

Connecting quality hotspots: from judicial quality to quality measures and systems

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1 Introduction

Looking at the practice of the functioning of courts around the world and the various initiatives undertaken to improve the performance and the results delivered by judges I have to conclude that there is a 'whole quality world out there!' The evaluation of the performance of judges, the application of court user surveys, the introduction of new information and communication technology in courts, organizational changes, the application of management and leadership principles are just a few examples of what is going on in the courts in the 2010 era. Mostly these initiatives are defined under different terminologies i.e.: (1) the improvement of judicial quality, (2) the introduction of quality measures and (3) the application of court quality systems. Not always is clear what is mentioned with these three terms.

In this presentation I will try to explain what the differences are between (the evaluation of) judicial quality, quality measures and court quality systems and how they are assessed in various countries by illustrating them with concrete cases. Let me first begin with judicial quality.

2 Judicial quality

Judicial quality is often related to the end result of a judicial proceeding: the quality of a judgment or verdict. The determination of what the level of quality is or should be is often

laid in the hands of colleague-judges, higher courts, supervisory bodies (high councils for the judiciary or judicial inspections) or the legal-scientific world.

Judicial quality is a complex and delicate subject to discuss, since it touches the core of the work of judges and important notions such as principles of independence, fairness and neutrality. It is also a term that is often related to a classical viewpoint on quality, because the final product of a judicial proceeding (judgment/verdict) is defined by the legal professionals (judges) themselves. An external assessment (for example by court users) is not included.

Picture 1 Award for my achievements in the field of quality



Under the influence of the expansion of the internet, the final product of courts is becoming more and more visible for the wider public. With the opening of dedicated court websites, the publication of judgments on the internet more openness of the judiciary is created towards society. In that respect new opportunities will arise for others than judges,

to determine what the level of judicial quality should be. For the users of the courts judicial quality (in terms of a correct application of the law) is just one of the aspects that need to be taken into account. Swift treatments of cases, courtesy in the courtroom, legal knowledge of the judge are for users important factors as well. Despite the importance to include some external viewpoint in the work of judges and courts into account it is still necessary to pay attention to the level of judicial quality.

How judicial quality in practice is evaluated will be illustrated by two examples (Bahrain and Kazakhstan). The reason that I have chosen these specific ones is very simple, because as a part my visits to these countries I had the opportunity to assess the practice of judicial performance (and quality) evaluation. Of course, there may be many other examples to give too.

Judicial performance evaluation (case of the Kingdom of Bahrain and the Republic of Kazakhstan)

In the Kingdom of Bahrain the evaluation of the performance of judges is conducted by the Inspection Directorate of the Supreme Judicial Council. In this directorate senior judges are appointed as evaluators. The judicial performance evaluation is addressing two aspects of the work of a judge: (1) its performance and (2) the quality of the decisions rendered by the judge. Regarding the aspect of *the performance* of a judge the evaluator will review the number of cases that have been concluded in a given period, the average duration of the proceedings undertaken, the complexity of the cases and the number of adjournments.

It is important to note that one of the current complicating factors in the evaluation of the

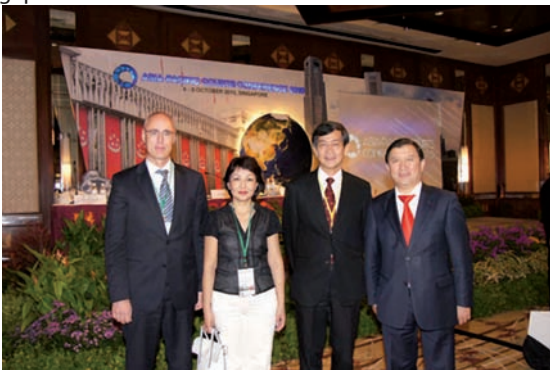
performance of the judges in Bahrain is related to a lack of objective norms and standards. At the moment there is no workload model available. This means in practice that the determination of 'underperforming' or 'over performing' of a judge is based on expert opinions rather than objective facts.



