncsconline.org/D_Research/tcps/index.html).

<sup>3</sup> I. Keilitz, 'Standards and Measures of Court Performance', 4 *Criminal Justice* (2000), p. 581.

<sup>4</sup> R.Y. Schauffler, 'Judicial accountability in the US State Courts measuring court performance', 3 *Utrecht Law Review* (2007), p. 120.

#### 4 Europe as 'followers'

Almost ten years later, a limited number of European countries started in the period 1999 - 2003 with the introduction of (comprehensive) quality systems for courts. Some of them had already introduced specific citizens' charters for customers to draw more attention to the wishes and demands of the users of the courts at the beginning of the 90ties. For example this was the case in United Kingdom where justice charters were released (in 1991)<sup>5</sup>. In these charters standards of court services were introduced, access to justice was improved, special attention was given to specific categories of users (witnesses, jurors, children and victims), information was published on the reduction of delays, etc. However, only in Finland and in the Netherlands, more comprehensive court quality models have been developed at the start of the 2000 decennium. As was the case in the US and in Singapore the main reason for the creation of those systems were problems in the functioning of courts, court delays and critics from society. Learned from the experiences with TCPS a Dutch measurement system for court quality was developed in the period 1999 – 20001 by a small project team composed of judges, court staff, advisors of the ministry of justice and specialists from a quality agency for the judiciary (PRISMA). One of the main building principles of the measurement system was the choice to be 'light and simple'. In other words only the essential indicators for court quality should be included in the system and also the process of data collection should not be too time consuming. Comparable with TCPS the Dutch measurement system includes several areas of measurement that are related to efficiency (timeliness of proceedings), judicial quality (unity of law and expertise) and the (ethical) behaviour of judges (independence and integrity and treatment of the parties). To facilitate the process of data collection and to visualize the results of a court quality assessment a tailor-made (pilot-) software application was developed (*the quality dashboard*). At this dashboard, based on the balanced scorecard, the results were shown in the colours: *green* (positive quality outcome), *yellow* (neutral) and *red* (quality improvements are necessary).

The Dutch judiciary was not to only one that took the court quality experiences of other countries into account. This was also the case with the quality project initiated by the courts of Rovaniemi in Finland. At these courts Quality Benchmarks were introduced in 2003<sup>6</sup>. The main goal of the benchmarks is to analyze the success and failures of the court operations and to introduce quality measures. In the benchmark there are six aspects (and 40 quality criteria) identified that are related to a proper functioning of courts<sup>7</sup> (the process, the decision, treatment of the parties and the

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<sup>5</sup> See for example: the Scottish Office and the Crown Office, Scottish Courts Administration, *Justice Charter*, 1991.

<sup>6</sup> Ministry of justice Finland, *Quality projects in the courts of the jurisdiction of the court of Appeal of Rovaniemi*, 2005.

<sup>7</sup> For the achievements made in the field of quality the Rovaniemi courts received in 2005 a European award (*Crystal Scales of Justice*).

public, promptness of the proceedings, competence and professional skills and the organisation and management of the adjudication).

## **5 Maturity phase of court quality systems**

After more than 15 years of experimenting and testing of court quality systems there seems to be a shift from the pioneering phase towards maturity. As a part of this shift certain modifications are applied in the current court quality models. Looking at the experiences in the US, Europe and Singapore there are different directions and solutions to make court quality systems more acceptable for the judiciary. For example TCPS was criticised for the fact that it was too complex and too time consuming to conduct a court assessment. This resulted in the creation of the CourTools (2005)<sup>8</sup>. These tools, composed of a list of ten practical quality and performance measures, are based on elements derived from TCPS, the Malcolm Baldrige Quality Award and the Balanced Scorecard. Courts are free to choose which of the ten measures are used to improve their quality. Flexibility is the key-word in this respect. An opposite trend may be visible in the Netherlands where, instead of reducing the level of complexity of the measurement system for court quality, more quality measures are added to the system (for example peer review amongst judges, national complaint proceedings, a system of visitation) and integrated in a comprehensive court quality system (RechtspraakQ). In Singapore the methodology of the justice scorecard is further refined, especially by focussing at the simplification of the data collection process and the presentation of quality and performance data by introducing the *eJustice Scorecard* (2003).

The maturity phase is not only visible in the fine-tuning of the current national court quality systems, but also in the growing attention to stimulate quality debates and to introduce court quality systems in various countries at an international level.

## **6 Europeanization and globalisation of court quality**

At a European level and even at a global level various initiatives are undertaken to stimulate a quality debate in countries and to improve the quality of courts. For example the Committee on Civil Justice and Home Affairs of the European Union published in 2004 a working document under the title 'the quality of criminal justice and the harmonisation of criminal legislation in member states'. One of the elements described in this working document concerns the need for a quality charter, which includes a set of criteria for evaluating judicial systems, benchmark information, a system for dissemination of best practices amongst the member states of the European Union and an evaluation report on compliance with the quality charter. Despite the good initiative undertaken by the European Parliament it has not resulted in any concrete follow up. This in contrast with the results shown by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe in the field of evaluation of judicial systems and quality. One important element of the quality

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<sup>8</sup> See for information: <http://www.courtools.org>.

charter drafted by the reporters of the European Parliament concerned the evaluation of judicial systems. From 2002 till current there are three evaluation studies produced which gives insight in the composition and operation of judicial systems of the (47) member states of the Council of Europe<sup>9</sup>. In addition to the publication of these reports quality was put on the agenda of the CEPEJ in 2007 when a special working group on quality was created. One of the outcomes of this working group is the publication of a ‘checklist for quality of the judiciary and courts’<sup>10</sup>. This checklist, a practical list of questions or attention points, can be used by governments, courts and judges to start a debate on quality improvements in the judiciary or to implement quality measures. What makes this checklist different from general court quality models such as TCPS, the Finish Quality Benchmarks, RechtspraakQ and the eJustice Scorecard is that it addresses the issue of quality at three levels: the national level, the level of the courts and the level of the individual judges.

