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From the Executive Editor
By Markus Zimmer

The struggle for justice and the rule of law is a perpetual one. One very recent illustration of that ongoing struggle occurred at the end of October. UN Secretary General Ban Ki-moon traveled to Cambodia to meet with government leaders and to visit the Extraordinary Chambers of the Courts of Cambodia (ECCC), the Khmer Rouge war crimes tribunal. The ECCC is poised to commence its second trial, this involving four alleged senior masterminds of the 1975-1979 genocide. ECCC prosecutors have initiated a new investigation involving five additional alleged senior leaders. During his visit, General Secretary Ki-Moon met with Cambodian Prime Minister Hun Sen and other officials. Hun Sen informed him that the ECCC would be permitted only to prosecute the four Khmer Rouge leaders currently in detention awaiting trial; the UN-backed court would not be allowed to try the additional five suspects under investigation or, for that matter, any others. He also directed Secretary Ki-moon that he wants the UN to close its local human rights office in Cambodia.

To justify his position, Hun Sen offered unpersuasive explanations about the potential for further prosecutions to imperil peace and impede national reconciliation in Cambodia. Whether they genuinely reflect his true motives is questionable. Efforts by the ECCC in the past to subpoena high-level government officials to testify at the earlier trial have consistently been confounded by technical maneuvering and, in the absence of enforcement authority, have largely been fruitless. Hun Sen was once a mid-level Khmer Rouge member before turning against the movement. Government ranks are alleged to include many who were complicit. As things stand, the ECCC’s focus is only on the top echelon of the Khmer Rouge leadership. Mid- and lower-level officials, unlike in some other countries with international or hybrid criminal tribunals, are not being prosecuted or otherwise held to account. Sentiment among Cambodians, young and old, is that the ECCC is doing too little rather than too much to achieve justice.
From the Managing Editor
By Philip Langbroek

The Commission for the Efficiency of Justice of the Council of Europe

Eight years ago the Committee of Ministers of the Council of Europe installed the Commission for the Efficiency of Justice. In accordance with its name in French: Commission Européenne Pour l’Efficacité de la Justice, it is abbreviated as ‘CEPEJ’, also based in Strasbourg, France.

The Council of Europe has 47 member states, among which are the 27 members of the European Union. As the Council of Europe is based on the European Convention on Human Rights, the main reason of its existence is the overload of work and large backlogs of the European Court of Human Rights. To give an indication: in 1999 8,400 applications were allocated; in 2003 27,200 cases were allocated, while around 65,000 applications were already pending. In 2009 57,200 applications were allocated to a judicial formation and the backlog had risen to 119,300 applications.

The work of the CEPEJ focuses on improving the work of national justice system, also from a fair trial perspective. This is remarkable, as the jurisprudence of the European Court of Human Rights does focus on the fairness and timeliness of judicial proceedings and on their outcomes, but has repeatedly stated that the internal organization of court organizations is a competence of the member states of the convention. The eventual aim of the CEPEJ is to reduce the number of applications to the ECtHR, but without reducing the level of legal protection in its member states.

The CEPEJ has been working steadily on gathering knowledge and exchanging analysis and experiences on the functioning of court organizations. Given the differences one may expect between the 47 European member states with their different languages, the CEPEJ has managed to create a solid basis for evaluation of national justice systems, it has started a centre for the Study and Analysis of judicial Time Use Research Network, (SATURN), and it also installed a working group on quality of justice.

A main feature of its methodology is to organise a close cooperation between scholars and judges and civil servants in the justice domain. The work is publicly accessible via: www.coe.int/cepej. The CEPEJ and its working groups are supported by a small bureau (presided by Fausto de Santis and John Stacey) and secretariat (headed by Stéphane Leyenberger). They do a lot of work which deserves our admiration. They are in effect the diplomats that keep the development ongoing and they manage to keep member states active and committed.

As the progress of such an essentially networked organization goes slow, it is too early to evaluate the success of the CEPEJ. By June 10, of this year, the 14th protocol to the European Convention came into force, enabling the European Court for Human Rights to rationally adapt its internal organization and proceedings to the very large numbers of applications it receives every year.

For us, as a Journal of the International Association for Court Administration, staying connected to this organization within the Council of Europe is of vital importance as they are a natural ally in gathering and spreading of knowledge and experience on the administration of courts and judges, especially so, because the large majority of its member states has not a common law system but a civil law system and the specific justice infrastructures that belong to it.
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The Pursuit of High Performance

By:

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Dr. Hanson advises judges, court managers, and legal practitioners on ways to improve the handling of cases and treatment of participants in the legal process. He recently taught at the University of Colorado Law School and Political Science Department. His collaboration with his coauthor, Brian Ostrom on multiple initiatives extends over the past twenty years.

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Dr. Ostrom has been at the NCSC for over twenty years. His research activities range from the study of felony sentencing and development of structured sentencing systems to civil justice reform to strategies for creating high performance courts. His interest in high performance grew primarily out of work with several state court systems regarding efforts to improve court organizational effectiveness through careful assessment of court management culture, judicial workload and court performance.

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Dr. Kleiman has worked extensively in the US and abroad on projects relating to the development of resource assessment models for judicial officers, court staff, prosecutors and public defenders. His research emphasizes the development of tools for justice system partners to effectively and efficiently manage their organizations.

The Framework summarized in this article reflects valuable input and advice from colleagues at the NCSC including Tom Clarke, Richard Schauffler, and Dan Hall. In addition, a fifteen member group of expert judges and court managers offered constructive criticism and suggestions for future developments. Shannon Roth ably assisted in the preparation of this essay and the Framework. Finally, the article benefitted greatly from the comments of an anonymous reviewer. We appreciate all of these efforts although we are responsible for the final product.

Introduction

A common focal point of conversation when judges from different countries meet is how their respective legal processes are different. Certainly true distinctions exist among the range of legal systems extant in the world. Civil law, common law, religious law, customary law, Sharia, and their combinations exhibit real and substantial alternatives in how, why and when court business is conducted. Yet, underneath this variation, there are striking similarities.

In virtually all countries, regardless of their legal system, there are courts of first instance or trial courts. Perhaps more importantly, being a judge or tribunal in these bodies of original jurisdiction involves four important common working conditions, experiences and roles.¹

First, courts of first instance tend to handle similar types of cases, typically involving some range of civil, criminal, and family matters. In addition, responsibility for resolving these cases typically resides with a single judge (rather than a multi-judge panel). While precise jurisdiction varies, there are common patterns in degrees of complexity, difficulty and seriousness of the cases handled in these courts. Relatively routine cases; two parties, single issues, settled areas of law and relatively uncomplicated facts outnumber those with complex issues, very serious criminal charges, or large amounts of money in controversy.

¹ Court administration focuses on improving practices in both courts of first instance and courts of appeal. The concepts developed in this article are likely applicable for all levels of court. However, for expository purposes, the focus here is on courts of first instance to alleviate the need for separate discussions of the same issue simply to take into account differences between courts of first instance and courts of appeal.
Second, because these first instance courts tend to handle the bulk of a country’s caseload, high volume calendars are not uncommon. While certain specific case types might be dominant in some courts and absent in others, the similarities in the distribution of relatively routine and complex cases are more striking than are the differences. As a result, many judges intuitively understand that they need some method for handling routine cases efficiently to avoid being overwhelmed or handicapped in having enough time for more time for complex matters.

Third, the position of first instance judges is alike as well. They are final arbiters in fact, if not in theory, because most of their cases are not reviewed on the merits by appellate courts. Consequently, they share a similar consciousness about their critical responsibilities.

Four, judges must come to terms with having to deal with the demands and pressures associated with cases in the first instance. They are familiar with the hurly burly of trial court proceedings and the centrality of their role in resolving all manner of human conflict. Yet, to one degree or another, they also recognize they must do more than decide cases—they must manage a host of interrelated people before, during and after every proceeding. The work setting requires management and this introduces a secondary administrative role for trial court judges. How to meld the fundamental adjudicative responsibilities with the administrative tasks is an issue judge’s share.

Basic similarities in the scope and nature of the work handled in courts of first instance means that there are also similarities in the challenges these courts face in providing efficient and effective case resolution. The quality of court outcomes reflects not only the character of the judge’s decision, but the administration of the legal process. Such elements as how participants are treated, the way judges allocate time and attention to cases, the introduction of innovative practices, and how judges interact with their colleagues are central to determining the success of court operations and how people view the work of the court.

Serious efforts to improve the quality of administrative practices will seek to create a dynamic process geared to helping court leaders think critically and creatively about alternative ways to solve problems. Of course, putting such a problem solving process in play can be a challenge in any court. In support of the search for workable strategies to improve court administration, the purpose of this article is to share an effort developed by the National Center for State Courts in Williamsburg, Virginia to enhance the administrative performance of American state trial courts. This initiative is called the High Performance Court Framework, with the full document available at www.ncsc.org/hpc.

In addition to the Framework’s utility in the American system, we believe the Framework has relevance and applicability in encouraging high performance in other countries. Hence, after highlighting the Framework’s essential aspects, the article’s second objective is to discuss the Framework’s implications for court improvement in other countries.

**Overview of the High Performance Court Framework**

The Framework is intended to clarify what court leaders can do to guide their organizations in the direction of high quality administration and consists of five key concepts designed to improve the daily ongoing work of courts.

1. **Administrative Principles** define high performance. They indicate the kind of administrative processes judges and managers consider important and care about.

2. **Managerial Culture** is the way judges and managers believe work gets done. Building culture committed to high quality service is key to achieving high performance.

3. **Performance Measurement** describes a court’s ability to assess how successfully it is completing and following through on the goals it seeks to accomplish.

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4. **Performance Management** concerns how court leaders respond to performance results and how the court develops its creative capacity to refine and improve administrative practices.

5. **The Quality Cycle** is a dynamic, iterative process that links the four preceding concepts into a chain of action supporting ever-improving performance.

**Administrative Principles**

Raising the concept of quality court administration implies some agreement on what court managers are trying to accomplish and that administrative practices can vary from better to worse. The Framework suggests that the character of quality administration derives from fundamental values and desired behaviors widely shared among judges and court managers, although they might not articulate them explicitly or discuss them frequently. These values and corresponding behaviors define effective court administration; that is, they lay out elements to look for in a well-run court. Among these elements are a series of administrative principles including the following: (1) giving every case individual attention, (2) treating cases proportionately, (3) demonstrating procedural justice, and (4) exercising judicial control over the legal process.

*Every Case Receives Individual Attention.* Giving individual attention to cases has direct implications for administrative performance because it connotes a tension between each individual case and a judge’s case load as a whole and in fact an entire court’s case load. Judges and court managers do not want decisions in any case to be a foregone conclusion or the product of inattention. No one wants to regret an outcome where additional time would have led to a more correct legal decision. Stated more positively, judges know an appropriate amount of time is necessary to allow them to gain requisite information to make the most correct decisions possible. Effective procedures allow contending parties and attorneys to provide all relevant information to the court, to present their respective sides of the case and to respond to any questioning by a judge.

*Individual Attention Is Proportional To Need.* Whereas the first administrative principle suggests judges focus on each individual case, the second one looks at each case’s relationship to all others. Judges and court managers must balance the desire to give every case appropriate attention and the concurrent responsibility to honor this desire in a world of substantial case loads and finite time and resources. One way to reconcile the conflict between “individualized” attention and case load imperatives is to apply the proportionality proposition, which states that every case should receive individual attention in direct proportion to what it warrants. More complicated, more difficult and more serious cases should receive more time than the less complex, less difficult and less serious cases. The idea of proportionality is intended to maintain equality and due process in the treatment of cases, but also to acknowledge the reality that available work time and resources are limited.