With respect to the second aspect *the quality of the decisions* made by a judge, I can indicate that this is assessed by selecting ad-random cases concluded by a judge over a period of two months. The senior judge/inspector is reviewing the content of the decisions by specifically investigating the quality of the legal reasoning, the correct application of the law, the correct grammar applied, etc. In situations that a legal-technical mistake is detected this will be reported by the evaluator and included in the evaluation report of the judge concerned.

The judicial performance evaluation may not be limited to the evaluation of the *performance* of the judge and the *quality of the decision* but can include *complaints against a judge* too. In situations that there is a grounded complaint, this can be a reason for an evaluator to insert information about the complaint in the personal evaluation file of a judge to be discussed by the members of the inspection directorate of the Supreme Judicial Council.

Figure 2 Delegation of Kazakhstan and Senior judge Singapore



In Kazakhstan the evaluation of the performance of judges i.e. judicial monitoring is done by the higher (regional) courts and the Supreme Court. As a part of this process the evaluators are especially reviewing judges with a *low index of administration of justice*. This is defined as "the occurrence of a relative high number of repealed or altered judgments, violations of procedural terms for legal investigations, as well as the occurrence of special statements for violation of the law during a legal investigation compared with other judges in a district or a region". Next to the use of the *index of administration of justice* principle as a criteria to evaluate the judicial quality and performance three other aspects can be included in the evaluation process too, namely:

(1) the public opinion of the work of a judge

concerned by using anonymous questionnaires, (2) the level of training and education and (3) the occurrence of disciplinary penalties and complaints against a judge and negative reports in the media.

Similar to the case of Bahrain, as a part of the examination of the repealed cases, the evaluators are looking at the content of the judgment/verdict: the reasons for the repeal or alteration of a judgment, the quality of the decision, the timeliness of the proceedings and the workload of a judge. Also external factors – in terms of presence of complaints – are taken into account of the evaluation of judges as well. However, there are also differences to detect. Where as a part of the evaluation of judges in Bahrain information derived from complaints is used, the evaluators in Kazakhstan make use of information from lawyers and the media too to draft their conclusions.

How the judicial quality and performance is evaluated in Bahrain and Kazakhstan are just two of the many examples that can be shown here. What I would like to do now is to discuss an interesting report from the Institute for the advancement of the American legal system of the University of Denver, called the *Transparent Courthouse*. This report describes the criteria that should be applied when the performance and quality of judges are evaluated and the elements that should be included in this evaluation.

According to the authors of the report a proper evaluation of the work of the judge should include the following principles:

1. *Transparency*: the evaluation system should be designed that all involved (judges, evaluation commission, respondents, the public) fully understand and trust the evaluation

- process;
2. *Fairness*: evaluations should be fair in design and results;
 3. *Thoroughness*: evaluations should take into account all relevant information and done frequently.
 4. *Shared expectations*: evaluations should teach judges about their strengths and weaknesses and promote improved performance (Transparent Courthouse report p. 1).

In contrast with the judicial evaluation conducted in Bahrain and Kazakhstan, the report of Transparent Courthouse recommends to include in the evaluation not only aspects related to the judicial quality and for example complaints against a judge, but to pay attention to the communication skills of a judge too, as well as the manner how parties and staff is treated in the courtroom, the professional attitude of the judge and the presence of fairness and impartiality towards the parties. For that reason the interested reader can find in the report sample questionnaires that can be used as a part of the evaluation process of judges.

3 Quality measures

As I have indicated at the beginning of my introduction judicial quality and the evaluation of the performance of judges is just one way to describe the quality topic. Another perspective is related to the so-called 'quality measures'. In many countries specific measures are taken to enhance and to improve the work of the judiciary. Most of these measures are not encapsulated in a comprehensive quality system, but form a part of reform measures that are being introduced at the level of a judicial system as a whole. Where judicial quality and judicial performance evaluation are mainly focused

on the individual judges, quality measures are often related to general improvements at the level of a court or a judicial system.

Lessons learned from practice showed that improvements in the operation of courts and the judiciary are not easy to realize. Compared to other parts of the public sector, the judiciary seems to be one of the most difficult sectors to introduce change and innovation. Protection of the independence of the judiciary, the presence of a strong legal culture, a high level of professionalism seems often to contribute to resistance to change. However, due to an increased external pressure from society or as the result of a growing number of international regulations and standards aiming at promoting the quality for the judiciary – in many parts of the world justice sector reform programs have been introduced.



