Tracking Progress in Strengthening the Criminal Justice Indicators for Integrated Case Management (e-Tools)

WHITE PAPER

JUSTICE SECTOR INSTITUTIONAL INDICATORS FOR CRIMINAL CASE MANAGEMENT

HIGHLIGHTS

- ***EU Member States' judicial systems face number of problems which require the implementation of systematic performance measurement.***
- ***Besides the legal accountability mechanisms courts tend to be a subject of managerial accountability.***
- ***There is no single model for managerial accountability of the judiciary and many countries are still very much within an experimental phase in this field.***
- ***Most of the tools in the EU Member States measure the performance of the judiciary at the three different levels:***
  - ***at a "micro-level", to measure the productivity of judges or employees;***
  - ***at a "meso-level", to measure the performance of each court; and***
  - ***at the "macro-level", to measure costs and means of the judicial institution as a whole up against its global output or outcome.***
- ***Evaluation criteria: Quality or performance?***
- ***Social indicators should also be developed to evaluate the level of public trust and institutional legitimacy in the judiciary demonstrated or generated by the way courts operate.***
- ***The use of ICT is a significant tool to manage and improve courts' timelines.***

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In recent years, the debate on the implementation of a quality model in the justice sector has grown increasingly intense at EU level. This debate is linked to the process of reform and modernisation undertaken by most of the EU Member States in order to tackle the critical number of problems faced by their judicial systems, among which in particular: a considerable case backlog, unbalanced caseloads of individual courts and judges, and excessive length of court proceedings.

Although it may be true that judicial systems have been late to adopt the principles of performance measurement, the endorsement by the judiciary administration of new jargon such as 'efficiency and effectiveness', 'transparency', 'quality care', 'benchmarking', 'result orientation' and 'accountability' demonstrates that these principles have become one of the cornerstones of their updated management policies.[1] At different levels of the judicial chain, numerous useful experiences and methods can already be highlighted in the area of quality of justice evaluation systems. All of these initiatives are designed to achieve a better organisation of justice that is capable of restoring and reinforcing the diminished confidence of citizens in the courts.

Comparing national experiences also enables to highlight the core challenges or tensions at work between the managerial objective of evaluating judicial performance and the preservation of an autonomous judiciary. Under the classic theory of division of powers, the judiciary should indeed be independent from the other branches of government and this independence is a fundamental element of a democracy based on the rule of law. The key question in this respect is: how can such fundamental requirement be combined or reconciled with quantification, standardisation and control which are the basis of most performance management instruments? When defining the objective to be achieved by the judiciary as a public administration, should one favour the 'effectiveness' or the 'quality' of its outcomes?

Until recently, the traditional and primary method of controlling the effectiveness of courts relied on legal accountability mechanisms, whose most typical elements include holding open proceedings, and publishing judges' reasoning, which allow public scrutiny, as well as appeals procedures and other methods permitting internal scrutiny carried out by the judiciary. In this framework, judicial accountability is imposed by the judiciary itself, and may consequently be seen as a way of avoiding the risk of external influence.

A separate approach, whose application has increased substantially in recent years, consists in applying performance indicators to measure the ability of courts to attain the results for which they are mandated. This approach refers to the concept of managerial accountability and tends to define administration of the judiciary as the management of resources that are necessary to

[1] Colson, R. et S. Field (2011). Les transformations de la justice pénale [The transformations of criminal justice], Paris, L'Harmattan.

ensure the proper functioning of the justice system, including human resources, budget and infrastructure. In this framework, the evaluation of judicial systems performance is based on a cost-benefit analysis and is generally carried out by third parties, such as High Judicial Councils.

Even though the diversity of national experiences clearly illustrates that there is no single model for managerial accountability of the judiciary and many countries are still very much within an experimental phase in this field, the traditional main indicators used to benchmark or measure the performance of judicial systems can easily be identified as follows:

- number of pending cases, or the caseload;
- duration of the procedure, or the time necessary to close a case;
- indicators concerning the quality of the case handling procedure;
- available resources in the system, as per the number of cases to be handled: human resources, equipment, courts (and their respective budgets and organisation).

While the approach often privileged by governments consists in equating performance with efficiency, in an area where performance is very difficult to measure, several national initiatives undertaken by EU Member States also demonstrate that the issue of judicial *time* or *performance* management is not the only orientation adopted. The topic of 'quality for the judiciary', not only providing figures but also qualitative information, is also becoming a significant focus with a view to hold the judiciary accountable to its primary beneficiaries or final recipients: the citizens.