*Decisions Demonstrate Procedural Justice.* Many assume that winning or losing is what matters most to people when dealing with the courts. However, research consistently shows positive experiences are shaped more by court users’ evaluations of how they are treated and whether the process of making decisions seems fair. The administrative principle of procedural justice is the concept that deals with the perception of fairness regarding court procedures and outcomes. This principle is of fundamental importance to the institutional legitimacy of a court and to the degree of trust placed in it by participants in the legal process, policy makers, and members of the public. In turn, perceptions that procedures are

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fair and understandable influence a host of outcome variables, including satisfaction with the process, respect for the
court, and willingness to comply with court rulings and orders—even if individuals don’t like the outcome.⁵

Judges Control The Legal Process. A key development over the past 40 years is application of management concepts to
the movement of cases in a court house. Case flow management has come to mean the blend of processes, techniques
and resources necessary to move a case effectively and efficiently from the date of filing to resolution. At the center of
successful case flow management is the recognition that judges, with the assistance of court administration, must make a
commitment to manage and control the flow of cases though the court. While this responsibility by judges and court
managers should be tempered by continuing consultation with attorneys and others on the best means for improvement, a
court must lead the effort if it is to succeed. A substantial benefit of greater court control over the case flow process is that
it can lead directly to more effective (and cost-effective) advocacy for all litigants. By implementing and using effective
case flow management policies, the court sets clear expectations for what is expected of attorneys at each event and
what a judge will do if the expectations are not met.⁶

These administrative principles offer guidance on how court management can support the effective adjudication of
disputes. Although they describe a vision of what a well-run court wants to achieve, actual application of the principles will
vary from court to court. The central court management issue is how to put principles into practice.

Managerial Culture
Administrative principles underlie how judges and managers define high performance. High performance occurs when the
principles and the practices correspond with each other. A key challenge for courts, of course, is creating a managerial
culture that is conducive to making high performance an administrative reality.

The study of court culture enhances the understanding of what drives courts to handle cases and treat participants in the
legal process in particular ways. Moreover, because culture can change, it can be molded to support administrative
reform.

The NCSC provides a method for understanding court culture and a set of tools and techniques for diagnosing, and when
appropriate, changing court culture.⁷ Following the methodology used successfully to understand managerial culture in
the private sector,⁸ the NCSC research defines court culture as the beliefs and expectations judges and managers have
about the way and the degree to which they individually and collectively affect and shape the legal process. A key finding
is that these beliefs are ordered sufficiently to fall along two “dimensions.” The first dimension, called solidarity, is the wide
spectrum of beliefs on the extent to which it is important for judges and managers to work toward common ends. The
second dimension, called sociability, concerns the wide range of beliefs as to whether it is important for judges and
managers to work cooperatively with one another. Solidarity refers to the degree to which a court has clearly understood
shared goals, mutual interests, and common tasks. Sociability refers to the degree to which court personnel acknowledge,
communicate, and interact with one another in a cordial fashion.

The NCSC approach constructs a classification scheme that systematically produces four distinguishable types of
cultures: (1) communal, (2) networked, (3) autonomous and (4) hierarchical. Each of the four cultures is a particular
combination of solidarity and sociability, as shown below.

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Judges Association”. Court Review. p. 4. See also: http://aja.ncsc.dni.us/htdocs/AJAPaper9-26-07.pdf
PA: Temple University Press.
Instrument and an Analysis of the Impact of Organizational Culture on Quality of Life”. In Research in Organizational Change and
An essential lesson from field research in the US is that a high degree of solidarity is necessary to support performance initiatives. Hence, a challenge for court leaders is to encourage and facilitate collective decision making among individual judges on what is best for the court as a whole. As a result, by focusing on solidarity and building consensus, a court can reduce the level of fragmentation and isolation, enabling it to more effectively apply the administrative principles.

Performance Measurement and Management
Knowing whether and to what degree a court is high performing is a matter of results. A high performance court is evidence-based in establishing success in meeting the needs and expectations of their constituents.

A court culture supporting a common understanding and commitment to sound administrative principles will seek to generate practices that lead to demonstrably high performance. Administrative principles help define a set of performance outcomes linked to gauging a court’s achievements in providing fair, timely, and cost-effective case resolution. The primary goal of court management is to refine administrative practices until desired objectives are achieved. For this reason, an objective of the High Performance Court framework is to offer a method of gathering information directly on performance and to suggest ways courts can use the information to adjust practices.

An initial definition of performance is that it is the consequences of a court’s efforts to achieve and sustain fundamental values, such as those represented by the four administrative principles. More specifically, performance-relevant consequences refer to the qualities of the products and services received by an individual or groups of individuals. Hence, the higher quality of service delivery is to the individual(s), the higher the level of performance. Yet, this definition is only one part of performance.

An essential characteristic of performance is utility. Knowledge of performance results must be put into practice. In other words, performance’s consequences refer not only to observable measures of how well practices promote values or desired goals. They also refer to the use of performance results to improve administrative practices. The gathering of information on performance and the usage of the results are two distinct, but related, aspects of performance: Performance Measurement and Performance Management.
Performance measurement clarifies the meaning of values and makes them relevant by providing the essential element of information on where a court’s service delivery stands in relationship to recognizable criteria. Gauging an institution’s effort in meeting expectations establishes its location relative to the past and present; it points out where it has come from and where it is now. Knowledge of what has been accomplished to date allows a court to husband its limited resources, set priorities, and target its attention at where it is most needed.

In support of such efforts, the NCSC working with a group of leading court practitioners released CourTools⁹, a common set of ten indicators and methods to measure performance in a meaningful and manageable way. The 10 CourTools Measures

<table>
<thead>
<tr>
<th>Measure</th>
<th>Definition</th>
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<tbody>
<tr>
<td>1   Access and Fairness Survey</td>
<td>Ratings of court users on the court's accessibility and its treatment of customers in terms of fairness, equality, and respect.</td>
</tr>
<tr>
<td>2   Clearance Rates</td>
<td>The number of outgoing cases as a percentage of the number of incoming cases.</td>
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<tr>
<td>3   Time to Disposition</td>
<td>The percentage of cases disposed or otherwise resolved within established time frames.</td>
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<tr>
<td>4   Age of Active Pending Caseload</td>
<td>The age of the active cases pending before the court.</td>
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<tr>
<td>5   Trial Date Certainty</td>
<td>The number of times cases disposed by trial are scheduled for trial.</td>
</tr>
<tr>
<td>6   Reliability and Integrity of Court Files</td>
<td>The percentage of files that are complete, accurate, and can be retrieved within established time standards.</td>
</tr>
<tr>
<td>7   Collection of Monetary Penalties</td>
<td>Payments collected and distributed within established timelines.</td>
</tr>
<tr>
<td>8   Effective Use of Jurors</td>
<td>Examines court processes for selecting and using prospective jurors.</td>
</tr>
<tr>
<td>9   Court Employee Satisfaction</td>
<td>Ratings of court employees assessing the quality of the work environment.</td>
</tr>
<tr>
<td>10  Cost Per Case</td>
<td>The average cost of processing a single case, by case type.</td>
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The choice and formulation of the ten CourTools measures are shaped by three interrelated criteria: (1) drawing on fundamental administrative principles, (2) providing a balanced perspective, and (3) offering feasibility and sustainability in application.

**Principles.** The measures are aligned with the four administrative principles and help courts evaluate success in key areas such as providing access to justice, reducing delay, and ensuring fairness. CourTools also includes other indicators relevant to all public institutions and linked to management effectiveness, such as fiscal responsibility, client-customer satisfaction, and the effectiveness and efficiency of internal processes. For a complete description, methods of calculation, and possible interpretations, see CourTools at www.courtools.org.

**Balance.** Achieving a balanced perspective means core performance measures should cover the most important dimensions of court performance and offer meaningful indicators of success in each area. Many court managers recognize the need for measurement in appraising current practices and procedures, but may not view performance measurement as essential beyond the arena of case processing. The management approach associated with a “balanced scorecard” entails both the idea of “balance” (e.g., unifying traditional case processing measures like time-to-disposition with measures of access, procedural fairness, effective use of jurors, and court employee opinion) and regularly scoring performance. The balanced approach allows the court to consider all the important measures at the same time, highlighting whether improvements in one area are coming at the expense of another.

**Feasibility.** Integrating performance measurement into daily operations requires measures that are limited in number, readily interpretable, and durable over time. CourTools constitutes a set of ten vital indicators of court performance that can be applied in a regular and ongoing fashion.

However, performance is not just a grade on a report card. Identifying and making use of performance results is a logical next step.

Performance management relates to how a court responds to performance results and refines, updates and adopts new practices in conjunction with both its evolving priorities and changing circumstances. Therefore, a high performing court is an “administratively activist” body because it considers the consequences of its administrative practices and adjusts them in light of what it learns.

**Quality Cycle**

With respect to performance management, the Framework suggests a series of flexible steps a court can take to integrate and implement performance improvement into its ongoing operations. In fact, the pieces of the Framework form a functional system that can be called a “quality cycle.” The court administration quality cycle consists of five main steps: determining the scope and content of a problem, information gathering, analysis, taking action, and evaluating the results.

In many courts, the road to high performance begins with a collegial willingness to see how the four administrative principles are working out in practice and using data to gauge what “working out” means. In other words, when a court’s culture supports a commitment to high quality service, there is ongoing attention to identifying and resolving administrative problems. A clear statement of a specific problem is the first step in organizing a court’s resources to effectively address it.

Collecting relevant data is the next key element of the quality cycle. The scope of assessment is a matter of local option. A court can begin by consulting the Framework’s proposed set of performance areas and accompanying measures to gauge whether reality is consistent with expectations. For example, consider a court that is concerned that the backlog of family law cases is growing. They decide to proceed by compiling data on time to disposition and age of the active pending caseload in family law, while also conducting an access and fairness survey with all litigants involved in family law case.
The third step in the cycle is examining and interpreting the results from the data collection and drawing out their implications. Bringing data to bear help judges, management and staff more clearly identify the real causes of the problem(s) and what actions might be taken to solve the problem(s). For example, time to disposition data shows that family cases fail to meet the benchmarks for timely case processing. Further investigation shows that many self-represented litigants are not clear on what actions are required to move their cases forward, leading them to feel ill-treated by the court. The result is family cases are taking longer and backlogs are increasing, while litigant (customer) satisfaction is declining.

This step in the quality cycle is clearly iterative. Once the basic character of a problem is identified, additional information can be gathered to further narrow and refine the problem. Continuing with the family law example, court staff might examine data on the number of continuances in family cases, distinguishing whether or not litigants are pro se, and also soliciting input from family court judges. Such additional information might allow the problem to be more succinctly stated as “family cases involving pro se litigants are continued at a greater rate, delaying these cases and increasing the workload of judges and staff.”

The fourth step in the cycle is a fusion of performance measurement and management. Clearly specifying the problem allows court managers to identify the particular business processes involved. As new information emerges, potential business process refinements and staff capability improvements will naturally evolve. For example, with respect to pro se family law cases, the court may redesign services to provide improved self-help resources in the law library; add a family law coordinator; build up staff training for those working with pro se family law litigants; ensure the issue is on the meeting agenda for the family law bench; and collaborate with the local family law bar to develop a legal clinic staffed by pro bono attorneys.