As a part of these programs specific measures are being developed aiming at reducing backlog of cases, length of proceedings, training and education of judges, the introduction of court technology, increasing the efficiency of justice, etc. Most of these developments can be understood as the introduction of 'quality measures' since they all are aiming at an improvement of the functioning of courts and an increase of efficiency of justice. Compared to the introduction of comprehensive 'court quality systems' several quality measures may

not be interrelated and integrated in a 'quality package' program. The best way to illustrate this is to show some European examples.

In Europe four top-priority quality measures are taken to improve the functioning of the legal systems, namely: (1) modifications or improvements in procedural laws (civil, administrative and criminal laws), (2) investments in training and education of judges (through the creation of national schools for the magistrature and the European Judicial Training Network), (3) the introduction of new forms of ICT in the courts (at a national level and European level) and (4) the reduction of the workload of courts by introducing alternative dispute resolution mechanisms.



With respect to *changes in procedural laws*, most of these changes are meant to reduce the length of proceedings and backlog of cases. For example by reducing the complexity of the laws, the number of procedural steps to be taken, increasing the possibility to start a proceeding without a lawyer and the use of 'fast track' procedures for simple (civil) cases. For the last type of cases it is important to note

that especially for the small uncontested civil claims specific measures have been introduced in Germany (Mahnverfahren) and United Kingdom (Money Claim online). As a part of the British Money Claim online the claimant can realize a fast recovery of his/her claim by making use of a dedicated (court) website.

Improvements of procedural laws are just one of the 'quality measures' that have been implemented in many countries in Europe (and outside Europe). Another example of quality measures concerns the enhancement of the *quality of the training and education of judges and staff* by promoting the establishment of national schools for the magistrature and specific training programs for judges and court staff. To exchange experiences on the training programs that have been developed at a national level the European Judicial Training Network was established. As a part of this network national schools for the magistrature can share their knowledge and can develop exchange programs for judges and court staff.

Regarding the investments in *new information and communication technology* in Europe much progress have been made in the area of case registration systems and court management information systems. Besides to this development an increasing number of countries have opened court websites, where practical information can be found about the functioning of a court or how to start a court proceeding. In addition to this more and more countries have introduced videoconferencing equipment in the courts. Especially to reduce

the 'traffic' movements between penitentiary institutions and the courts, to facilitate an efficient handling of cross-border cases and immigration law cases. For a further promotion of videoconferencing in the courts in Europe the European Union has developed special leaflets and manuals. Also European projects are funded to test cross-border videoconferencing meetings between courts.

Another promising development that must be mentioned in this context is the launch of the European e-justice portal. In July 2010 this portal was opened for the public as a part of the EU-presidency of Belgium. At this portal citizens, companies, legal professionals and judges can find practical information about court proceedings in the EU-member states, retrieve information from registers (insolvency registers, land registers and business registers) and - in the long run - submit cases online to the various courts in Europe.

The last quality measure that I would like to mention concerns the introduction of ADR as a mean to reduce the workload of courts. In many European countries mediation is possible, especially in civil and commercial matters (family law, contract law). Even for cross-border disputes an EU-directive has been adopted in civil and commercial matters.

4 Court quality systems and comparative benchmarks

In the first part of my presentation I have shown examples how the judicial quality at the level of the individual judges can be evaluated (judicial performance evaluation and the assessment of judicial quality) and I have provided four examples of quality measures that have been introduced in Europe. Let's now move on to the subject of court quality systems and the

application of the International Framework for Court Excellence. In contrast with court quality measures a court quality system can be seen as a comprehensive system with interrelated measures to assess and to enhance the quality at the level of the courts. Most of the court quality systems that have been developed does not evaluate the level of the quality of an individual judge - because that part belongs to the subject of judicial quality (and the independent position of judges) - but is focused on the level of the court as a whole (or a department within a court).

