

QUALITY ASSESSMENT OF COURTS AND THE JUDICIARY: FROM JUDICIAL QUALITY TO COURT EXCELLENCE

1. Introduction

The concept of quality, quality assurance and quality improvements is well known within the private sector. Many companies across countries utilise various quality systems to serve their customers the best they can. The origin for the development and implementation of quality policies can be found in Japan¹. Japanese companies were stimulated in the '50ties to change the negative image concerning the quality of their products by introducing quality measures. With the assistance of 'quality gurus', for example Deming², they started gradually with the implementation of the principles of 'total quality control'. In contrast with other quality measures which are only oriented at quality of the final product (and/or the identification of 'defects' in a product), total quality takes all the organizational aspects that are related to the production of a good and service, as well as the level of satisfaction and expectation of the clients into account.

At a later stage the concept of 'total quality control' was replaced by 'total quality management' (TQM). The general idea of TQM is the same as the principle of total quality control. For the assessment and quality assurance of products and services it is necessary to take all the elements that can influence the final product into consideration³. To encourage quality improvements in American enterprises the US Congress adopted in 1987 a special Act "the Malcolm Baldrige National Quality Act of 1987". The main aim of this act is to create a national quality improvement program where selected companies are awarded for their achievements in the area of quality management. From 1988 onwards several companies and public institutions have received this award. In Europe a similar initiative was launched four years later, with the introduction of the European

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¹ Gar Yein Ng (2007), quality of judicial organisations and checks and balances, p. 25.

² <http://www.deming.org>.

³ <http://www.tqe.com/tqm.html>

Foundation on Quality Management model (EFQM). This model enables companies and public institutions to assess their level of quality and to identify areas of improvement. As is the case with the Malcolm Baldrige Quality Award, yearly selected companies or public sector agencies are awarded with the EFQM-prize⁴.

Quality assessment, quality assurance, quality management, excellence models

In the world of quality many different concepts and definitions are used. Langbroek⁵ explained that often three concepts are applied: (1) quality assessment, (2) quality assurance and (3) quality management. The latter concept (quality management) concerns the integrated set of tools that are used for quality management. Quality assessment is related to the inventory and state of affairs, measured against a set of (quality) standards, whilst quality assurance is connected with instruments that are used to maintain a certain level of quality standards.

In the 'quality jungle' another notion of quality is common for TQM-models. Instead of using the concept of total quality management current models are using the term 'business excellence models'. This to distinguish the old quality models from the new ones.

Currently many companies and public sector institutions are implementing quality models. What about the judiciary? Are they following the path of other organizations or are they just at the beginning towards their 'journey of court excellence'? In this article an overview will be given on the history of quality models and quality measures that has been used (or will be used) by courts in various parts of the World. Before this 'journey' starts a small introduction will be given concerning the difference between the concept of 'judicial quality' and 'court quality'.

2. Judicial and court quality

In the judicial branch the terminology of quality is often applied, especially to indicate legal reasoning, the identification of errors made by judges, to determine the final product of a court i.e. a decision taken by a judge and the existence of a system of appeal. In the literature this is seen as 'judicial quality'. When the notion of 'judicial quality' is compared with the general quality models and the history of developments of quality systems for companies, it focussed only on the final outcome of a product: the decision rendered by the judge. It is not always clear if other elements, such as the organizational quality of the courts or the expectations and level of satisfaction of the users of the courts are taken into account as well.

For many years quality was defined in the light of this narrow perspective. A client orientation was seen as a possible attack to the independent position of judges and

⁴ www.efqm.org

⁵ Langbroek (2008), Draft CEPEJ-research proposal quality management in courts, Strasbourg.

not necessary, since judges perceived themselves as the ‘masters of legal reasoning’. However as the results of a reduction in the public trust in the judiciary, certain ‘crises’ or growing problems in the day to day operation of courts a number of countries started in the nineties with the implementation of court reform plans. The general public did not accept automatically that they have to wait for months or even years to receive a ‘high quality’ decision made by judges (‘justice delayed is justice denied’). As a consequence of this it is necessary that, as a part of a more wider quality approach, judges not only look at the quality of the content of the final decision but that they take other quality aspects as well into consideration (for example the duration of court proceedings or the treatment of the parties). In other words, a change in the quality orientation of the judiciary is necessary and a total quality approach for the judiciary should be developed too. The first attempts taken to create an integral quality model started in the United States with the development of the Trial Court Performance Standards (TCPS) in 1987. As is the case with other quality models for the judiciary, an important basis or fundament for the creation of a quality framework such as TCPS are the underlying values of a court.