The fifth step involves checking to see whether the solutions have had the intended result. By gathering input from appropriate judges, court staff and court customers and monitoring the relevant performance indicators, the court can determine if the problem is really fixed. The goal is not to temporarily change performance numbers, but to achieve real and continuing improvements in the process and in customer satisfaction. For example, a court that has implemented a range of possible solutions for improving family case processing will want to determine if updated performance measure data show the problem has been resolved. If data show performance is still unacceptable (not meeting benchmarks), another round of problem assessment is required.

A virtue of viewing the Framework in terms of the dynamic quality cycle is that it encourages courts to move back and forth between performance areas in creating a composite picture of performance. There is no one aspect of performance that must be every court’s entry point; rather, the performance measurement scheme provides a balanced and comprehensive set of areas that courts can address from the position of their particular needs and circumstances with the aim of ultimately filling in all of the blanks.
The Framework in International Context

A holistic approach to the study and practice of high performance is advantageous. Operating from a comprehensive framework clarifies the interconnections among principles, managerial culture, the development of appropriate performance indicators, and management of the change process. Without a framework, it is very difficult to predict which change efforts will work, to see how new programs might conflict, or to anticipate potential trade-offs among performance areas. A framework helps make clear how performance results can be used by courts to reshape their day-to-day operations and strengthen their institutional performance.

While the current conceptualization of administrative principles, court culture and performance measurement were designed for application in US trial courts, the ideas and logic of the Framework are applicable as a road map for the design, reform, and improvement of courts elsewhere in the world. One defining characteristic of the Framework is that it does not offer up “best practices” or one size fits all solutions, but instead provides a robust set of ideas and a rational approach to guide courts towards higher performance. The Framework provides both a methodology to assess performance and a set of strategies for quality improvement that remains sensitive to the historical, cultural, and contextual foundations that undergird courts in different settings.

A promising set of lenses through which to look at the similarities and differences among trial courts worldwide is the distinction made by scholars in the parallel field of democratic development and the nature of governmental institutions.  

Key propositions contained in this work include the idea that countries can be placed on a continuum ranging from nascent democracies (or “transitional”) at one end to established and sustainable democracies (or “consolidated”) at the other. What separates the two types of democracies is the manner of resolution of conflict and disputes. In transitional systems, force and violence often settle disputes while consolidated systems seek to resolve contentious disputes in designated institutions. A second proposition is that the nature of institutions matters considerably in whether democracy takes hold and that institutions shape sustainability.

Building on and extending these ideas to the issue at hand, transitional court systems (Afghanistan, Kosovo, Nigeria) have newly emerging judiciaries, institutional independence is an aspiration, and the judicial role is not well established. In contrast, in consolidated court systems (Argentina, Canada, Italy, Philippines, Singapore) there is a tradition of judges adjudicating disputes, some degree of judicial independence exists although it is variable across countries, and the public has trust and confidence in the ability of the judiciary to be fair and impartial. Viewed in this manner, possible connections between the Framework and courts in different countries will vary among transitional and consolidated systems. What is relevant (or good) for Albania and Romania is not necessarily the same (or the best) for Australia and New Zealand.

For transitional judiciaries the Framework provides guidance for reformers on both the design of the court system and the education and training of the judiciary. The Framework encourages court leaders to articulate their vision for what the court system will look like, what courts as organizations are intended to achieve, and the values that will sustain them over time.

The Framework advises keeping the talk about courts and what they are expected to do at level of “working” values; values that can be manifested in concrete policies, procedures and practices. Without subscribing to the precise substance of the Framework’s principles and culture typology, transitional systems can benefit from designing their courts around one or more of the five concepts. By thinking about principles and culture in the design process provides a clearer and stronger ground for transitioning to a viable institution and the future introduction of management plans, case management information systems, and performance reports.

Furthermore, transitional court systems can profitably integrate aspects of the Framework into the recruitment and training of judges and staff members. The seed of the idea that courts are organizations should be sown early in the development of a judiciary. Judges are more than just individual arbiters. An important lesson to teach is that their impact and legacy are greater if they think they are part of a judiciary and they make decisions collectively in how their institutions operate. A parallel effort is warranted in the training of all staff members with a particular emphasis placed on promoting the adoption of performance measurement and performance management principles.

For consolidated court systems, the Framework’s utility seems more direct. No consolidated court system should take the Framework so literally that they must adopt it in toto. However, other systems should have convincing arguments for departing from the Framework’s concepts. For example, if every case is not deemed worthy of individual attention, this precept should not be dispatched for light and transient reasons. Yet, despite the potential appeal of the aspects of the framework, what is its applicability elsewhere?

The Framework’s applicability hinges on whether other court systems operate under conditions similar to those on which the Framework rests. Specifically, three conditions in descending order of importance are (1) the opportunity for collegial discussion among judges and staff members exists, (2) judges and staff members have some say over the design and implementation of court administration policies and practices, and (3) the judge with official leadership responsibilities has an interest in high performance. The more vibrant the collegial discussion, the more aware judges are that their administrative decisions have independent consequences and the greater the interest of administrative leaders, the greater the Framework’s applicability.

To foster these conditions, the formation of a cadre of judges and staff members focused on high performance is a workable strategy. A cadre can have a leavening influence on the entire court. Solidarity among a select group is sufficient to promote collegial discussion on a court-wide basis, to organize ideas and concrete proposals for improving court
performance and to mobilize support for a chief judge intent on making a court as best as it can be. Assuming the cadre is sufficiently cooperative to put its proposed ideas on the table for all judges to consider, it averts the charges of elitism and dismissive treatment of tradition.

In summary, the Framework invites court leaders in both transitional and consolidated systems to consider the benefits of a structured approach to the design and operation of key court functions. Both transitional and consolidated courts benefit from knowing why and how they should respond to calls for accountability. The Framework orients both types of courts to appreciating why its institutional performance matters. Additionally, it supports the efforts of courts generally to anticipate problems, prevent small problems from becoming big ones and learn from its failures. Finally, both transitional and consolidated courts can profit from a better understanding of how to use available resources skillfully and minimize the challenges of resource deficits.
Using System Dynamics to Develop Organizational Learning Process: the Neighbourhood Justice Centre in Yarra

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Background

The development of the Neighbourhood Justice Centre (NJC) in the Melbourne suburb of Collingwood is a first for Australia and reflects a universal growing interest in addressing the underlying causes of criminal behaviour and disadvantage as well as improving access to justice.

The NJC project initially arose out of interest in community justice centres overseas, in particular, the Red Hook Justice Centre in Brooklyn, New York. At the core of these models is the concept of partnerships between courts and communities, local and state governments and service providers. Alternative approaches to traditional forms of justice, which are often based on a “get tough on crime” approach, are becoming increasingly widespread. In addition to Redhook, there is a similar Centres in North Liverpool and a wide range of community justice operations in the US. The fundamental philosophy is that of therapeutic justice with its emphasis on including the trialling and implementation of problem-solving courts, like drug courts, and restorative justice initiatives and juvenile offenders and often focuses on juvenile offenders.

The paper documents the findings from an intervention in the NJC that involved analysis of the NJC processes using process maps, causal loop diagrams and systems modelling. From this analysis, plans for organizational change were developed through a series of workshops. The paper also documents the change in sense making processes to include ideas of process flow, feedback systems and causation. The processes that were modelled in the NJC have much in common with other case management systems, particularly in hospitals and it appeared likely that the NJC would soon be addressing the problems identified where “the normal mode of operation is beyond their safe design capacity.”

The Victorian NJC project was announced by the Attorney-General in April 2005 and implements A Fairer Victoria commitment to improve access to justice, particularly for vulnerable members of our community. It also delivers on the Government’s commitment to address disadvantage and modernise courts consistent with the Attorney General’s 2004 Justice Statement.

The Courts Legislation (Neighbourhood Justice Centre) Act 2006 received Royal Assent on 15 August 2006 and established the NJC Court as a new division of the Magistrates’ Court and the Children’s Court. The objective of the legislation was to simplify access to the justice system and applying therapeutic and restorative approaches in the administration of justice.

The NJC is designed to champion a problem-solving approach to justice. It focuses on both civil and criminal legal issues in an effort to reduce re-offending and crime rates, to enhance community perceptions of safety and confidence in the justice system and to assist in re-invigorating communities affected by individual and systemic disadvantage.

The NJC was established in the City of Yarra which has one of the highest crime rates in Victoria, with four of its suburbs represented in the top ten postcodes ranked by offence rate per 100,000 population. The suburb of Collingwood, located in the City of Yarra has a crime rate that is more than six times the state-wide average – 52,754 per 100,000 population in comparison with 7,979 per 100,000 for the whole of Victoria.

1 Jeffries (2005)
2 Wemmers and Cyr, (2005)
4 Wolstenholme (2007)
The work that was done during the assignment and the response of the NJC staff to the systems thinking approach taken by the consulting group encouraged the CEO to incorporate the results of the mapping and modelling into the embryonic organizational learning capability of the Centre. A series of workshops were developed using the set of Systems Thinking\(^5\) Tools used by Ponte in the analysis of the processes of the NJC:

1. Process Mapping to provide a tool for understanding the micro-level workflow processes within the organization.
2. Causal Loop Diagrams\(^6\) (CLDs) to provide a tool for understanding causal relationships and policy dynamics both within the organization and between the organization and its external environment.
3. Simulation Modelling to provide a tool for understanding, managing and reengineering the dynamics of the micro level workflow processes and the causal dynamics within the organization.

**Action Learning within the NJC and beyond.**

These three tools provide three distinct platforms for developing organizational learning for process reengineering and policy alignment both within the NJC and with its external stakeholders. In relation to the issues of an organization learning capability within the NJC, there were two related aspects of the NJC operations that would provide a useful focus for developing this capability. There appears to be a consensus that the NJC has become Court centric to an extent that was not envisaged in the original design. This consensus is supported by the work done by Ponte in developing the CLDs indicating that the policy directions and dynamics that the NJC wishes to establish with the local community continue to be very much a work in progress. The simulation modelling indicates that the workload of the Court has increased consistently since the NJC was established and that now some of the operations within the NJC may have reached the limits of their of operating capability.

As the development of NJC’s activities appears to become increasingly focused on the administration and distribution of justice, the community outreach and community building activities have not developed at a similar rate. These two issues

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\(^5\) Systems Thinking is a framework that is based on the belief that the component parts of a system can best be understood in the context of relationships with each other and with other systems, rather than in isolation

\(^6\) Causal Loop Diagrams show causal interrelations between variables in a system. *(Source: Wikipedia)*
are interrelated and interdependent. As increasingly large amounts of time spent on Court activities, available time for community based activities declines.

There are three central elements that the NJC management accepted as the basis for organizational change. The first is that structure determines behaviour. To change the performance of an organization the best approach is to understand the structures that are producing current behaviour and then to design the structures that will produce the desired behaviour. The second is that structural and organizational change can only be brought about by the internal stakeholders. The third is that Systems Thinking provides a powerful set of tools for organizations to understand and implement organizational learning and change.

**Overseas Experience**

Community justice centres have proven effective in several overseas jurisdictions including the US and more recently the UK. Since the Red Hook Community Justice Centre in New York commenced, there has been a 50% improvement on the national standard of compliance with community-based dispositions, a contribution of more than 79,000 hours of community service to the Red Hook area (some $400,000 worth of labour), a 300% increase in approval ratings of police, prosecutors and judges and at March 2006 (using 1998 as the baseline data) the number of murders in the area had dropped by 48%, rapes by 79%, robberies by 25% and assaults by 41%. Further, in a survey of 400 defendants, researchers found that at Red Hook, 86% agreed that their case was handled fairly by the court compared to 75% at the centralised court and 90% agreed that they were treated in a way they deserved in the court, compared to 75% at the centralised court.

