

PROJECT LAUNCH WORKSHOP JUSTICE SECTOR RE-  
FORM PROJECTS WORLD BANK CROATIA: EUROPEAN  
EXPERIENCES WITH JUSTICE SECTOR PERFORMANCE  
INDICATORS (APRIL 2010)

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Dear participants,

It's a pleasure to be in Croatia. For me it is almost ten years ago that I had the first opportunity to assess the situation of the Croatian judicial system as a part of an evaluation initiated by the European Commission<sup>2</sup>. In this study a major part was addressed to the organization of the justice system in Croatia and its performance. A topic that is still high on the European agenda. Today we will continue our search for optimizing the judicial systems by discussing various subjects related to the operation and functioning of the justice sector. I was asked to give an introduction of the European experiences in measuring the justice sector performance.

This will be illustrated on the basis of information derived from the results of evaluation studies developed by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe and from EU-reports. In this respect it is important to mention the Euro barometer studies (opinion polls of citizens on various topics including the justice sector), the co-operation and verification mechanism (CVM) to evaluate the progress of justice reforms in Bulgaria and Romania and the recent plans to create an additional evaluation mechanism to enhance the mutual trust between the member states of the European Union (especially in the area of criminal matters).

Before I discuss the content of these studies in more detail I will present a preliminary list of justice sector performance indicators.

To evaluate the performance of the justice sector at a European and national level various anchor points can be used. One of them is 'efficiency' (in simple words: the ratio between the input and output). If there is a higher output (in terms of products or services) realized with lesser input (financial, personnel and material resources), there is an efficiency-gain. To identify potential efficiency gains in the justice sector it is important to look at the financial resources available compared to other resources (where personnel capacity is one of the most important resources for the judiciary). Though, efficiency in terms of financial and personnel resources is not the only anchor point for justice sector performance measurement, since efficiency in the courts is influenced by the development of the cases in the courts

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<sup>1</sup> This presentation is given in his personal capacity and as an international expert in the field of administration of justice.

<sup>2</sup> As a part of the EU OBNOVA program

(and public prosecution) too. In that respect there is a tendency that the number of incoming civil (and criminal) cases in Europe is growing due to a 'juridization' of societies, more economic activities, but also as the result of the economic crisis (bankruptcy cases, employment dismissal cases, etc). How should judicial systems respond to these developments and maintain an efficient level of operation of courts? More judges, more budget or stimulation of alternative dispute resolution mechanisms? What the best solution is seems to be unclear yet. However for an appropriate measurement of the performance we know that we need information about the development of cases and the resources available to resolve these cases in due time.

Efficiency in terms of costs and court performance are important elements to assess the justice sector; however this must be brought into balance with other notions such as: fair trial, independence, access to justice, trust, transparency and accountability and quality.

Since my speaking time is limited I will only make a selection of certain indicators that can be used to measure 'pieces' of the justice sector performance.

One of the subjects that leads to the attention of politicians and members of the judiciary in Europe concerns the financing of judicial systems i.e. how much public budget is spend on the justice sector and which portion of the state budget is allocated to the judiciary. As you can see from the information collected by the CEPEJ/Council of Europe, there is a large variation between the member states. In Switzerland, UK-Scotland, Ireland, Norway, Sweden and the Netherlands a relative large justice sector budget is available per inhabitant. Looking at the Balkan region much budget is allocated to the justice sector in Croatia, Slovenia and Serbia.

Since the court budget is not the only public budget, it is important to have an indication of the percentage of the state budget that is available for the judiciary. In numerous Western European countries a relative small budget of the total state budget is reserved for the courts. This seems to be in contrast with the Balkan countries where between 1,5 percent and almost 2,5 percent of the state budget is allocated to the judiciary<sup>3</sup>.

Looking at the individual budgetary components of the courts budget at a European level it is evident that most of the costs for courts are related to the salaries for judges and court staff (66 percent). To a much lesser extend budget is spend on justice expenses (experts, court interpreters (16 percent) and court buildings (9 percent). Four percent of the court budget is spend in Europe on ICT. This view is similar for the Balkan region, where most of the court budget is addressed to personnel costs and justice expenses and where there is a high variation in budgets allocated for court buildings and ICT.