3. Underlying values of a court

Courts do not operate in the ‘blind’ but are guided by central values. Since courts are, compared with other public institutions, unique these values are especially important because it gives direction to the work of judges and court staff and defines their main reason of existence. Often the values of a court are described in national laws, international treaties or conventions and are related to principles of: impartiality, fairness, equality, independence of the decision making process, timeliness, accessibility, and etcetera. A good example of a description of important core values of a court can be found in Article 6 of the European Convention on Human Rights. This article stated that:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a *fair and public hearing* within a *reasonable time* by an *independent and impartial tribunal established by law*. Judgment shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”

Similar values can be found in Article 10 of the UN Declaration of Human Rights:

“Everyone is entitled in full *equality* to a *fair and public hearing* by an *independent and impartial tribunal*, in the determination of his rights and obligations and of any criminal charge against him”.

In other words, courts or tribunals, should at least take notion of the principles of equality, fair proceedings, transparency (public hearings), impartiality,

independence and timeliness. Also it is necessary that courts are based on and established by law. When you take a closer look at quality models for courts you will find these values as a part of the 'areas of measurement' or included in the list of quality-indicators. As has been described earlier this is also the case for the US Trial Court Performance Standards.

4. The US Trial Court Performance Stands (TCPS) and future improvements of this model

In 1987 discussions started among twelve members of US State court communities on the fundamental responsibilities of courts. The outcome of the discussion was the development of the Trial Court Performance Standards (TCPS)⁶. The main reason for the need of these standards was the increase of court delays. Also more attention to court performance and openness towards society were one of the incentives to start with the creation of TCPS. The final version of this system was published in 1990. It identifies 68 measures for 22 standards that are related to five areas of measurement:

1. Access to justice: trial courts should ensure that the structure and the machinery of courts are accessible to those they serve;
2. Expedition and timeliness: trial courts should meet their responsibilities in a timely and expeditious manner;
3. equality, fairness and integrity: trial courts should provide due process and equal protection of the law to all who have business before them;
4. independence and accountability: trial courts should establish their legal and organisational boundaries, monitor and control their operations and account publicly for their performance;
5. Public trust and confidence: trial courts should work to instil public trust that courts are accessible, fair and accountable.

The TCPS system was tested in twelve courts. For the collection of the data different methods were used varying from: observations and stimulations, case record review to surveys of clients and focus groups. Evaluation studies of TPCS showed that many courts were not able to implement *all* the 68 measures and to assess the various quality standards. Only the Los Angeles Municipal Court (1996) succeeded to assess their level of court quality on the basis of the integral TCPS methodology, other US Trial Courts only selected a limited number of measures to assess and to improve the quality of their courts⁷. Despite the fact that TCPS includes the main important elements that are related to court quality, a further implementation was not a success. One of the causes that TCPS is only partly implemented at the US Trial Courts is the fact that the system is too complicated and that there are too

⁶ www.ncsconline.org/D_Research/TCPS/index.html

⁷ Ingo Keilitz, Standards and measures of court performance. In: Criminal Justice (2000, Vol. No. 4), p. 581.

many measures to be assessed. Also, an improved economical situation in the United States in the nineties, problems with the collection of the relevant data and a lack of interest from the court management contributed to a decline of interest in using TCPS in the courts⁸.

Learned from lessons with TCPS, the US National Center for State Courts started at the beginning of 2000 with a new approach. Not trying to re-develop an all inclusive and comprehensive court quality model, but to create practical instruments that can be used by the courts to improve in certain areas the quality and services delivered. These instruments are published under the name *CourTools*.

The CourTools must be seen as an attempt to provide the courts a common set of ten indicators and methods to measure the performance in a meaningful and manageable manner. These measures and methods are derived from the TCPS system and is combined with experiences with general quality models, such as the Malcolm Baldrige Award and the Balanced Score Card. In the table below the ten measures are listed.