The NJC has a range of broad and specific objectives that were set by the implementation team and which would underpin the evaluation of the NJC.

**Increase the participation of the community in the justice system**

1. Increase offender accountability and improve justice outcomes by decreasing the rates at which criminal court orders\(^7\), CBO and ICO are breached.
2. Improve community outcomes in response to identified needs
3. Improve community outcomes in the administration of justice in the City of Yarra by improving the confidence of participants, including victims, defendants, applicants, witnesses and the local community, in the justice system.
4. Improve the administration of justice for NJC court participants
5. Modernise Courts by contributing to cultural and procedural change in the justice system.
6. Increase community safety by contributing to the reduction of crime in the City of Yarra.\(^8\)
7. Increase offender accountability and improve justice outcomes by reducing re-offending rates of participants.

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\(^7\) These come in two forms: Community Based Orders (CBO) where the offender is required to undertake the unpaid community work hours imposed by the court and report to a Community Corrections Officer and Intensive Correction Orders which includes the conditions of the CBO and any special condition imposed by the court to attend one or more prescribed programs. (Source: Department of Justice website))
The original aims also included a commitment to Action Learning as a methodology and an emphasis on the improvement in performance expected of the NJC. Whilst it was intended that the NJC increase perceptions of safety in the City of Yarra, it was widely recognized that there has not always been a correlation between the reduction of crime and increased perceptions of safety.

It was anticipated that at least half (50-60%) of all usage would be court-related, with the balance of usage being non-court related, inclusive of community engagement, crime prevention, mediation, group and targeted activities and individual matters raised by residents. This is consistent with the view that the NJC includes a court but that it is not its sole defining feature.
The NJC includes a multi-jurisdictional court with on site services (such as legal aid, prosecution services, community corrections services, assessment services, victims services, mediation services, referral and support services), facilities (such as an information hub, spaces for community meetings, child-friendly and quiet areas), and on-site intake or connections with services that are off site (such as housing services, drug and alcohol services, employment services and mental health services).

The first of a series of three evaluation reports recently identified a series of key emerging issues

1. The concept of ‘community justice’ is complex, with no definitive set of meanings. Some uncertainties and tensions exist within the NJC stemming from differing perspectives on community justice.

2. The emerging goals and outcomes of NJC require consideration in terms of articulating the NJC’s community impact and what makes a ‘successful’ Centre.

3. The need to match data collection systems and administration with the objectives and philosophy of the NJC.

Staff identified the following as the key challenges faced by the NJC to date:

1. The lack of appropriate mechanisms for productively resolving differences in the way various ‘parts of the NJC view the role of the Centre and its commitment to therapeutic and restorative approaches to justice

2. The implications of expanding case loads upon staff capacity to give (ongoing) meaningful attention to the procedural, therapeutic and restorative ideals of the NJC

Evaluation of the Neighbourhood Justice Centre

This second point had been identified in projections of the 2005/2006 statistics cited in the NJC Court Operations Guide. These showed that if the NJC were to operate on the basis that the court would sit 243 days per year, the NJC Court would be over committed in trying to meet the projected demands of the City of Yarra. As a result of the first evaluation report, the NJC senior management group decided that a thorough analysis of the way in which the NJC processes were meeting (or not meeting) the NJC goals was needed.

There was also recognition that it was time to enhance the action research and learning capability of the Centre. During the first year of operation, there had been a strong emphasis on getting the centre up and running. With the possibility of more NJCs being set up in Victoria, it was hoped that the Collingwood NJC would become a blueprint for future development.

One member of the senior management team had had previous experience on a System Dynamics intervention at the Dispute Resolution Centre of Victoria (DSCV) and recommended that such an approach be used at the NJC.

In mid-2008, Ponte Consulting was engaged by the NJC to provide process maps, causal loop diagrams and a simulation model of the processes within the NJC. The senior management was aware that as the NJC was a pilot project, senior officials within the Department of Justice and the Attorney General were becoming increasingly interested in whether the NJC experiment was successful and whether it should be rolled out across the state. To do this would require a very clear understanding of the organizational processes and structures shall be replicated including:

1. The identification of key process requirements and

2. Opportunities for change that relate to people, process, technology and policy improvements,
While individual processes within the NJC had grown organically for the first twelve months and were working well, there had been no systematic attempt to understand the interaction of those processes. While it was easy to identify how the individual processes related to the NJC goals, in many cases, specific metrics were not available to substantiate this. This is in part a result of a very strong clinical and correctional focus within parts of the NJC and the amount of time and energy that had been necessary to set up a new operation for which there were no existing organizational templates. The strong pressure to deliver clinical and correctional outcomes associated with the activity of the Court meant that less time and energy was devoted to questions of process management and improvement and on bringing together key elements of the external relationships.

It is widely accepted that the mental models and cognitive maps of individuals are fundamental to the way they make sense of their organizations. Individuals in professional organizations such as hospitals and court systems bring a well-established set of mental models to their professional and organizational life. These models are case and incident-based and represent the dominant paradigm for dealing with individual clients. The care and treatment of individual clients, whether patients in the hospital or criminals before the justice system, are the primary focus of these organizational systems. Professionals make sense of their work in terms of the primacy of the individual rather in terms of the primacy of process.

Concern for, and indeed knowledge of, the importance of organizational processes is not a strong element of the mental models and sense making of professional staff in these organizations. This is in the functioning of these organizations, where the focus is on directing resources to individual cases. Bringing about change from a case and incident-based approach to a process oriented approach requires changes both in the structures of the organization and the structures of the mental models of the individuals who work in those organizations.

At a practical level, there are number of tools that can be used to develop professionals’ sense making to include an understanding of organizational structures and processes. Three such methods are process mapping, causal loop diagramming and systems modelling. Each of these approaches provides different insights into organizational structure and process.

**Process Mapping in NJC**

The first phase of the consulting assignment was to develop 23 process maps of the key processes of the NJC, which are shown in Figure 1.

These maps were developed after 28 interviews conducted with NJC management responsible for Client Services, the Magistrates Court and Correctional Services. The interesting development from this process was the acknowledgement from the NJC staff, that this most simple of systems analysis represented a quite different way of making sense of their organization. While they were obviously aware of the process by which cases moved through the system, their fundamental orientation was case management. Process mapping provided a tangible and formal means of thinking about their organizational processes.
The second phase of the project was to develop a series of causal loop diagrams connecting these processes to the NJC goals. Many of these activities were related closely to the fundamental goals of the NJC but also demonstrated the dominance of the Court-centric activities that the process maps had identified.

There are three main reasons for using CLDs9:
1. Quickly capturing a hypothesis about the cause of dynamics
2. Eliciting or capturing mental models
3. Communicating important feedback that is responsible for a problem

The initial process mapping exercise had clearly distinguished the well-established processes related to Magistrates Court. When the NJC was first established, not everyone had had experience of working in the court system. The Magistrate was new to the role, the Justice Officers and the Manager of Client Services had no Magistrates Court experience and only one member of Client Services had previous Court experience. This was in stark contrast to the appointees from Victoria Legal Aid, Police, Registry and Corrections staff who had significant experience in the Courts.

Because the NJC was the first to be established in Victoria, no one had experience in working in this style of problem-solving and therapeutic court. As the simulation modelling was later to show, workloads had been steadily increasing, particularly in relation to the case flow from the Magistrates Court, which was increasingly dominating the time of the staff of the NJC at the expense of those activities designed to increase community involvement in the justice process.

The causal diagrams were designed to capture the dynamics particularly associated with the community involvement aspects of the NJC and represented an exploration of the mental models that the NJC staff in relation to those goals.

The first CLD identified the fundamental strategic thrust of the NJC, which is to reduce crime in the City of Yarra. This takes two forms. The first is to prevent crime within the City of Yarra, much of which is committed by non-residents. The focus here is on reducing the antecedents of crime, such as people leaving computers in parked cars and unlit areas within housing estates providing a venue for drug dealing. The second is to reduce crimes committed by citizens of Yarra and to reduce the chances of these citizens re-offending through the application of therapeutic and restorative justice. This process is shown in Loop 1. Loop 2 indicates the role of the NJC’s crime prevention activities, which are designed not only to prevent crime by citizens of Yarra but also crime by non-residents.

The original plans for the NJC envisaged that 50% of its activities would be spent on non-Court related matters particularly in relation to crime prevention and community involvement. The CLD in Figure 3 indicates the two processes by which this was to be undertaken. The loop is driven by two activities: the formation of Community Safety Bodies in response to community sensitivity to crime and by the activity of CPAG (The community partnerships and accountability group later renamed the Community Justice Advisory Group). The activities of these two groups were designed to decrease the likelihood of crime being committed by dealing with the environmental antecedents of crime.

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9 Sterman (2000)
The next CLD shows the positive impact of the approach taken in the NJC where greater knowledge on the part of the Magistrate is a positive loop that contributes to perceptions of fairness and community confidence in the court while also reducing offences by citizens of Yarra through the use of CBOs and ICOs.

The CLD in Figure 4 depicts the dynamic between the operations of the NJC and its client group and the impact that NJC activities will have on community perceptions. One of the central concerns of the NJC was the development of community perceptions of the fairness of the Court operations within the NJC. This was seen as a central driver for the demand for NJC services within the community and from the local police stations who referred cases to the Magistrates Court in the NJC.

The fundamental operating assumption of the NJC is that the therapeutic and restorative justice processes lead to better long-term outcomes, intensive crime prevention and rehabilitation. The rehabilitation process is specifically focused around the success of Community-Based Orders (CBOs) and Intensive Correction Orders (ICOs).

The final causal diagram indicates the reinforcing loop that incorporates the Community Based Orders and the delivery of therapeutic services. It also includes two elements of this causal diagram that are specific to the NJC: the use of problem solving meetings and correctional services reviews to detect and rectify breaches of CBOs and ICOs.
The Model: Capturing the Dynamics of Case Flows

The simulation model that was developed for the NJC was designed to show the behaviour over time of the NJC system. Figure 6 shows the complexity of the four systems in the NJC: the Magistrates Court, Crimes and Family Violence, Victorian Civil and Administration Appeals Tribunal (VCAT) and the Victims of Crime Assistance Tribunal (VOCAT).

The Court sub-model is a series of different processes that are essentially unrelated except for the impact they have upon the client services area. These processes are the Magistrates Court, VCAT, VOCAT and Crimes Family Violence. The sectors are administrative main chains\(^\text{10}\). There is also a sector that models the Human Resources dynamics of the NJC.

\(^{\text{10}}\) Richmond (2001).
system. The model of the Magistrates Court is complex and is best understood when broken into its component parts: the Registry, Client Services, the Adjournment Processes, Problem Solving, and the Supervision of Court Orders. The first section of the model has been dealt with in the introductory comments.

**The Criminal Court**

In the simplified example below, cases flow into the Registry and then to Client Services for assessment and then to the Court for the First Mention. In some situations cases leave the NJC system as under the successful Diversions program\(^\text{11}\). The alternative pathways for cases are shown in the pathway of Unassessed Cases, which bypass the Client Services assessment on their way to First Mention.