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More efficient (and less costly) judicial systems can be realized by introducing

<sup>3</sup> To have a complete picture comparable figures must be developed for the various budget components of the State budgets (justice, health care, education, public works, social security, defence). With these figures it will be possible to compare the 'share' of the justice budget (and court budget) with other budgetary components.

cost reduction measures (lesser costs for personnel, ICT, buildings, justice expenses, etc). However, another possibility is to pay more attention to the income side of courts. In many European countries land registers and business registers are a part of the court systems and in most of the countries (with the exception of for example France) court taxes/court fees must be paid to start a judicial proceeding. In some countries the height of the court fees are based on the principle of covering the operating costs of courts. This is for example the case in the UK, where parties have to pay a relative high amount of court fees to start civil law proceedings. However, in other countries this may be seen as a threat for guaranteeing access to justice.

If you relate the income derived from court fees with the available court budget it is evident that the differences in Europe are large. Notably in Austria even more income is generated compared with the operating costs of their judicial system, whilst in other countries - including the Netherlands - the fees forms a relative small part for covering the operating costs<sup>4</sup>. Also in the Balkan region large differences can be found. In Croatia a relative high budget is available for the courts, whilst the income generated from fees is low. On the other hand, in Serbia for example the situation is different, since there exist a more balanced relationship between budget and fees.

To have a complete overview of the justice sector performance it is important to pay attention to the personnel resources as well. As a part of the CEPEJ evaluation studies information is collected about the number of professional judges, non-professional judges and court staff (including staff for the direct assistance of judges). Reading the reports, you can see is that there is a large variation between European countries regarding the number of professional judges and non-professional judges. In certain countries (Belgium, Germany, FYROMacedonia, Slovenia and Serbia and – lesser visible – United Kingdom) many non-professional judges are available to handle – mostly criminal law (minor offences) – cases in the courts. On the other side there are European countries where there is a specific policy to exclude non-professional judges from the court system. This is for example the case for the Netherlands.

Are professional judges compared to non-professional judges more efficient and are there differences in the quality of their work? A clear answer to this question is difficult to provide, since you need to have data available about the performance of these two categories of judges and their quality of decisions. Maybe that non-professional judges are cheaper and that they contribute to a larger involvement of the society in the courts, but if that is really the case is unclear. More research in this field is necessary.

Looking at the available figures for the Balkan region, it is evident that in a majority of these countries a relative high number of professional and non-professional judges is present to treat the various cases before the courts.

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<sup>4</sup> One important remark must be made: in the majority of the European countries the income of court fees is not automatically used to fund the courts. Mostly the income derived from court fees is used to finance the State budget in general.

Justice sector performance is not only limited to professional and non-professional judges, since a major part of the preparatory work in judicial proceedings will (or should?) be done with the assistance of specialized court staff. In certain countries performance improvements can be realized through more delegation of the work from judges to court staff. In fact this is already common practice in the Netherlands, where much of the judicial work (including the preparation of draft decisions) is carried out by court staff. To have an idea how much staff for the direct assistance for judges is available a specific ratio can be applied (the number of available staff members for the direct assistance per judge). If you look at the CEPEJ data, one can conclude that in some countries there is more than one staff member available per judge for direct assistance (for example in Portugal and Bosnia Herzegovina), whilst in other countries the number of available staff per judge is very limited (see Croatia and France). This means in practice that more preparatory work needs to be done by the judges themselves, since they cannot rely on a sufficient number of court staff.

I have indicated in my presentation that financial resources and personnel resources needs to be taken into account when measuring the justice sector performance. However, this is not enough. One may vary the height of the budget for the justice sector and increase the number of court staff and judges to improve performance, but for some part court performance is influenced by the (autonomous) development of cases, the working methods that are used, the quality of the laws, etcetera. When we are looking at the civil law cases in the Balkan countries, one can see that Croatia and Serbia is confronted with a high number of incoming civil litigious and non-litigious cases (and that the number of resolved cases is high too). Serbia and Croatia are also the countries where the average calculated disposition time in enforcement cases are the shortest (compared to Slovenia, FYROM and Bosnia Herzegovina). This is of course a promising development since in many Eastern European countries the enforcement of judicial decisions is a major problem. Also in land- and business register cases Serbia and Croatia are more efficient – in terms of average disposition time – compared to Slovenia, FYROM and Bosnia Herzegovina. In practice this means that these types of cases are handled in a ‘relative’ short period.