Table 1 CourTools (10 measures)

Access and fairness	Reliability and integrity of case files
Clearance rates	Collection of monetary penalties
Time to disposition	Effective use of jurors
Age of active pending caseload	Court Employee satisfaction
Trial date certainty	Cost per case

Courts are free to select the measures that are important for their daily operations. Instead of introducing an exhaustive list of indicators and a measurement system, the CourTools model followed a flexible approach. For each of the CourTool measures listed in the table, practical guides are available on the internet⁹.

What is lacking in the CourTools approach though is that there is no clear relationship given between the ten measures listed, their contribution to quality improvements and increase of court performance. That is also one of the reasons that recently the US National Center for State Courts developed a 'framework for court performance measurement'. In this framework the measures are clustered and arranged according similar principles as used in the Balanced Score Card i.e. there are four quadrants: effectiveness, procedural satisfaction, efficiency and productivity¹⁰. Since this framework is published in the spring of 2008, there are at the moment no concrete experiences with the application in the courts available.

⁸ Richard Schauffler, Judicial Accountability in the US State Courts measuring court performance. In: Utrecht Law Review, Volume 3, Issue 1 (June 2007), p. 120.

⁹ See: <http://www.courtools.org>.

¹⁰ US National Center for State Courts and State Justice Institute (2008), A unifying framework for court performance measurement, p. 7.

5. Quality initiatives in Singapore: eJustice Scorecard

Similar to problems in the US State Courts, court delays and backlog of cases were the main incentives for Singapore to initiate court reforms in 1990. One of the first elements of this reform that was implemented concerned the introduction of a 'court charter'. This charter was meant to improve the client friendliness of the courts, especially by taking actions on the reduction of the length of proceedings and a proper treatment of the parties. In addition to the court charter other measures were also taken such as: the promotion of visionary leadership, strategic planning methodologies, smart use of information, human resources policies, efficient court proceedings through the use of information and communication technology, mediation and a regular conduct of the level of satisfaction of the users of the courts¹¹. At the end of the nineties the Singapore Subordinate Courts launched the '*justice scorecard*' as a tool for measurement of court performance. This scorecard makes it possible to create a link between vision, mission and actions undertaken by the courts, pro-active management and the use of strategic indicators to measure court performance. In September 2000 the justice scorecard was replaced by an electronic version: the '*eJustice Scorecard System*'. Inspired by the Balanced Scorecard principles relevant performance and quality information is collected and clustered around four perspectives: (1) community, (2) internal processes, (3) learning and growth and (4) financial.

As the results of the pro-active role of the Singapore judiciary in improving their quality the Singapore Subordinate Courts received in 2006 the 'Singapore Quality Award'. The Singapore Quality Award institutionalises the highest standards of business excellence and is based on the standards laid down in the US Malcolm Baldrige National Quality Award, the European Foundation on Quality Management (EFQM) and the Australian Business Excellence Award.

6. Integral court quality systems in Europe: two cases (the Netherlands and Finland)

6.1. *The Netherlands: rechtspraakQ*

At the end of the nineties in two European countries (the Netherlands and Finland) plans were drafted to develop comprehensive quality systems for the courts. In the *Netherlands* the topic of quality for the judiciary became high on the political agenda as a part of a large court reform program 'administration of justice in the 21st Century' (1998 - 2002). Several innovative projects were developed and implemented at the level of the courts. One of them was the project Quality (1999). The main aim of this project was to create a measurement system for the courts

¹¹ Singapore Subordinate Courts (2007), *Case Study: the Subordinate Courts of Singapore a journey of excellence*, Singapore.

which enables them to access the level of court quality and to define areas of improvement.

A small project team composed of judges, court staff, advisors of the ministry of justice and experts of a quality agency for the judiciary (PRISMA) created the measurement system during a period of three years. One of the lessons learned from the trial court performance standards was that the system itself should be 'light' i.e. easy to implement for the courts and not resource demanding. Similar to TCPS five areas of measurement were identified:

1. Independence and integrity;
2. Timeliness of proceedings;
3. Unity of law;
4. Expertise;
5. Treatment of the parties.

For each of the areas of measurement several indicators, as well specific instruments (court statistics, (court user and staff) surveys, audits) to collect and to present the relevant data were developed. To submit the results of the quality assessment in a visible manner a special (pilot) software application was created; the '*quality dashboard*'. As is the case with the eJustice Scorecard of Singapore the indicators are clustered in this dashboard according to the four quadrants of the Balanced Scorecard. Depending on the results of the evaluations the outcome is visualized in three colours: green (positive quality), yellow (neutral) and red (quality improvements necessary).