Improving performance indicators through a mixed managerial and quality-based approach

Several types of performance measuring tools have been or are being implemented in the EU Member States. Different countries have different challenges with regard to improving judicial performance and different judicial traditions, and the performance measurement system should be tailored to cope with these particular challenges. Furthermore, there is no perfect or ideal set of performance indicators, also because figures or statistics alone will never provide a fully accurate picture of court or judicial system performance.

Despite this lack of unitary approach, several common trends can be identified regarding the levels and the criteria adopted for measuring the performance of judicial systems.

Levels of performance evaluation

Most of the tools developed in the EU Member States have been designed to measure performance at three different levels:

- "micro-level": to measure the productivity of judges or employees,
- "meso-level": to measure the performance of each court,
- "macro-level": to measure costs and means of the judicial institution as a whole up against its global output or outcome.

These different levels of performance measuring serve different purposes.

Ideally, the formal evaluations of individual judges enable to measure the quantity (results) and to evaluate the quality of the judges' work, i.e. their competence and capabilities, as well as their commitment and integrity. The results of such individual assessments are generally not made available for public scrutiny and are very specific focusing on the evaluation of each magistrate's career. Therefore, these results are of limited value with regard to the comparative assessment of either courts or the judicial system as a whole.

Consequently, several countries have also developed specific tools and procedures to measure and benchmark judicial performance at the court level, which enables to support a process of continuous evaluation and learning, provide a foundation for more efficient budgeting and allocation of resources, as well as useful documentation for its main stakeholders. The results of the evaluation provided at this level can help to devise appropriate caseload and workload policies. This can vary from the monitoring of the workload of the courts and judges (such as the Lamicie workload model developed in the Netherlands) to the stimulation of alternative dispute resolution outside the courts, the filtering of cases, the use of a flexible case assignment system (France), the extension of tasks to be carried out by court staff, the limitation of extra judicial activities of judges (Hungary) and the stimulation of a one-sitting judge instead of a panel of judges (Italy).

Finally, it has also become customary for national judiciaries to provide some data about the performance of the entire judicial system. Providing information at system level responds to the vision of the judicial system as a public service that should respond for its effectiveness, even though the data provided might sometimes be too general to act upon.

Evaluation criteria: quality or performance

The approach often privileged by governments consists in equating performance with efficiency or timeliness, that is, the capacity of an organisation to maximise productivity and achieve its goal at a minimal cost. This means that the evaluation of the performance of courts is done through a mere ratio between their output and their budget or between their output and the number of their staff (judges or other employees). This approach might imply the risk of reducing the complexity of the core of judicial decisions, by using a few indicators as guidelines for budget downsizing or as arguments in political debate.

The quality of a judicial proceeding's outcome depends to a large extent on the quality of the prior procedural steps (as initiated by the police, prosecutor's office, or parties), so an evaluation of the judicial performance is impossible without an evaluation of every distinct procedural context. Judicial performance therefore involves more than just the work of judges and other legal professionals acting in courts.

Many countries closely monitor the judicial system productivity, by tracking the volume of cases passing through courts (usually as the ratio between the number of cases filed and the number of cases disposed) as well as the time it takes for courts to process these cases.[2] Court systems also analyse this kind of information according to the type of offence, court, and individual judge presiding, tracking ratios over time to distinguish between seasonal disturbances and more meaningful trends.

A converse approach, which is generally adopted by judges, lawyers and human rights organisations, is to link performance to the "quality" of proceedings and judicial verdicts. This means that the quality of justice should not be semantically reduced to the judicial system's 'productivity'. As far as justice is concerned, the criteria of quality are defined by the law, jurisprudence or international conventions such as the European Convention on Human Rights: conformity of verdicts to the law, fair trial, independence of the judge, transparency, reasonable length of proceedings. According to these actors, the development of efficiency-driven performance measurement instruments would lead to the standardisation of proceedings and de-humanisation of the judicial work, as well as affect the balance of power inside the courts and between the judiciary and political authorities.

In the framework of this quality-based approach, citizens as primary beneficiaries of judicial systems are considered to have a legitimate interest in holding them accountable. The idea is that citizens are entitled to legal certainty. One could reasonably argue that effective or efficient judicial administration constitutes a necessary element to guarantee this fundamental right.