As already has been illustrated in several articles about the development of court quality systems, there are a number of countries available with a history of experiences in that field. Of course, one of the well known examples is the US Trial Court Performance Standards. Based on five areas to measure quality and more than 60 measures, it is one of the most comprehensive court quality system developed ever. Some may say, also the most complicated one too. Because not many US trial courts were able to implement the system. However, despite its complexity it does have laid the fundamentals for the US Courtools; a list of ten practical tools which courts can use to assess their performance and to take appropriate measures to improve the quality of services. These tools are widely applied by several courts in the United States.

At the same time that the US Trial Court Performance Standards were developed similar initiatives were undertaken in Singapore, which resulted in the publication of the Quality justice scorecard by the Singapore Subordinate Courts. For this work the Subordinate courts received the prestigious Singapore Quality Award. Still today we can conclude that Singapore is on the top when it comes to the promotion of quality in the judiciary. The hosting of this conference

is a good example in this respect.

In Europe the Netherlands and Finland (court of appeal of Rovaniemi) were the first two countries who took the initiative to develop their own court quality systems. Based on the experiences of other systems, both countries have walked different paths. In Finland a quality benchmark has been introduced in 1999. Almost similar to other court quality systems this system takes several quality aspects into account when measuring the quality level of the court of appeal of Rovaniemi. Comparable with Singapore, the appeal court of Rovaniemi received for their work a European Award (the Crystal Scales of Justice). It must be noted that the Finnish Quality Benchmarks are limited to just one jurisdiction (the court of appeal in Rovaniemi) and that in other parts of Finland comparable initiatives must be introduced. It is expected that this will happen in the near future, since during the celebration of the 10th anniversary (November 2009) of the existence of the Quality Benchmarks the president of the Supreme Court made an appeal to introduce the system in all the courts in Finland.

In the same year that Finland started with the creation of a court quality system, also the Netherlands took the initiative - as a part of a large reform program of the judiciary - to develop its own model. After piloting in three courts (district courts of Amsterdam, Roermond and Maastricht) and the launch of the Council for the Judiciary in 2002 the use of a court quality system is mandatory for all the courts in the Netherlands. This means in practice that on a regular basis court user surveys are held, assessments in the courts will take place and on a four years cycle basis a national report on the state of affairs regarding the judicial quality and court quality is published.

The development of what I would like to call 'quality hotspots' in the world does not stop in Europe, the United States and in Singapore. With the creation of the International Framework for Court Excellence other regions will become inspired too. A good example in this respect can be given for the North Africa and Middle East Region. In several meetings and conferences (in Jordan and Bahrain for example) the general idea of the International Framework has been presented. As a result of this several countries in this region are becoming aware of the need to develop similar systems or to apply the ideas put forward by the International Consortium for Court Excellence.

It is then also not surprisingly to see that several initiatives in this region have been undertaken to raise the awareness for the need for quality systems and regional benchmarks. For example in 2006 the American Bar Association Rule of Law Initiative and the Arab Council for Judicial and Legal Studies (ACJLS) launched under the title of regional 'justice sector benchmarks' and judicial monitoring a new project. I had the opportunity to moderate two workshops (in 2006 and 2007), followed by an expert meeting in 2010 (Bahrain), with the aim of identifying, together with judges, legal practitioners and other experts in the MENA region, indicators which reflect a good representation of the various aspects that are related to the subject of judicial and court quality.

The current ABA/ACJLS justice sector benchmark system contains four areas:

- Judicial independence;
- A competent and qualified judicial system;
- A well management judicial system;
- Access to justice and fair process.

For each of these areas several indicators

have been defined and measurement tools developed. As you can see, there are some overlaps between the justice sector benchmark for the MENA-region and the international Framework for Court Excellence. Especially the focus on a well managed judicial system and the importance for access to justice and a fair process can be found in both models. However, there are also differences. For example with respect to the promotion of judicial quality. Judicial independence and a competent qualified judicial system are two separate areas of attention which are explicitly mentioned in the ABA justice sector benchmark. Lesser attention for these issues is given at the Framework for Court Excellence.