The measurement system for court quality was tested (2000 – 2001) in three pilot-courts (the district courts of Roermond and Maastricht and the criminal department of the district court of Amsterdam). After this test phase and the creation of the Dutch Council for the Judiciary in 2002 an improved version of the measurement system became part of a comprehensive quality system for the Dutch Judiciary '*RechtspraakQ*'¹². This system is developed along the lines of the '*INK-model*' (a Dutch version of the EFQM model) and is composed of nine elements, clustered according to three categories (a normative framework, measurement instruments and other elements)¹³. See table.

¹² Dutch Council for the Judiciary (2008), *Quality of the judicial system in the Netherlands*, The Hague.

¹³ The application of *RechtspraakQ* by the courts is supported by two organisations: the Quality bureau of the Dutch Council for the Judiciary and the PRISMA-agency (an independent and impartial service organisation for the judiciary in the field of quality).

Table 2 RechtspraakQ

Normative framework	Measuring instruments
Quality regulations Measurement system for court quality	Court-wide positioning study Client satisfaction survey Staff satisfaction survey Visitation Audit
Other elements	
Complaints procedure Peer review	

Normative framework:

Quality regulations are designed as a checklist that can be used by the management of courts to improve its quality. The regulations include many aspects that are considered by the courts and the Council for the Judiciary as important for the quality of the judicial system and the necessary requirements of the direct stakeholders of the courts. The quality regulations are accompanied and supported by the measurement system court quality.

Measurement instruments:

Each court must held every two year a court-wide positioning study on the basis of a standardized 'INK' review-procedure. As a part of the assessment the management of a court must analyse the progress made in the field of quality based on the INK standards and the quality regulations of the court. In addition to the court positioning study, every court must conduct on a regular basis (once per four year) a court user and court staff satisfaction survey.

In a similar four years cycle a court visitation will be held. An independent commission composed of persons working outside the courts: for example a university professor, a lawyer and a public prosecutor is visiting all the courts. On the basis of these visits a general report is drafted concerning the quality of the judiciary in the Netherlands¹⁴. In addition to the court-wide position study, the satisfaction surveys and the visitation court audits are undertaken. During the audit, court staff examine whether the courts meets the criteria as described in the measurement system quality of courts.

Other elements:

RechtspraakQ includes a system of peer review and a complaints procedure as well. The peer review must be seen as professional consultations between judges, mainly to improve the functioning of individual judges. The review focussed strongly at the interaction between the judge and the parties during a court hearing, as well as at the individual performance of a judge. Together with the launch of the Council for the judiciary in January 2002 a uniform complaint procedure for all the courts

¹⁴ The first visitation report was presented in the year 2006.

was introduced. The central aim of the procedure is to streamline the treatment of complaints received by the courts.

6.2. Finland: Quality Benchmarks

The Quality project in Finland was launched in 1999 and included all the courts working in the jurisdiction of the court of appeal of Rovaniemi. As a part of this project a *development committee* (chaired by the president of the largest district court of the jurisdiction), a *co-ordinator for quality* and *working groups for quality* have been created. The selections of the topics that are discussed in the working groups are based on the outcome of a 'quality conference'. This conference is held every autumn of the year and is attended by judges, trainee judges and various stakeholders¹⁵. The quality working groups are reporting their work at the same conference. All the individual contributions of the groups are collected and integrated in a yearly Report on Quality, which is available for all the courts in Finland and to various stakeholders.

In 2003 a set of Quality Benchmarks for Adjudication was introduced. They are used to measure the quality of various aspects that are related to the operation of courts. The benchmarks are applied in the courts in the jurisdiction of the court of appeal of Rovaniemi as a source of information for quality improvements. It serves also as a tool for training and development for judges and court staff, as well as an instrument for stimulating debates between the courts and the users of the courts¹⁶.

The Quality benchmark consists of six aspects (and 40 quality criteria) that are important for the work of the court:

1. The process (nine quality criteria);
2. The decision (seven quality criteria);
3. Treatment of the parties and the public (six quality criteria);
4. Promptness of the proceedings (four quality criteria);
5. Competence and professional skills (six quality criteria);
6. Organisation and management of adjudication (eight quality criteria).