![Figure 7: Registry and Client Services](image)

The second section is between the First and Second Mentions in the Magistrates Court. There are four flows between these two stocks. The first is Contested Hearings, which leave the NJC for the Melbourne Magistrates Court. The NJC court only hears guilty pleas because it does not have the capacity to hear contested matters. The three other flows are different pathways through to Second Mention and all constitute some form of adjournment. These three flows are modelled separately because they have a different impact on the workload of Client Services. Adjournments requested by client's lawyer have no input from Client Services. The two other flows require Assessment and Treatment and these two processes are modelled separately. Both of these flows represent processes unique to the NJC and involve intervention by the Client Service group, which brings recommendations for treatment before the sentencing Magistrate.

![Figure 8: Adjournments sub-model](image)

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\(^\text{11}\) The success of diversions programs in Victoria is reported by Sironi et al (2005).
After second mention a number of cases leave the court, either on good behaviour bonds or as result of fines being imposed. The Fines process includes the workload imposed on Registry by Unpaid Fines, some of which are subsequently collected. Those cases that do not leave the court process are then assessed by Corrections and returned to the Magistrate for sentencing.

The final part of the process constitutes a significant proportion of the work of Corrections. After sentencing, a number of cases received custodial sentences and leave the NJC system. The remainder are subject to CBO and ICO supervision. During this period of supervision a number of cases are referred to Problem Solving, another unique NJC process designed to identify and solve problems likely to lead to breaches of orders and a re-appearance in court. This process, where cases are simultaneously under corrections supervision and in the problem-solving process, is a co-flow, where two flows run simultaneously and in parallel. During this process, a number of cases come to the NJC from other jurisdictions as result of convictions of citizens of the Yarra in these other jurisdictions. In addition, there is a co-flow of parole supervision that can also include cases from other jurisdictions. At the time of writing this report, the practice of receiving parole cases from other jurisdictions had been ended but a number of cases remained in the system and would remain so for the next 12 months.
The Simulation Results

The input to the system is the cases supplied by the NJC from the mention book, which is prepared by local police and lists the individual charged with an offence. Existing data covered the first 48 weeks of operation data and was projected for another 48-week projection with a predicted 10% increase.

The first observation was that there had been a spike in cases in December for which there appeared to be no explanation. Possible causes were a spike in the crime rate before Christmas or Police clearing a backlog of cases before the summer break. The spike had significant workload implications for Client Services but particularly for Corrections if a) it were part of a pattern and b) because, while Client Services deal with clients within a two-week period, Corrections clients stay in the system for between 12 and 18 months.
Impact on Case Loads

The model also simulates the impact of caseload on staff workloads in the Registry, Client Services and Correctional Services areas. As shown in Figure 12, these have been increasing and it was predicted that the workload would come close to the NJC operational capacity. Anecdotal evidence suggests that operational targets are being met but that the workload, particularly for Correctional Services was approaching a critical level. The figures below indicate the projected workloads with a 10% increase in cases coming into the NJC.

The increase in the workload for Corrections reflects the time clients spend in the system completing CBOs and ICOs and the lag between sentence and completion. The implication for the design of future NJCs is that Corrections staffing level will need to be increased for over 18 months to cope with the lagged workload from both non-custodial sentences and Good Behaviour Bonds (GBBs).

While the model produces data for all of these processes, there are a number of metrics that need to be developed to demonstrate the effectiveness of the NJC system.

- The number of clients who are assessed and treated by Client Services who go on to successfully complete CBOs or ICOs.
- The number of CBOs and ICOs relative to other Magistrates Courts
- Recidivism rates amongst those who have been treated within the NJC process

Starting the Organizational Learning/Change Process in NJC

The senior management of the NJC decided to run a series of 5 half-day workshops to embed the learning from the consulting project. The focus of the workshops was on two major processes The first was based on using the CLDs to examine the necessary policy re-alignments to enable the NJC to meet the broad ranging community-based goals described in the documentation on Service Delivery Models from 2006, particularly those relating to community
involvement in the justice process. This work involved developing specific skills related to CLDs with a group of senior managers responsible for policy development within the NJC.

The second was to restructure and streamline the Court processes within the NJC to enhance the service delivery principle that justice should be more immediate than delayed to meet and be objectives set out in the Courts Legislation (Neighbourhood Justice Centre) Act 2006: "simplifying access to the justice system and applying therapeutic and restorative approaches and new ministration of justice". This involved developing specific skills with stock-flow-rate diagrams with the senior managers responsible for the operations within the NJC and potentially with the members of the NJC Project Team.

The second of these was probably the more appropriate given because it created the space necessary to develop the wider ranging community-based goals of the NJC. It also had the advantage of beginning the process of understanding the systemic outputs necessary for a thoroughgoing evaluation of the NJC operations.

It was also hoped that during the workshops, the staff would gain a workable level of knowledge in the Systems Thinking skills used during the consulting assignment. The staff attended the workshops were familiar with the report from the consulting project and as a result of a set of extensive interviews had some familiarity with process mapping, causal loop diagramming and, to a lesser extent, stock-flow-rate diagrams. The initial diagrams that Ponte Consulting had developed around the original organizational goals were presented. The participants were asked to develop a new set of goals in the light of their experiences over the previous two years and then to drool causal diagrams for those goals. When developing the goals the participants were asked to think in terms of "elevator statements". An elevator statement is the one you make when a senior manager gets into the lift with you and says "What you working on?" You know she's getting out in 10 floors so the statement has to be very brief and concise, hence "elevator statement". The groups came up with three new goals for the NJC:

1. A Fair Go for All
2. Reducing Re-Offending
3. Taking the Law Back to the Village

The groups developed three CLDs, shown in Figure 14 that indicated how these goals would be met.

It was also hoped that the workshops would provide a set of skills that would allow learning and reflection about existing NJC processes. This was in response to a general belief that the learning processes within the organization were still very much in their infancy. As part of this, participants are encouraged to keep diaries of what they had learned during the workshops and follow-up interviews and review of the diaries produced the following feedback about both individual and organizational learning.

One of the clinical psychologists in the Client Services team had found the concept of behaviour over time particularly useful and begun thinking of patterns of behaviour in his clients in terms of stock-flow-rate diagrams with inflows and outflows and accumulations and drawing them to explain clients to his colleagues.
The Registrar of the Court had found the discussions of the dynamics of cooling coffee\textsuperscript{12} particularly useful in exposing the different ways that people thought about problems and processes and the huge diversity in the way people thought about even the simplest of problems. He also saw the potential for using systems thinking for dealing with complex problems.

At an organizational level, he felt that the new leadership group would be able to use Systems Thinking to help them with the big decisions affecting the whole system. However, he was unable to give any specific examples of how these techniques have been used in the previous three months.

The rookies and pros\textsuperscript{13} model had clearly been useful in helping the senior managers think about the retention of organizational memory. They were aware that the accumulation of knowledge of the processes of the new and innovative NJC system could only take place during the operation of the organization, namely two years. The people who began working in the organization brought no organizational memory that was useful to meet the new goals with the NJC. This meant that there was a significant rookie factor present for all of the new staff when the NJC was established in 2006. Establishing the new processes and culture for the innovative approach to justice that the NJC represented was a significant task that had been made more difficult by significant levels of staff turnover. In the six months to the time of writing, the Registry had three resignations from five staff members. All of these resignations were to take promotions within the courts portfolio of DoJ. New staff members included the Registrar and Deputy Registrar. In addition, the original Systems Thinking Champion within NJC was departing for an overseas appointment.

There was also recognition that the success of the NJC would be a two-edged sword in terms of maintaining experienced staffing levels. Discussions were beginning about establishing new NJC's in Victoria and it was clear that the Collinwood NJC staff would be high on the head-hunters list. This would lead to an exacerbation of the rookie problem and to a decline in performance of the original NJC.

In addition to the CLD on staffing matters, one participant produced an interesting diagram of the impact of punitive management behaviour. Significantly, this participant had a number of insights into the benefits of the workshops particular in relation to a new set of tools for thinking through policy issues.

\textit{"In terms of policy issues, I feel we have been using 2-D tools to deal with 3-D problems"}

In particular, she commented that the dilemmas concerning change in the Justice system were drawn into high relief at the NJC where processes for involvement of the community in the NJC's justice processes were still in their infancy compared with the robust, well-established and old systems and processes of the traditional justice system. This impacted on the battle that the NJC had been incorporating innovation into its work where the processes for the Magistrates court were well developed within the new centre but the processes and systems to support innovation and learning was still emerging.

This participant was not a permanent member of the NJC but was seconded from another Department within DOJ and was seeking to establish systems thinking and learning structures there. Perhaps significantly, her manager had been involved in developing systems thinking capabilities in the Department of Justice in the UK.

The NJC now confronts a number of challenges. The first is to consolidate the experience and learning from the first two years of operation to poll the basis from which to drive innovation and change particularly in relationship to the

\textsuperscript{12} The rate at which coffee cools can be demonstrated to be an exponential decrease. Many people have quite different (and wrong) mental models of how coffee cools. Newton's law of cooling shows that the cooling rate is approximately proportional to the difference between the hot coffee temperature and the ambient temperature. This example is used to show how people act under different, and often flawed, mental models.

\textsuperscript{13} This model shows the effect of new recruits (rookies) coming up to speed with the more experiences staff (pros). Even the most experienced worked become rookies for some period of time when taking up a new position. A large number of rookies at one time can have a marked impact on organizational performance.
development of community involvement in the processes of justice. This will involve the establishment of robust learning processes and the adoption of the rigorous processes of systems thinking to understand the issues of structure and behaviour now manifest in the organization.

The second challenge is related. It is to provide a blueprint that will be useful in the structure of future NJCs. The original philosophy of the NJC was that this was an experiment from which the justice community would learn particularly about the operation of community and therapeutic justice. If this is to occur, it will require a task force drawn from senior management who have the time and energy to focus defining the goals, objectives and structures that would allow future NJC's to benefit from the experience of the first NJC.

The third challenge is to be able to meet the first two challenges in the face of potentially disruptive rates of staffing turnover and increasing workloads across the organization. The danger already manifest is that as this pressure comes on to the organization, the systems that are well established and well developed, those of the traditional Magistrates Court, will further dominate the processes of the NJC. If this happens the high ideals of the NJC will not be met.

The fourth challenge is the development of a “blueprint” for new NJCs. The core processes for the Magistrates Court of the Collingwood NJC are well established and easy to model and evaluate. The community engagement processes have been slower to show results and have, necessarily, been more amorphous. As a result, the modelling necessary for providing a blueprint for future development cannot yet be done. The partnerships with local community groups that provide the basis for projects that reflect the core business of the NJC are still developing.

There is another fundamental difficulty in the development of the blueprint. Using the Collingwood NJC as a blueprint for developments in other areas pre-supposes that the development of community involvement in the justice system will necessarily be the same across the board. It is unlikely that this will be the case and using he current NJC as a blueprint may stifle innovation in new and developing centres.

The final, and in many ways most significant, problem is to develop an organization for the expansion of the NJC processes and to ensure that this organization, as distinct from the individual courts, has a built-in and formal capacity for learning and innovation.

Bibliography

Centre For Court Innovation, (2006) *The Impact of the Community Court Model on Defendant Perceptions of Fairness, A Case Study at the Red Hook Community Justice Centre*.