A different approach in stimulating court quality at an international level is used by the International Consortium for the Framework of Court Excellence. This Consortium, an initiative of a senior judge of the Singapore Subordinate Courts, has tried to combine all the best practices with court quality assessment tools in the world into a new model: ‘the Framework for Court Excellence’<sup>11</sup>. The central aim of the framework is to present a concept and tools by which courts worldwide can voluntarily assess and improve the quality of justice and court administration they deliver. In the following table the seven areas of ‘court excellence’ used by the Framework are listed.

**Table 1 Areas of measurement in the framework of court excellence**

Court management and leadership	User satisfaction
Court policies	Court resources
Court proceedings	Affordable and accessible court services
Public trust and confidence	

With respect to the assessment of court quality a list of indicators has been defined for each of the seven areas of measurement. This list can be used by the courts to evaluate their current state of affairs. To facilitate the process of assessment a plan of action (steps to be taken to implement the Framework, to conduct the assessment and to use the results for improvement of the court performance and quality) and a self-assessment questionnaire is included in the Framework. The main aim of the questionnaire is to search the strength and weaknesses in the court organization. If needed or requested, the Framework contains also a scoring mechanism. Courts can

<sup>9</sup> The reports are available on the website of the CEPEJ: <http://www.coe.int/cepej>.

<sup>10</sup> Council of Europe (CEPEJ-GT-QUAL (2007)9Rev), *Quality of the judiciary and courts (a checklist)*, 2007.

<sup>11</sup> The Framework for Court Excellence was launched at a Quality Forum organized by the Australasian Institute of Judicial Administration (AIJA) in Sydney Australia ( 21-23 September 2008). For further information about the Framework consult the website of the AIJA (<http://www.aija.org.au/>) or the website of the National Center for State Courts (<http://www.ncsconline.org>).

use the scoring method to see how far they are on their journey towards court excellence. Results of different assessments (including the scoring results) may be used in the future to setup national or international court quality benchmarks and to identify that court that has achieved the highest level of court excellence.

## **7 The future: court quality systems for all?**

In a period of twenty years much has been changed in the judiciary. Inspired by quality and business excellence models applied by companies and public institutions there is an indication that also the judiciary will follow the path of quality management. For many years quality was restricted to 'judicial quality', but now seems the time right to extent this notion towards 'court quality' or 'court excellence'. A limited number of countries in various continents have shown that it is possible to introduce comprehensive court quality systems. Some of them made in the past the mistake to create a system which is 'too beautiful' i.e. with too much indicators and measures to catch all the aspects that are related to court quality. However successful court quality systems should be 'light', flexible and easy to implement. Good examples for this are the US CourTools and the Singapore eJustice Scorecard. The recently launched Framework for Court Excellence is created by experts who are aware of the pitfalls that can be found in the court quality debate. That is also the reason that the Framework is based on the earlier described recommendations such as 'light', flexible and easy to implement. Though, it must be noted that from the stage of development to implementation there are currently no concrete experiences. One of the challenges of this new court quality model is that it should be applicable in courts operating in all continents: from Australia to the United States and from Europe to Africa. We have to wait and see if the creators of the Framework are able to fulfil this expectation.

Learned from the past it is expected that to a greater extent countries will introduce quality systems for the judiciary and that supplementary attention will be given to the needs and wishes of the users of the courts. Supported by international organizations (such as the European Union and the Council of Europe), networks of judicial institutions, legal professionals and initiatives such as the International Consortium for Court Excellence more and more courts in various countries will introduce quality measures and quality systems. This will not always be an easy task, since there may be resistance from the judiciary. Especially the group of 'conservative' judges may perceive a court quality system not as an improvement, but as an attack of their judicial independence. To overcome this resistance it is essential that during the phase of creating and implementing court quality systems judges are actively involved. By the end of the day it should become their 'own quality system'. Another important aspect that needs to be taken into account is the fact that quality systems in the courts should not become 'control systems' and that individual judges and court staff are 'sanctioned' when there are poor quality results. The essence of court quality system is that they are used for improvements and for the benefits of the courts as a whole and of course of its users.

How will the future look like over five to ten years? In contrast with the past court quality models and systems will be common in the courts and accepted as general management tools to run a court. It is hard to say if there will be only one universal model applied, such as the Framework for Court Excellence, or that court quality models will be developed and implemented according to the local needs and wishes of the various regions in the world. In a situation where the Framework of Court Excellence will have gained a comparable status with general business quality and excellence models such as the Malcolm Baldrige Quality Award, EFQM, Six Sigma, etc., it may be necessary that an international institute for Court Excellence will be created. This institute can be responsible for the maintenance of the quality model and provide assistance to courts around the globe with the implementation of the Framework and court quality assessments. It may even be responsible for collecting regional benchmark data in cases where countries would like to compare their level of court quality with other countries. If we follow the path further even regional awards for court excellence will be (yearly) given to courts in the different continents for their achievements made in the field of quality. Before this will be reality much pioneering work still needs to be done, however the first steps has been taken in the 'journey' towards court excellence. Steps that may not only result in 'justice for all' but also in 'court quality systems for all'.