All the quality criteria are analyzed by making use of a framework, where the results are presented on a six-point scale. As a part of the assessment, the individual scores of the quality criteria are summed up. The total score of the Benchmark gives an impression how much quality improvements have been made and to what extend the court is reaching the maximum score (210 points). To collect all the necessary information for the framework i.e. Benchmark various evaluation methods are used, varying from a self-evaluation, surveys, an expert evaluation to statistical analyses and responses by the courts.

¹⁵ Ministry of Justice Finland (2005). Quality project in the courts of the jurisdiction of the court of appeal of Rovaniemi.

¹⁶ Court of Appeal of Rovaniemi, How to assess quality in the courts, Finland (p. 4).

The frequency of conducting the Benchmark is fixed at a three to five years period. In between several interim-evaluations need to be carried out too. For example, for the criteria 'promptness of the proceedings', the authors of the Benchmark underlined the need to monitor this criteria on a yearly basis.

The Quality of Adjudication project of the Rovaniemi courts was in 2005 awarded with the 'Crystal Scales of Justice Award'. This Award, an initiative of the Council of Europe (CEPEJ) and the European Union, is every two year given to an organization which has initiated an innovative project in the field of civil justice¹⁷.

7. European initiatives: 'Costa report' of the European Parliament, Quality topics of the CEPEJ and the European Network on Councils for the Judiciary (ENCJ)

In addition to initiatives undertaken by individual countries to develop quality systems there seems to be a tendency at a European level to promote quality of the judiciary and courts as well. For example in 2004 a Committee of the European Parliament addressed the need to create a quality charter for (criminal) justice. At the level of the Council of Europe a special Quality working group of the CEPEJ (European Commission for the Efficiency of Justice) became active and as a part of the work of the European Network of Councils for the Judiciary (ENCJ) a working group on 'quality management' was installed. In this paragraph the three European initiatives will be further explained.

7.1. *The European Parliament: a quality charter for (criminal) justice*

In 2004 the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament published a working document on 'the quality of criminal justice and the harmonisation of criminal legislation in the Member States'¹⁸. The general notion of this working document is that an area of freedom, security and justice in Europe is founded on "a culture of diversity of legal systems and pre-supposes the establishment of a common reference framework and a mechanism for mutual evaluation". The special Committee of the European Parliament proposes a quality charter for (criminal) justice. This quality charter should specify a set of criteria for evaluating the functioning of judicial systems. Elements of this charter should contain: the level of respect for the principle of judicial independence, compliance with fair trial standards and the conduct of criminal proceedings, including the execution of sentences¹⁹. In addition to these suggestions the Committee

¹⁷ See the website of the CEPEJ: www.coe.int/cepej. Special file 'Crystal Scales of Justice'.

¹⁸ European Parliament (2004), Working Document on the quality of criminal justice and the harmonisation of criminal legislation in the Member States, Brussels.

¹⁹ European Parliament (2004), p. 3.

recommend to include in the Charter a mechanism for ‘mutual evaluation’ composed of the following elements:

- A comparative statistical basis;
- A ‘benchmarking’ exercise;
- The dissemination of best practices;
- An evaluation report on compliance with the quality charter.

After the publication of the working document of the European Parliament not much progress has been made to set up such a quality charter. Instead of this initiative the European Commission has created a ‘Justice Forum’ to stimulate a debate between relevant actors in the field of justice and to evaluate (legal) instruments that have been implemented by the European Union²⁰.

7.2. *the CEPEJ: Quality working group (2007)*

The CEPEJ, created in 2002, has published three comparative reports on European judicial systems, based on the collection of statistical information and qualitative data^{21 22}. In these reports a description is given of the state of affairs concerning the composition and the functioning of judicial systems of the member states of the Council of Europe, referring to: the financing of judicial systems, access to justice, judicial proceedings and court performance, status and role of various legal professionals, enforcement of judicial decisions, etc. In the last report (published in 2008) a growing attention for quality is given, due to the fact that for example a concluding chapter is included in the report which describes the main trends in Europe concerning efficiency *and* quality²³.

During the last five years the CEPEJ is mainly involved in the ‘efficiency’ part of the judiciary, by looking at issues that are related to court delays and improvements of the efficiency of judicial proceedings.. Special working groups, a Task Force on Delays and currently SATURN (Center for Judicial Time Management) has published many reports and documents on these topics. Some of the reports drafted by the working groups provide more insight in measures taken in Northern European countries to reduce the length of proceedings²⁴, time standards that are used by the European Court of Human Rights²⁵ and causes for delays, whilst others

²⁰ http://ec.europa.eu/justice_home/news/information_dossiers/justice_forum/index_en.htm

²¹ CEPEJ (2005), European Judicial systems: facts and figures, Strasbourg.