With respect to the implementation of the ABA/ACJLS regional benchmark I can inform you that two activities are underway. The first concerns the finalization of a user guide for justice sector benchmarks. This practical guide should be used for setting up national and regional assessments for measuring the quality of the judiciary and courts in the MENA-region. The second activity is related to individual 'judicial' quality monitoring/benchmark initiatives. For this reason the ABA Rule of Law Initiative, together with ACJLS and USAID have invited NGO's inside the MENA region *and* outside the region, to develop pilot projects which covers one or more topics of the justice sector benchmark. At the moment pilots are undertaken in the Palestine territories, the Lebanon (access to justice), Nigeria (duration of proceedings) and Indonesia (access to justice). The results of these pilots (expected next year) will be used to improve the justice sector benchmark and to stimulate other countries to make use of this tool.

After this short 'stop-over' in the North Africa and Middle East region I would like to return to

the measurement aspect of the Framework of Court Excellence, especially referring to country experiences and the possibility to apply the Framework for cross-country comparisons. Currently the ideas of the Framework for court excellence are applied in two different ways. First of all it is used for a general assessment at a national level (the quality delivered by the judiciary as a whole). For example such an approach has been followed recently in Indonesia (with the assistance of the US National Center for State Courts) and in Kazakhstan (as a part of an UNDP mission undertaken by the author of this presentation). In this working method the seven areas of excellence can be used to identify the strong points of a judicial system and the areas of improvements. Information collected as a part of a general assessment may be an important information source to develop a plan of action for procedural and/or organizational changes in the courts.

The second application of the framework is at the level of the individual courts (as a tool to assess the level of quality, productivity and services delivered and a source of information to develop a plan of action to raise the level of quality towards 'excellence'). One of the examples that can be shown here concerns the Land- and Environment court of New South Wales (Australia). This court started at the end of 2008 with the preparation of the application of the framework, followed by two meetings in the beginning of 2009 where the self-assessment questionnaire was introduced and several judges and court staff officers were invited to take part of the assessment process. On the basis of these two meetings a total score was registered (483 = band 4 upper middle range of the total score listed in the framework document) and for each of the 7 areas of excellence sub-scores calculated. The

application of the framework by the Land- and environment court NSW showed that some improvements could be made. Especially in the area of the creation of a mission statement for the court, the involvement of court employees in court policies, the collection of reliable quality indicators and the use of 'partner' and user satisfaction surveys.

In addition to the experiences of the Land- and Environment court in NSW Australia the Singapore Subordinate courts are using the ideas of the international framework for court excellence too. With the help of external assessors the performance of the Singapore subordinate courts are measured on 7 categories ((almost) similar to the 7 areas of excellence). Based on the results of the assessment several improvements are regularly implemented in the Subordinate Courts.

Currently there are several countries and regions interested in using the Framework for Court Excellence. This is for example the case for the Middle-East region, (Central) Asia (e.g. Kazakhstan), Europe (Ukraine?) and the United States (courts in California). At this point we can conclude that the awareness of the existence of the International Framework of Court Excellence is growing and that more and more countries are developing plans for implementation. On the other side we must also admit that we are still at the beginning phase, since comparative information about which country or court is applying the framework is still lacking and that we are not able (yet) to compare the (weighted) scores from several courts with the aim of identifying the most excellent court in the world. Much work needs to be done in this respect and that brings me also to my final remarks of the presentation (the future).

5 The future

As I have indicated in my presentation there are already many 'quality hotspots' in the world identified. It is expected that - with a growing awareness of the existence of the International Framework of Court Excellence and its underlying instruments - in more and more countries, the attention for applying court quality instruments and systems to assess and to improve the quality of the work and services delivered by the courts will grow. In that respect more and more 'quality hotspots' will arise. To facilitate a lively debate and an increase of exchange of experiences with the application of the framework I would like to welcome the idea that the participants will get the opportunity for making suggestions, comments and submitting information about their experiences to the International Consortium for Court Excellence. For this reason at this conference already a small questionnaire has been passed to the participants. I hope that the results of this survey will provide a better insight in the current situation with respect to the application of the Framework for Court Excellence. Moreover I would like to propose a suggestion to see if it is possible to add Web 2.0 possibilities at the current website courtextcellence.com (similar to Face book and Twitter). This will make even a quicker exchange of experiences and ideas possible and it will become an excellent platform to connect all the quality hotspots in the world.