Engaging Communities in Criminal Justice (2009) Presented to Parliament by The Lord Chancellor and Secretary of State for Justice, The Secretary of State for the Home Department and the Attorney General by Command of Her Majesty

Evaluation of the Neighbourhood Justice Centre, City of Yarra (2010) Brotherhood of St Lawrence and Melbourne University


Richmond, B, (2001) An Introduction to Systems Thinking HPS INC Hanover


Victoria’s Neighbourhood Justice Centre Current Initiatives Paper 1 (2009) Courts and Tribunals Unit, Department of Justice, Victoria


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I. Introduction
The judiciary in Switzerland – like all state bodies – is under increasing pressure to reform: On the one hand, workloads, the complexities dealt with and procedural requirements are all tending to grow in volume, while at the same time there are scarcely any additional resources available to cope with the problem. The outcome is that judicial authorities (conciliation and arbitration authorities, justices of the peace, public prosecutors offices, courts) are forced to increase their efficiency, and this can ultimately be achieved only through a truly effective system of court management. One element of court management is caseload management. The former Chief Justice of the Federal Supreme Court, Arthur Aeschlimann summed this up as follows: “Each division president will have to work with objectives for his or her division members and staff and keep up to date on individual caseloads.”

Some courts in Switzerland are currently addressing questions of caseload management: these include at federal level the Federal Supreme Court (the highest Swiss court) and the Federal Administrative Court (the court that reviews administrative acts taken by the Federal Administration), and at cantonal level in particular the Administrative Court of the Canton of Lucerne. This article intends to show first of all the importance of caseload management in the context of court management, and it also provides information on a research project which the authors were able to carry out on behalf of Administrative Court of the Canton of Lucerne – the first project of this kind in Switzerland.

In order to understand the following comments, it is important to know that in Switzerland there is no uniform, nationwide administrative procedure. Each canton enjoys extensive autonomy to regulate its own administrative procedure and the structure of its administrative justice system. There are therefore considerable divergences in the cantons and these affect both the various stages and channels of justice as well as administrative jurisdiction and court organization.

II. Caseload Management as an Element of Court Management

1. Definition and Importance of Court Management

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3 For detail on court management, see Andreas Lienhard, Oberaufsicht und Justizmanagement, Die Schweizer Richterzeitung (Justice – Justiz – Giustizia) 2009/1, No. 25 ff.
5 Here the authors would like to thank the administrative committee of the Administrative Court of the Canton of Lucerne for agreeing to release parts of the research results for academic publication.
Court Management means the administration of the courts, i.e. the “administrative activity that creates and maintains the resources and personnel required for arriving at court judgments and rulings”. The essential matters here are the administrative and financial management of the courts – namely those areas that represent the central components of oversight and supervisory control. The former President of the Cantonal Supreme Court of the Canton of Zurich, Rainer Klopfer, described the importance of court management as follows: “A courts, as a major institution providing services, and as the most important supervisory body, needs a professional, efficient administration. This does not happen without management, but this in no way means that the independence of judges is compromised, just the opposite. It produces better working conditions for the judges and means that they can better fulfill their core duty, namely to adjudicate.”

At federal level, the requirements in terms of court management can be derived from three provisions in the Federal Constitution. First we should mention the right of the courts to self-government as defined for the Federal Supreme Court in Art. 188 para. 3 of the Federal Constitution. The right to self-government as an essential component of the institutional independence of the judiciary is simultaneously a right and an obligation for a functioning system of court management. An essential requirement for court management is also the constitutional requirement that public resources should be used economically. This efficiency requirement at federal level, which is laid down in Art. 126 para. 1 of the Federal Constitution, applies not only to administrative authorities but also to the courts. Since courts never receive sufficient resources to meet their notions of quality, the result is an ongoing drive for efficiency. A further guideline is the constitutional requirement in Art. 170 of the Federal Constitution, which stipulates that public duties must be carried out effectively. Court management should accordingly ensure that the courts can in fact fulfill their duties. This means guaranteeing the protection of the law, the consistent application of the law, and the development of case law, while all the time observing proper procedural guarantees (Art. 29 ff. Federal Constitution), such as prompt and timely adjudication. In other words: court management is a necessary precondition for guaranteeing proper adjudication.

In recent times, endeavors to improve court management in theory and practice have produced a number of constituents for a system of good court management that may be listed as follows:

1. Strategic principles
2. Client-friendly practices
3. Job satisfaction
4. Management structures
5. Management support and responsibility for court administration
6. Steering instruments
7. Caseload management
8. Court controlling
9. Quality management
10. Certification

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8 For detail on supervisory control, see Lienhard (Note 3), No. 8 ff.


10 SR 101, version following reform of justice system; see also Art. 13 and 25 FSCA; cf. also for example the system in Canton Zug (§ 63 para. 1 Cantonal Constitution).

11 Cf. Lienhard (Note 3), No. 28, with references.

12 Cf. Lienhard (Note 1), p. 140 f.

13 Cf. Lienhard (Note 1), p. 462.


16 See for further detail, Lienhard (Note 3), No. 31 ff.
Caseload management here is of key importance for guaranteeing adjudication, both with regard to preventing legal delays or the denial of legal rights (settling cases in good time) as well as with regard to the quality of judgments (settling cases in the correct way in procedural and material terms).

2. Caseload Management

It goes without saying that not all cases generate the same amount of work. In order to provide reliably for proper case assignment and the allocation of the resources required (and to maintain a good climate in the court and guarantee the presence of “legal harmony” between the court divisions), it is necessary to have some idea of the staff resources (and in particular working hours) that a case in any legal field (or case category) requires on average.

Caseload management is thus closely connected with controlling; it may also be a component of an integrated controlling system\textsuperscript{17}. The Ordinance of the Federal Assembly on Judges’ Positions in the Federal Supreme Court\textsuperscript{18} addresses this concern and sets it down in legal terms as follows:

Art. 2 Controlling and Reporting
1 The Federal Supreme Court shall introduce a controlling procedure that will serve Parliament as a basis for supervisory control and for determining the number of judges.

2 In its annual report, it shall comment on trends in the workload and in general terms on the results of controlling.

Today there are still some uncertainties as to the method of caseload management. There is also a notable lack of reliable reference values and documented experiences. On the organization and workload of courts in Switzerland, and in particular the highest administrative and social insurance courts, there is a general lack of surveys and figures that can be compared. The research project outlined below attempted to gain new insights in this regard.

3. Caseload Management in Switzerland in Relation to the International Development

Weighted caseload systems are well-established in the United States of America (USA); their origins date back to the late 1970’s\textsuperscript{19}. The National Center for State Courts, for example, has carried out this type of study in at least 11 States.\textsuperscript{20} In 2000, it was estimated that weighted caseload systems are used in at least 15 States.\textsuperscript{21} There is also a considerable amount of literature on the subject, reflecting the development of caseload studies over almost 40 years.\textsuperscript{22}

In continental Europe, caseload studies are not that well known and caseload systems are seldom used for the allocation of judicial resources. At the beginning of the 1970s, caseload analyses were carried out in German civil courts of the first and second instance\textsuperscript{23}, and one of the pioneers in caseload management was the Netherlands.\textsuperscript{24} However, it is only

\textsuperscript{17} See Andreas Lienhard, Controllingverfahren des Bundesgerichts, Die Schweizer Richterzeitung (Justice – Justiz – Giustizia) 2007/2.
\textsuperscript{18} SR 173.110.1.
\textsuperscript{20} Cf. Brian J. Ostrom et al., Florida Delphi-based Weighted Caseload project, History of the Project, 2000, p. 3 f.
\textsuperscript{21} Cf. Caylor (Note 19), p. 35.
\textsuperscript{22} See e.g. – apart from the already mentioned – Alexander M. Bickel, Caseload of the Supreme Court and what, if Anything, to do About It; J. Jacoby, Caseweighting Systems for Prosecutors, Guidelines an Procedures, 1987; Victor E. Flango et al., How do states Determine the Need for Judges, 1993; Alexander B. Aikman et al., Designing a Judgeship Needs Process for Florida, Gryphon Consulting Services, 1998.
\textsuperscript{24} Cf. Roger Dépré et al., Etude de faisabilité de la mise en œuvres d’un instrument de mesure de la charge de travail destiné au siège, p. 3.
recently that caseloads have become a major subject of research again. The Ministry of Justice of Belgium has commissioned a series of studies, for example,25, and in Switzerland – as part of different initiatives towards good court management – caseload studies have also been launched.26

This article describes the first caseload study ever made in Switzerland by a University Institute on a scientific background. It aims not to give final answers to methodological questions, derbut rather to give insight to a research project. The study described lead to a lot of discussion in Swiss judiciary and seems to become the starting point of a series of caseload studies within Swiss courts.

III. The Research Assignment as Point of Departure

The Administrative Court in Lucerne reviews the administrative acts of cantonal and communal authorities in the Canton of Lucerne. In administrative matters, it is the highest cantonal court, and at the same time in many cases also the only court. Its judgments may normally be appealed to the Federal Supreme Court.

The administrative court is organized in three divisions. As a result of the growing number of cases in recent years, in particular in the field of invalidity benefit cases, the divisions dealing with administrative law and tax law have increasingly been called on, within the framework of what is termed the “caseload exchange procedure”, to take over cases from the social insurance division in order to guarantee their completion within a reasonable period of time. This circumstance made it necessary to introduce a system of caseload management. As a consequence, the Administrative Court of the Canton of Lucerne embarked on the first efforts to construct a caseload management system. After studying the results of these internal steps, in October 2007 the court in plenary session requested its administrative committee to bring in one or more experts in order to investigate and evaluate the workload involved in the settlement of cases from all legal fields on the basis of the current workload and present system of organization.

The external experts finally were given the task of investigating and evaluating the workload involved in the settlement of cases from the major legal areas on the basis of current workload and present court organization as follows: Ultimately, the external experts’ essential mission was to investigate how high the average workload was, based on the existing average requirements for the important categories of case and within the limits of evaluation accuracy. It was intended that the investigations would proceed by making comparisons with other Swiss courts. The results expected were as follows:

Information for own use:
- Basis for objective caseload management;
- Basis for the staff allocation in a subsequent merger of the Cantonal Supreme Court and Administrative Court to form a Cantonal Court.

Additional information as “added value”:
- Comparative data for other judicial authorities in Switzerland;
- Contribution to knowledge (in substance and method).

IV. Research Concept

1. Task Analysis and Procedures

In principle, the task set was a business management problem involving the optimization of processes such as is encountered frequently in the private sector in production and service companies. The problem would therefore have to be tackled using the methodology applied to similar optimization processes. In order to obtain the basic data, all court employees and registry workers would be required over a period of at least five to seven months to keep records of the working hours that they devoted to predefined categories of case. At the same time, by conducting interviews with selected court employees, details would be collected on the nature of the work and the processes involved. Such

25 Cf. Depré et al. (Note 24).
26 Cf. Andreas Lienhard/Daniel Kettiger, Geschäftslastbewirtschaftung bei den Gerichten, ZBl. 8/2009, p. 413 ff.; the authors are currently carrying out a caseload study on the Swiss Federal Administrative Court.
analyses have already been carried out in courts, in particular at the beginning of the 1970s in German civil courts of the first and second instance\textsuperscript{27}.

Procedures such as these are costly, both in terms of time and finance. In addition, the results would not be ready for a good year. The specific situation of the Canton of Lucerne’s Administrative Court required us to look for ways of obtaining usable data more quickly and with less expenditure. A modular phased procedure was therefore chosen:

- Phase 1: Blanket survey
- Phase 2: Validation of the results of Phase 1 by means of interviews
- Phase 3: Detailed investigation at the Administrative Court of the Canton of Lucerne

This contribution contains only the results of the completed Phase 1. In relation to the case numbers identified, therefore, the values are approximations which are, however, coherent in the overall relationships.