²² CEPEJ (2006), European Judicial systems: edition 2006 (data 2004), Strasbourg.

²³ CEPEJ (2008), European Judicial systems: towards quality and efficiency, Strasbourg.

²⁴ CEPEJ studies No. 2 (2006), Time management of justice systems: a Northern Europe Study, Strasbourg.

²⁵ CEPEJ studies No. 3 (2006), Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights, Strasbourg.

are oriented at producing practical tools for the courts to reduce the length of proceedings (for example the Time Management Checklist)²⁶.

2007 seems to mark a different orientation of the CEPEJ, because the Commission is not only involved anymore in subjects related to 'efficiency', but it started with a new initiative in the field of quality. For that reason the CEPEJ created a special working group on quality (CEPEJ-GT-QUAL). The group is responsible for the collection of information and the evaluation of quality initiatives undertaken by the various courts in the member states. In addition to this task CEPEJ-GT-QUAL has to develop tools that can be used to assess the quality of the judiciary and courts²⁷.

One of the first results of CEPEJ-GT-QUAL concerns the publication of a 'checklist for quality of the judiciary and courts'²⁸. The main aim of this document is to introduce a practical tool to assist member states in collecting appropriate information and to analyze relevant aspects regarding quality. What makes this document unique, compared to comprehensive court quality models (for example rechtspraakQ or TCPS), is that it addresses the quality at *three different levels*: the national level (the judicial system as a whole), the level of the courts and the level of the individual judges. Per level the checklist includes a list of attention points or questions that needs to be discussed or verified and may contribute to stimulate a quality debate or the introduction of quality measures.

When the checklist on quality for the judiciary and courts was drafted, it took the experiences with other quality models for the judiciary into account. After many meetings of the working group, the experts decided to arrange the quality topics according to five areas of measurement: (1) strategy and policy, (2) operational processes, (3) access to justice, (4) human resources and the status of judges and its staff and (5) the (financial and material) means of justice.

Parallel with the creation of the checklist CEPEJ-GT-QUAL initiated a comparative study to collect relevant information concerning court quality initiatives undertaken by member states. Currently a research team is conducting a case study, based on eight European countries. In this study quality of courts is examined from three different angles: (1) legal quality, (2) managerial quality and (3) public quality²⁹. Legal quality concerns the standards, controls and policies to develop the (legal) quality of justice; managerial quality is related to standards, controls and policies that are used in courts to improve effectiveness and efficiency; public quality includes the standards, controls and policies that have been implemented to

²⁶ CEPEJ (2005), Time management checklist: a checklist of indicators for the analysis of length of proceedings in the justice system, Strasbourg.

²⁷ CEPEJ (2007)3, Terms of reference the Working Group on quality of justice (CEPEJ-GT-QUAL), Strasbourg.

²⁸ CEPEJ-GT-QUAL (2007)9Rev, Quality of the judiciary and courts (a checklist), Strasbourg.

²⁹ CEPEJ-GT-QUAL (2008)2, Quality management in courts: organization and effects, Strasbourg.

develop and maintain core-values, such as fairness, timeliness, independence, etc. in relation to the treatment and the level of satisfaction of the court users³⁰. It is expected that in the final report for each case study the current state of affairs are described by making use of these three angles.

In addition to the publication of the checklist on courts and the judiciary and the (future) report on European quality initiatives CEPEJ-GT-QUAL is involved in the development of a practical tool for courts to conduct a court user satisfaction survey and a report on examples of 'contractualization' of the relationship between the parties and the courts. It is expected that both the report and the tool for court user survey will be available during the course of 2009.

It must be noted that CEPEJ-GT-QUAL describes quality initiatives and quality systems of courts from a integral point of view i.e. it discusses quality from an organizational perspective where all relevant aspects that are related to the quality of services delivered by the courts are taken into account. The judicial quality or the quality of the decisions rendered by judges does not explicitly form part of the mandate of the working group. However, another body - the Consultative Council of European Judges - of the Council of Europe will draft an opinion on quality of judicial decisions. As a part of the preparation of this opinion a questionnaire has been send to the member states in 2008, containing seventeen questions that are related to the preparation and evaluation of a judicial decisions. The results of this evaluation (35 member states replied to the questionnaire) can be found on the website of the Consultative Council of European Judges³¹.