In other terms, social indicators should also be developed in order to evaluate the level of public trust and institutional legitimacy in the judiciary demonstrated or generated by the way courts operate.[3] User surveys at the court level or broad polls at system level are therefore carried out at either systemic or ad hoc basis by several European countries to evaluate citizens' perceptions of the effectiveness of the service provided by the judicial system. Some of them, such as Spain, have even gone further by analysing the quality of legal proceedings through the number and type of complaints and claims issued by citizens against courts. This information provides a more precise evaluation of the effectiveness of the judicial system than the general level of perceived satisfaction captured by public polls or surveys.

Improving judicial time and quality through the use of e-tools

In many documents that have been produced by CEPEJ on the topic of length of judicial proceedings and timeframes, it is clear that one of the tools to manage and improve their timeliness is the use of ICT (information and communication technology).

[2] In most European states this is sometimes referred to as the "Cappelletti-Clark" index.

[3] Jackson, J.et al. (2011) "Developing European indicators of trust in justice", In: *European Journal of Criminology*, 2011.

ICT may provide useful support to the judges' work in many areas: organising their tasks, information management and retrieval, legal research, document production (through the use of search engines and text mining techniques) and sharing (the use of e-mail and forums) as well as decision-making (development of sentencing support and automated judgment systems). These systems have the potential to improve the quality and timeliness of judgments and result in more consistent sentences in the long run, although present technologies might not yet be capable of coping with the nature and complexity of these tasks. The complexity, variability, flexibility and discretion that are typical of judicial decisions are not easily tackled by computer automated systems. Nonetheless, improvements in semantic technologies and data mining foster hopes for the future at least in the areas characterised by more predictable, repetitive and bulk cases.[4]

ICT may also improve the timeliness of court proceedings by introducing electronic exchange of information between parties and the courts, the development of case-tracking and case management electronic system database, the use of standard templates for certain judicial decisions, as well as the use of audio and video technology in courtrooms.

Normative changes have been introduced in several countries to allow the experimental implementation of these technologies. For example, in Italy, video technologies are specially applied in criminal proceedings dealing with organised crime. In this way, it is possible to avoid the transfer of inmates from prisons to court facilities with a reduction of cost and hearing times. Case management systems can be found in Austria where the Linz District Court uses electronic legal communication to file cases electronically, and to exchange data between the courts and the parties.

Although Case Management Systems (CMS) are less widespread than case-tracking systems, they have the potential to allow more efficient scheduling, assignment and processing of court cases, for complex cases as well as for simple ones. Case management involves the monitoring and managing of cases in the court docket from the time the action is filed to the moment it is finally disposed of by way of trial, settlement or otherwise. CMS can monitor the courts' output and performance, and simplify the planning and organisation of their activities and allocating their resources efficiently. The more sophisticated CMS packages provide useful information about the court workflow on a daily, weekly and monthly basis. Tracking case typologies can be used to highlight critical situations and later the allocation of personnel, judges and other resources accordingly. Another interesting area in which CMSs are innovating is the opening of case-tracking and Case Management System databases to external users like lawyers and parties, enabling them to check the progress of the case in which they are involved without having to go to court.

[4] Taruffo, M. "Judicial Decisions and Artificial Intelligence, 1998 *Artificial Intelligence and Law* 6, pp. 311-324, and Dory Reiling "Technology for Justice How Information Technology Can Support Judicial Reform" Leiden University Press, 2009.

If many technologies to support and ease judges' activities are 'individual tools', the majority of tools aimed at improving the efficiency of courts are 'organisational tools', which require a high degree of standardisation in order to produce visible results. Organisational tools may lead to a higher resistance, due to judges' independence and the nature of the tasks they perform. Having said that, just like the introduction of new managerial procedures and policies, the potential of e-tools in incrementing judicial performance and quality has led to a number of significant initiatives undertaken by courts or judges themselves. The close involvement of these stakeholders will be essential in order to translate the variety of these local good practices into a global policy that could improve the quality and performance of judicial systems for the sake of its direct beneficiaries.

RECOMMENDATIONS

- Enhancing common European approach and stronger national engagement of each Member State (to combine supranational efforts with successful national solutions) for **introduction of common standards for measuring judicial performance** which would allow comparability;
- Encouraging investments from the national governments from EU MS and EU for shaping and reshaping national data collection systems as well as for security and protection of the collected data;
- Minimizing barriers to the development of the ICT and use of e-tools for re-designing justice systems in order to improve access to justice, transparency and accountability of the judiciary;
- Inspiring broader dialogue between all stakeholders on national and EU level including civil society.