2. Organization

The administrative court as “the client” was represented on the project by a three person working group: Dr. iur. Andreas Korner (President); Dr. iur. Patrick Müller (Vice-President and from 1 January 2009 President; internal project management); Dr. iur. Heiner Eiholzer (Vice-President). The team of experts comprised the present authors. In order to provide methodological backup and to validate the results, a specialist advisory committee was established comprising the following experts: Prof. Dr. iur. Arnold Marti, Cantonal Supreme Court of the Canton of Schaffhausen; Dr. iur. Hans-Jakob Mosimann, Social Insurance Court of the Canton of Zurich; Federal Supreme Court Judge Rudolf Ursprung.

3. Online Survey as Phase 1 of the Overall Investigation

a. Basics

A first phase involved a blanket survey of all the highest level cantonal administrative and social insurance courts in Switzerland\textsuperscript{28}, which in fact consisted of two separate surveys:

a. Court administrative offices/Court registries (Survey A): collection of various key figures, unique per court or court authority.

b. Court employees (Survey B): estimates of average expenditure of time per case in ten specified case categories.

The aim was therefore to achieve a certain methodological pluralism. The information provided by Survey A, although on the one hand representing clear numerical values derived from statistics, could not all the same be used for comparability purposes on account of its origin, while the results from Survey B arose in accordance with clear, uniform and comparable methodological principles, but are limited by the imprecise nature of estimates.

b. Survey A

In the survey of the court administrative offices/court registries, the data summarized below was collected (centrally per court or court authority):

- number of staff expressed as percentages (of the total annual working hours in full-time employment) of lawyers working on the preparatory briefing procedure and decisions (including court clerks, part-time judges, etc);

- Settlements in total and divided according to the 19 categories of case, and further subdivided according to settlements without final judgment (proceedings settlements) and material settlements;

- number of contested decisions;

- success rate of appeals.

The following parameters may adversely affect comparability between the cantons and were therefore also surveyed:

- avenues of appeal (administrative court as first or second instance);

\textsuperscript{27} Under the heading „Richterzeitstudien“, see note 23.

\textsuperscript{28} See the list in Annex 1.
- cognition of the court (examination of facts of the case, application of the law, appropriateness);
- powers with regard to the judgment (to modify or annul);
- adjudicator activity (persons acting as judges as their main occupation, or as a secondary occupation, clerks of court);
- settlement possibilities (single judge, decisions made by correspondence).

The case numbers for 2006 were recorded (settlements in the financial year 2006), so that a survey of the success rate of appeals in relation to the corresponding decisions is made possible. The survey of staff capacities, however, relates to the year 2008 in order to achieve compatibility with Survey B.

c. **Survey B**

In the case of the employees of the courts listed in Annex 1, the survey consisted of an assessment of the average expenditure of time per case in 19 specified categories of case.

Only those persons actively participating in the court judgments were interviewed. The survey was conducted anonymously, so although the results can be classified according to certain characteristics (e.g. canton, main occupation or secondary occupation), no conclusions can be drawn with regard to specific persons. Accordingly, this also meant that in the case of this part of the survey, no feedback or follow-up was possible that might have made the answers more precise.

d. **Categories of Case**

In order to reduce complexity and indeed to facilitate the conduct of the survey, case categories were established that related to various subject areas (cf. Annex 2). For this purpose the following criteria were considered to be decisive:

- types of case in accordance with the assignment system currently used by the Administrative Court of the Canton of Lucerne as a starting point;
- the list of the case categories must be of a size suitable for the survey (around 15 categories of case);
- number of cases per type of case must be taken into account (large number of cases = separate category of case);
- the categories of case must be balanced;
- business reports/number of cases/classifications made by the administrative courts in the cantons of Bern, Lucerne and Zug as a further basis.

The core component of both surveys was accordingly formed from the following 19 case categories validated by the advisory board (a detailed description can be found Annex 2):

1. Planning, construction- and environmental law
2. Compulsory purchase law
3. Law on foreign nationals
4. Public procurement
5. Social assistance and victim support
6. Road Traffic Act
7. Guardianship law and compulsory custodial care orders
8. Other cases under administrative law
9. Direct taxes
10. Cantonal special taxes
11. Charges for specific services
12. Valuations/Buildings insurance
13. Other tax law cases
14. Invalidity insurance

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29 In the investigation, "persons acting as judges as their main occupation" (German "hauptamtlich") were defined as "judges employed on a fixed salary" (the term had to be defined in this way so that data would be recorded consistently, although it was known that the German term "Hauptamtlichkeit" is not used consistently in Switzerland).
15. Health Insurance Act
16. Occupational Pensions Act
17. Accident insurance/Military insurance
18. State pension scheme (AHV)/Compensation scheme for earnings lost while on military service (EO)
19. Unemployment insurance/Other social insurance law cases

e. Procedure

The surveys were carried out electronically via the internet using an online tool. This meant that the invitation to participate had also to be sent by e-mail in order to allow people to click directly on the links needed for online questioning. The survey proceeded anonymously and under password protection.

In order to ensure that the materials reached the right destination, all the judicial authorities concerned (or their presiding bodies) were informed beforehand by letter and requested to provide the research team with the name of a contact person.

The courts thereafter received two e-mails:
- a first e-mail with a link to Questionnaire A, which was to be dealt with centrally by the court administrative office; and
- a second e-mail with a link to Questionnaire B, which was to be forwarded to all lawyers involved in court judgments.

All the highest cantonal administrative and social insurance courts in Switzerland took part in Survey A (cf. list in Annex 1).

A total of 198 persons participated in Survey B. 15 questionnaires were incomplete or otherwise filled out unintelligibly in a way that precluded them from being taken into account. On the basis of the data obtained with regard to the staff capacities at the administrative courts in Switzerland, this corresponds to a return of around 50 per cent, which can be considered to be better than average.

4. Methodological Comment on Comparability with Other Studies

The point of departure for the court survey was the deployment of personnel per case, effective personnel on the basis of statistics in Survey A, and estimated personnel in Survey B. Both the data derived from statistics as well as the estimates provided by individuals questioned were based on the number of full-time staff expressed as percentages (percentage of the annual working hours of a full time staff member). There is therefore no scaling present here. The upper values are open. The middle value (and also the median30) do not inevitably reflect the estimated medium workload created by the case.

Other methods are based mostly on estimated values: the values they survey partly represent individual assessments by persons from the respective statistical population (court in plenary session, division), made on the basis of a pre-defined scale (scaled response to questionnaire). The scale employed is abstract, i.e. it represents a weighting system sui generis, which may not be linked to any other system of measurement or assessment. In addition, the scale is closed by an upper and lower limit; the lowest possible value (e.g. 1) and the highest possible value (e.g. 5) are prescribed beforehand. It was furthermore decided in advance that the middle value of the workload scale (in the case of a scale from 1 to 5, the value 3) signifies an average load. With such a procedure it is not clear from the outset whether the scaling is linear (i.e. whether the distance or value difference between the values is always the same size) whether it takes a different course31

30 The median is the dividing line between two halves. In statistics, the median divides a distribution into two halves. In contrast to the arithmetical mean, or average, the median has the advantage of being more robust in relation to outliers (highly anomalous values) and can be used on ordinally scaled variables (after Wikipedia).

31 The question of whether a scale, where there is a scaled response, is linear depends on the precise, verbal definition of the values. For example the scale of values “completely exceeded/partly exceeded/satisfactory/partly unsatisfactory/completely unsatisfactory” is not linear, because in our experience the interviewees tick “partly exceeded” for work that is slightly better than satisfactory, but only tick the highest grade in the case of absolutely perfect work. In practice, the same scales are also worded and used differently in...
Due to the various evaluation systems (more precisely: the reference systems and frame of reference of the evaluation systems), it is not possible to recalculate this or that value in order to make them more comparable. The only possibility for achieving what is still an approximate comparability would be to have completely identical categories of case, both with regard to completeness and to demarcation between the categories.

V. Survey Experiences

At the outset it may be stated that interest in the survey was considerable, the returns were high\(^{32}\) and the feedback was fundamentally positive.

In the case of Questionnaire A various difficulties arose:

- Online questioning was obviously a problem for some court registries, and led to numerous feedback questions during the ongoing survey and to later questions from the experts when the values were being validated. The reason for this may well lie in the fact that online surveys such as this are unusual, and that the survey was also carried out in the main vacation period which meant that it was not uncommon for several people to be working, one after the other, on the same questionnaire.
- The structuring of the questionnaire could not do full justice in every respect to the various models of organisation for administrative adjudication in Switzerland. This meant that it was not until the courts had consulted the experts that they were able to decide which of the values available were supposed to be entered in what fields.
- The differing statistics from canton to canton made it difficult to obtain uniform results for the whole of Switzerland. In some cantons, certain values could not be provided, either because they could not be taken from existing statistics and business controls or because they could not be reconstructed on that basis.

In addition, the structure of the application of administrative law with regard to the division of responsibilities between cantonal administrative and social insurance courts was in some cases not completely recognised until the survey was running, and this necessitated a further survey of the relevant highest court whose results were missing. In addition there were a few courts which, despite previous assurances that they would collaborate, had to be once again encouraged to participate in the survey. The conduct of the survey thus encountered difficulties and was delayed.

There were only a few problems with Questionnaire B. This may be ascribed in the first place to the low number of queries from the interviewees, as well as to the rather low number of returned questionnaires that could not be used.

It may therefore be concluded that the decision to carry out the survey by electronic means was correct. The difficulties that arose could probably have been avoided to some extent if a more detailed instruction sheet for filling out Questionnaire A had been made available to the court registries.

VI. General Findings

1. Preliminary Remarks

The results of the survey permit numerous findings on the organization and procedural aspects of the application of administrative law in Switzerland that go beyond the minimum information that was required in response to the questions posed in terms of the research team’s remit. For the time-being, however, we will refrain from a systematic and complete evaluation. In what follows, only those aspects will be presented that were specifically important to the assessment of the workload of the Administrative Court of the Canton of Lucerne or that enable a better understanding of the statements on the workload of the Administrative Court of the Canton of Lucerne. A more detailed evaluation of the data is planned in the context of a larger project.

\(^{32}\) See for more detail No. IV. 3. e above.
2. Organization of the Application of Administrative Law

One of the main findings of the investigation is that the landscape of the administrative justice system in Switzerland, including the highest administrative courts in the cantons, is, in relation to its structure and procedural organization, and with regard to certain parameters of trial practice, far more diverse than was assumed at the beginning of the research project.

This diversity has led to the assumption that in a comparison with the Swiss-wide average, a distortion may arise, in particular due to the values returned by the small, rural cantons. For this reason, the comparison is made based on a selected group, consisting of the courts of the cantons of Aargau, Basel Stadt, Bern, Lucerne, St. Gallen and Zurich. Purely in terms of size and structure, the cantons of Vaud and Geneva suggest themselves as comparable cantons. The administrative courts of the Canton of Vaud, however, cannot be used as a comparative model because they have a different method of counting settlements. The Canton of Geneva presents difficulties affecting a comparison in the area of social insurance judgments, because in Geneva there are disproportionate numbers of cases involving social insurance law (including social assistance).

With regard to the evaluation of specific categories of case, the organizational diversity leads to especially difficult repercussions, in that

- in some cantons deprivation of liberty for the purpose of providing care (compulsory custodial care orders) and matters relating to guardianship (wards of the court) are dealt with by the civil courts, while in others the administrative courts have jurisdiction;
- in particular in the field of road traffic law (Road Traffic Act), the final cantonal instance in some cantons, (often at the same time the only cantonal authority) is not the ordinary highest administrative court but a special administrative court (e.g. in the Canton of Bern, it is a so-called Appeals Commission);
- in some cantons the decision in tax cases is made by the administrative court as second instance subsequent to a special tax appeals authority;
- in the Canton of Zurich (and in some other cantons), the judgment made by the administrative court as court of first instance in tax cases can on application (i.e. in the case of objection against the penalty imposed) be dealt with in a main hearing;
- for coercive measures under the law on foreign nationals, the responsibility lies to some extent not with the administrative courts but with the courts responsible for coercive measures that are affiliated to the prosecution authorities (today often designated as detention courts) (e.g. in the Canton of Bern).