7.3. The European Network of Councils for the Judiciary: working group Quality Management

The working group on Quality management was established by the European Network of Councils for the Judiciary (ENCJ) in June 2007. The main aim of this group is to:

“...share experiences on the subject of quality, where quality is broadly defined. Insight is provided into various quality initiatives in the participating countries and the role of the Councils of the Judiciary in these. Furthermore, a register is made of which quality activities are being pursued in which countries”³²

After four meetings of the Quality working group (between October 2007 and May 2008) a report was published on Quality Management. In this report an overview is given of the various quality initiatives undertaken by the 9 participating countries. These initiatives vary from the implementation of comprehensive court quality

³⁰ CEPEJ-GT-QUAL (2008)2, p. 3.

³¹ See: www.coe.int/ccje.

³² ENCJ (2008), Report ENCJ Working Group Quality Management

systems (the Netherlands and Finland), to partial quality measures such as measures related to: leadership and management, peer review, complaints procedures, processing time and working procedures, training, staff and client evaluation, quality assessment, management information and external communication.

In the description of these initiatives – as can be derived from the aim of the working group – a wide orientation of quality is taken i.e. it is not limited to judicial quality but it takes all relevant aspects, including the expectation and the wishes of the users of the courts, into account.

8. Towards a global framework for court excellence

In the beginning of 2007 a senior judge of the Singapore subordinate courts took the initiative to initiate a project towards the development of a global 'Framework for Court Excellence'. Inspired by quality initiatives implemented in their own country and experiences with court quality models in other countries, experts from the United States, Europe, Australia and Singapore were invited to joint a project team which should get the ambitious task to develop a practical tool that can be used in all regions of the World to assess to level of court quality, to identify areas of improvements and to take necessary steps to realize court excellence.

The cooperation between the experts was formalized with the creation of a Consortium for Court Excellence. This Consortium, composed of representatives of the US National Center for State Courts, the US Federal Judicial Center, the Singapore Subordinate Courts and the Australasian Institute of Judicial Administration (assisted by the CEPEJ and the World Bank), will take the lead in the development of the framework, the dissemination of relevant information and assistance in case courts need help with the conduct of the quality assessment.

The main goal of the framework is:

“...the development of a framework of values, concept and tools by which courts worldwide can voluntarily assess and improve the quality of justice and court administration they deliver. The framework represents a resource for assessing a court's performance against seven detailed areas of court excellence and provides clear guidance for courts intending to improve their performance”³³

The framework identifies seven areas of excellence. These areas has been selected by taking into account of the experiences with various general quality models (EFQM, Balanced Scorecard, Malcolm Baldrige Quality Award, Singapore Quality Award, etc) and quality systems that has been developed for courts (Trial Court

³³ Framework for Court Excellence (2008), p. 4.

Performance Standards, CourTools, RechtspraakQ, eJustice Scorecard, etc). The areas of excellence are:

1. Court management and leadership;
2. Court policies;
3. Human, material and financial resources;
4. Court proceedings;
5. Client needs and satisfaction;
6. Affordable and accessible court services;
7. Public trust and confidence.

The main pillars of the framework are based on *management* and *leadership*. It is stated in the framework document that to become an excellent court pro-active management and leadership is required at all levels. In addition to this adequate measures needs to be taken, based on appropriate data that indicates what the court's current state of affairs is concerning court performance and how much progress has been made toward targeted goals. The concept of *performance* used in the framework is wide, because it captures the quality of the management of the courts and indicates how well the supply side is doing (court organization, judicial services, court policies) and how effectively the demand side for justice (external environment and court users) is being met³⁴.

The areas of court excellence

Court management and leadership is related to the application of pro-active management and inspiring leadership where there is an attention for the need to cooperate with other organizations and partners that influence the work of the court, openness towards society and an eye for innovation. Concerning *court policies*, the framework stated that excellent courts use a system of policies and plans that have been formulated in terms of court performance and quality as well as contribute to the strengthening of court values. It is clear that with respect to *court proceedings*, excellent courts have fair, effective and efficient court procedures with a focus on reduction of court delays and backlog of cases. Regarding the *management of resources* the framework illustrates that excellent courts manage all resources properly, effectively and proactively. It is also evident that excellent courts are easy *accessible* and that court proceedings are *affordable* even for users with insufficient financial means. With respect to the demand side the framework identifies two areas of excellence: *client needs and satisfaction* and *public trust and confidence*. Excellent courts apply on a regular basis court user surveys to identify the needs and wishes of the clients and maintain a high level of public trust and confidence.