Justice sector performance measurement is not only about ‘efficiency’ and ‘productivity’, since the judiciary is a special part of the public sector where other important notions/values must be taken into account, such as sufficient guarantees for access to justice (financial access to justice, geographical access to justice and ‘virtual’/informational access to justice), public trust and independence (including absence of corruption). The CEPEJ results shows that especially in the Balkan region (but also in Turkey, Greece and Spain) a high number of court locations per 100.000 inhabitants can be found. This is an indication that citizens have the possibility to visit a court within a short travel distance<sup>5</sup>. One can conclude that a high number of court locations will contribute to more access to courts. However, it must be noted that too many court locations (including small sized courts) can have a negative impact on the efficiency of justice (and

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<sup>5</sup> Maybe a better or more accurate indicator for access to justice is the number of courts per 100 km<sup>2</sup>. For the outcome of Croatia this will not lead to a different conclusion, since Croatia has the highest number of court locations.

limits positive effects in terms of 'economies of scale').

At the beginning of my presentation I have explained that in a number of countries the height of the court fees/court taxes is related to the operating costs of courts. This can have a negative effect on access to justice in terms of affordability. To overcome this problem for the low income citizens a system of legal aid is important. Especially in the Netherlands, Norway and United Kingdom a high public budget is available for legal aid (on the lower side of the scheme we can find Croatia, Montenegro and Serbia), but under the influence of the economic crisis the budgets for legal aid are currently under pressure.

In improving access to justice, a solution is not only be found in opening more courts or make court proceedings more affordable, but promoting Alternative Dispute Resolution and the use of information and communication technology for exchanging information between litigants (and lawyers) and the courts can help as well. Many countries have invested in the development and use of applications and systems for the direct assistance of judges and court staff (for example case registration systems, databases with jurisprudence, word processing facilities (including templates for draft decisions). To a lesser extend this is the situation for court management information systems, including possibilities to generate management information concerning the performance of courts (and judges). Still, many European countries are not able to present important court performance information about the length of proceedings. This needs to be improved.

The least attention in many European countries has been given to the electronic communication between the courts and citizens. However, the developments are going fast and what we can see is that more and more countries are opening court websites with practical information for litigants, electronic exchange of documents between lawyers and courts are realized (for example in Portugal), court decisions are published on the internet, videoconferencing is applied, for small civil claims electronic proceeding have been introduced (for example UK money claim online), the progress of cases can be followed through the internet and court fees will be paid electronically (see for example Turkey). Even at a European level 'informational access to justice' is stimulated by opening a European e-justice web portal (expected to be opened during the Belgium EU presidency in 2010).

More computers, court buildings, judges and court staff, increased investments in computerization of courts can have a positive effect on the court performance (and the justice sector performance). Is this enough? No, because a high quality judicial system demands public trust from the society, guarantees for judicial independence and absence of corruption. If we are looking at the figures from the European Union (Euro barometer) then we can conclude that in Denmark, Finland, Austria but *also* in Croatia the perceived public trust in the judiciary is very high. This in contrast with other Balkan countries, such as Slovenia and FYROM. Regarding the perceived abuse of power for personal gain in the judiciary unfortunately there are no figures available for Croatia and other candidate EU-member states. Data from Euro barometer shows that in Bulgaria, Greece,

Latvia, Slovenia and Romania citizens have the impression that there is corruption in the judiciary. Especially for the recent new EU-member states Bulgaria and Romania this has resulted in the need to introduce another evaluation mechanism at the level of the European Union (Co-ordination and Verification Mechanism). On the basis of six benchmarks the judicial reforms are monitored on a six month basis, including measures to be taken to prevent and fight corruption.

The last example of justice sector evaluation that I would like to mention is the introduction of an additional evaluation mechanism to enhance mutual trust between the EU-member states. Currently a pilot project is prepared to evaluate specific EU-instruments in the criminal law area. It is expected that after a successful completion of this pilot the areas of evaluation will be expanded to civil law too and that it can be a step towards the development of a full 'rule of law' monitoring mechanism in the European Union. If this ever will be realized is dependent on the political will and the support from all the EU member states. Until then, we have to work with the measurement tools that have been developed by the Council of Europe, the European Union, the World Bank and other international institutions.

I wish you all a fruitful workshop and thank you for your attention.