To assess the areas of court excellence the framework document includes a plan of action where all the necessary steps to be taken are described. In addition, there is also a '*court excellence self-assessment questionnaire*'. In this questionnaire for each area

³⁴ Framework for Court Excellence (2008), p. 11.

of excellence several checkpoints are listed. During the assessment the evaluator needs to check and score the level of 'approach', 'deployment' and 'results'.

Approach refers to the extent to which the court has addressed each of the issues listed under the area of excellence, whether it is consistently applied and is integrated with other relevant court initiatives. There are six levels/scales of approach possible (none, reactive, defined, integrated, refined and innovative). At the lowest level 'none' there is no approach at all, whilst at the highest level 'innovative' the court uses an exceptionally well-defined innovative approach where the organisational needs are fully integrated with the quality model. *Deployment* is related to the extent to which the quality initiatives has been implemented and the extend of coverage and impact. There are six levels/scales of deployment possible (none, some area, some key areas, most key areas, all key areas and all areas). At the lowest level there is no deployment at all and at the highest level the practices are implemented in all areas within and outside the court organisation and practiced consistently by all levels. *Results* are included in the questionnaire to identify whether the deployed approaches have achieved their desired effects. There are five scores of results possible: none (no results or the results show no improvement trends), limited (poor results; or good performance/improvements in a few key indicators), fair (good performance and/or improvement trends in some key indicators), good (good performance and/or improvements in most key indicators), very good (current performance is good to excellent in most key areas and/or improvements are sustained in most areas) and excellent (performance levels are excellent in most key indicators and/or there are exceptional improvement trends in most areas).

When the scoring mechanism of the self-assessment questionnaire is applied a maximum score for a court is 1000 points. This score reflects the excellent court. When you read the document of the framework for court excellence one might get the impression that the description is only related to a hypothetical 'ideal court'. However this is not totally true, if courts meet all the standards that are required for court excellence, the complete 'journey towards excellence' will be realized. On the other hand it is noted that the framework instrument is flexible. Courts are free to use and to select certain areas of excellence that are important for them. There is no need to assess all the areas. Courts that want to do so may conduct the complete assessment and also use the scoring mechanism for internal purposes or for benchmarking.

After two years of development of the framework of court excellence the final product was presented at an international Quality Forum (Sydney: 21 - 23 September 2008) organized by the Australasian Institute of Judicial Administration. More detailed information about the content of the Framework can be found at the website of this institute or other partners of the Consortium.

9. Concluding remarks

An interest for quality started in the fifties' when Japanese companies introduced the first principles of quality control. At a later stage the United States followed this initiative with the Malcolm Baldrige Quality Award (1987). A couple of years later a general quality model was introduced in Europe: the EFQM-model. Similar to the Malcolm Baldrige Quality Award companies and public sector institutions are awarded for their achievements in the field of quality. It took many years after the introduction of the American and European Quality Awards, before the judiciary showed interest in quality too and not to restrict themselves anymore to judicial quality. For the determination of quality of courts it is not sufficient to look only at judicial quality. The needs, expectations and level of satisfaction of the users of the court are necessary to take into account, as well as other aspects that are related to the daily operation of courts. It was the Finish and Dutch judiciary who took the first step towards the development and implementation of comprehensive court quality systems. Later, several individual countries applied quality initiatives in the courts too, varying from measures to improve management and leadership in the courts to training and education of judges and court staff.

In the beginning of the 2000 era the interest for court quality was also growing at a European level. For example the European Parliament drafted a proposal to create a quality charter for courts, the Council of Europe (under the flag of the CEPEJ) initiated a quality working group and the European Network of Councils for the Judiciary installed a quality management working group to collect and present necessary information concerning quality initiatives of courts and the role of Councils for the Judiciary in promoting court quality.

The year 2008 mark a new era on the subject of court quality, since the publication of the framework for court excellence is a fact. This framework should help courts from various continents in the World with the implementation of improvements concerning the quality of the services that are delivered.

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