3. Procedural Law: General Conditions

For all the considerations given below, the following general procedural conditions that apply throughout Switzerland should be taken into account.

- In social insurance law, the legal channels are specified by federal law. There can thus be no cantonal special features in this regard. The procedure differs, however, according to the legal field concerned: in the case of invalidity insurance, the competent authority must first issue a preliminary decision and then a ruling; this latter may be challenged directly by an appeal to the cantonal social insurance court. In cases relating to the Occupational Pensions Act, claims proceedings must be taken to the cantonal social insurance court (original administrative court). In all other social security fields, the insurance fund is required to make a ruling, which may be contested. The decision on the objection is subject to an appeal to the cantonal social insurance court.

33 Cf. Art. 3 ff. of the Cantonal Road Traffic Act (KSVG) of 27 March 2006, BSG 761.11.
34 See with regard to the legal problem of this organisational solution Martin Busslinger, Die Anforderungen von Art. 86 para. 2 BGG an letzte kantonale Gerichtsinstanzen im Bereich der ausländerrechtlichen Haft, Jusletter of 2 March 2009.
35 In relation to this, the validity of the information obtained in Survey A would be verified in follow-up studies.
In the area of tax law, due to the Swiss-wide harmonization of the appeals procedure to a cantonal court, there must always be an objection procedure before the appeal. In all cantons, therefore, appeals relating to direct taxes are appeals against decisions on objections.

A singularity of the Lucerne procedure in administrative disputes is that the administrative court normally acts directly as first appeal instance and simultaneously adjudicates as the only court of first instance, and this means therefore that there is neither a prior objection procedure involving the authority issuing a ruling nor a judgment by an internal administrative judicial authority. The survey reveals that in the case categories of administrative justice, the results across Switzerland tend on comparison to be quite diverse. Notably in the case category of planning, construction and environmental law, the judgments in certain cases are made in other cantons by the highest courts as the first instance:

- as the only instance (Solothurn, Vaud);
- depending on the subcategory of the cases either functioning as first and only instance or as the second appeal instance (Bern, Glarus, Graubünden);
- as first and only authority after an internal objection procedure (Bern, Fribourg, Geneva, Neuchatel, Zug).

It may be assumed that cases dealt with by the court of first instance are more time-consuming in the early briefing phase, since there are often questions of fact (incompletely established or contested facts of the case) that have to be cleared up. With regard to cognition, the following may be stated: normally the administrative courts examine only the establishment of the facts and the application of the law. An exception is constituted by the test of proportionality, mostly in cases where administrative courts adjudicate as first appeal instance. This is currently the normal practice in the Canton of Lucerne.

In contrast to our original assumption, the highest cantonal administrative and social insurance courts may modify or annul judgments in almost all cases. The highest administrative courts annul judgments in most cantons only in cases where they (alternatively) do not have available to them the same cognition as the lower court, or when the lower court has erroneously not applied a legal remedy or where there still remains a need for considerable preliminary briefing. With regard to the competence to make a decision therefore, we must proceed on the assumption that these courts are entirely comparable.

The overwhelming majority of the highest administrative and social insurance courts recognise not only the judge-rapporteur activity of persons employed as judges as their main occupation – like those in the Administrative Court of the Canton of Lucerne – but also the rapporteur activity of court registrars and clerks of court. In contrast, the administrative activity of part-time judges tends to occur more infrequently. In addition, most courts have the possibility of settlement by a single judge without a decision on the facts. On the other hand, the Swiss administrative justice system, according to the results of the survey of the courts (Survey A), apparently does not recognise the general material settlement by an individual judge. Some cantons recognize the single judge material settlement even in cases with a known amount in dispute, provided this latter is relatively low. Overall there prevails a high degree of comparability with regard to the possible deployment of persons involved in court judgments as rapporteurs as well as of single judges in the case of the highest administrative and social insurance courts.

Whereas the Administrative Court of the Canton of Lucerne recognizes the possibility of decisions by correspondence in all categories of case irrespective of the type of decision, a very nuanced picture emerges for the rest of the cantons. There is as yet no detailed assessment.

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38 Only in the form of the direct appeal (Sprungrekurs); relatively rare cases.
39 Decisions on building projects in the Canton Vaud may be contested directly in the administrative court.
40 See for example in relation to the Administrative Court of the Canton of Bern, Markus Müller, Bernische Verwaltungsrechtspflege, Bern 2008, p. 201 f.
41 On the term “as the main occupation” see Note 21.
42 For example, the Canton of Bern where the amount in dispute is under CHF 20'000.- (until 31.12.2003 under CHF. 8'000.-), cf. Art. 128 of the Gesetz über die Verwaltungsrechtspflege 23 May 1989 (VRPG), BSG 155.21.
Overall it may be noted on the basis of this first overview of the Swiss system of administrative procedure that only one general procedural condition could be decisive with regard to the (un-)comparability of the Administrative Court of the Canton of Lucerne with the highest administrative and social insurance courts of the other cantons, namely the question of whether the court as first appeal instance directly judges or does not judge the rulings of administrative authorities. All other differences in the procedural general conditions are of no relevance to a comparative study.

4. Staff Aspects
In Switzerland, around 415 full-time positions are occupied by judges and court registrars at the highest cantonal administrative and social insurance courts. A total of 345 full-time equivalent positions are deployed directly for adjudication in the highest administrative and social insurance courts of the cantons. This leads to the conclusion that – as an overall Swiss average – of the staff resources at the level of judges, court registrars and clerks of court around 80 per cent are devoted directly to the work of adjudication, and around 20 per cent are used for other functions (management and coordination functions; administrative duties, including statistics; representation; training and education; etc.).

5. Statistics, Number of Cases
The quantitative data may be summarized as follows:

- In Switzerland there are each year around 21,800 cases brought before the highest cantonal administrative and social insurance courts.
- The average time devoted to each case across all categories of case amounts in these courts to a total of around 38 to 42 hours.
- The mean, arithmetical workload value across the entire country per case on the basis of a comparison of all cases (21,793) and the total resources effectively available for court judgments (34,439 full-time staff): 1.89% of the annual working hours of a full-time member of staff per case.
- Mathematical median across the caseload figures for the individual courts surveyed in relation to the entire country: 2.03% of the annual working hours of a full-time member of staff per case.
- Mathematical median across the caseload figures surveyed for the individual courts in relation to the comparison group (the cantons of Aargau, Basel-Stadt, Bern, Lucerne, St. Gallen and Zurich): 2.07% of the annual working hours of a full-time member of staff per case.

The number of cases were surveyed for 2006 (settlements in the financial year 2006), in order to enable data to be collected on the success rate of appeals. This means that for the courts of all cantons, the changes brought about by the entry into force of the Federal Act of 17 June 2005 on the Federal Supreme Court (Federal Supreme Court Act, FCSA), have not yet been taken into account. Due to the guarantee of legal recourse, the burden of the highest administrative courts will probably increase, since administrative courts are now required to adjudicate in cases that at present are judged in the final cantonal instance by an administrative authority.

The approximate calculation of the average workload per case contains a methodological lack of precision in that the number of cases relates to the year 2006, while the staff capacities relate to the year 2008.

6. Success Rate of Appeals
Comparisons of efficiency between courts are only admissible if the success rate of appeals is factored in: the success rate of appeals, i.e. the relationship between the number of cases contested and appealed to the Federal Supreme Court to the number of cases in which the Federal Supreme Court overturns the corresponding judgment of the highest cantonal

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43 In relation to the limited applicability of these general figures, reference is made to No. VII. 1. And VIII. 2.
44 Assuming an average workload per case of 1.9 to 2.0 % of the annual working hours of a full-time member of staff and net annual working hours (i.e. under deduction of Saturdays, Sundays, public holidays and vacation) of between '1'900 and '2'100 hours.
45 Not included are the resources of the Social Insurance Court of the Canton of Geneva, which could not be recorded on the basis of the court statistics. In the event of an average difference between the nominal values and an effective use of resources of around 20 per cent, this would result in an additional 800 to 900 per cent of the time worked by a full-time member of staff.
46 SR 173.110.
authority, may shed some light on the quality of the work of the cantonal court. In addition a high share of annulled judgments, i.e. judgments that have been overturned and referred back to the lower court for reconsideration, can create an additional workload for the courts without this being reflected in the surveyed number of cases or in the estimates of expenditure of time.

For the time-being we have refrained from a systematic evaluation of the values surveyed with regard to success rate of appeals. A preliminary summary consideration reveals that the success rate of appeals in social security cases is generally lower than for other categories of case:

- **Cases under administrative law**: cantonal court with highest value 12.9%; numerous courts with values between 5.0 and 7.5%;
- **Tax law cases**: cantonal court with highest value 5.4%; numerous courts with values 0.0%;
- **Social insurance law cases**: cantonal court with highest value 42.6%; numerous courts with values around 20%.

7. **Cantonal Differences hamper Comparability**

The small, rural cantons (in particular Appenzell-Innerrhoden, Appenzell-Ausserrhoden, Nidwalden, Obwalten, Uri) have administrative courts that make the most extensive use of part-time judges. In addition, the number of cases in each of the categories is essentially different from that in the more urban areas or in cantons with both urban and rural or suburban regions. For this reason as well, the comparison in the study undertaken for the Lucerne Administrative Court compares this court with the whole of a selected group, comprising the courts of the cantons of Aargau, Basel-Stadt, Bern, Lucerne, St. Gallen and Zurich.

In various cantons (in particular Basel-Stadt, Schaffhausen, Solothurn), all the administrative and social insurance judgments at the higher level are issued by the Cantonal Supreme Court, as are higher level court judgments in civil and criminal cases, such that the judges basically all have experience of cases from the entire spectrum of court judgments. In view of the small workloads per category of case, this leads to a situation in which it becomes scarcely possible to estimate the workloads involved properly.

**VII. Special Findings with regard to Caseload Management**

1. **Introduction: Basic Comparability Issues**

The research remit was to examine and evaluate the workload involved in the settlement of cases from the essential legal fields on the basis of present workload and current court organization. The objective was to create a foundation for a future system of caseload management. On the basis of the surveys of the highest administrative and social insurance courts in Switzerland (list cf. Annex 1), it is now possible to compare and appraise the workload in the individual categories of case.

Comparisons of performance between individual courts, however, would presuppose that the values were produced in the same way as at the Administrative Court of the Canton of Lucerne. A benchmark secured in business management terms would also have to be employed by all participating courts on the basis of a similar scrutiny of time and performance stretching over a lengthy period.

As already indicated, however, it is perfectly possible to make comparisons between the activities of courts that have been properly grouped. This is especially valid for a potential comparison of the Administrative Court of the Canton of Lucerne with the administrative courts of the cantons of Aargau, Basel-Stadt, Bern, Lucerne, St. Gallen and Zurich (selection/comparison cantons). The average values from these cantons taken together can therefore be employed as a basis for the future caseload management of the Administrative Court of the Canton of Lucerne or of another of the comparison cantons.

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47 Percentage of cases that were quashed by the higher court (Federal Supreme Court, Federal Administrative Court) when compared with the total of cases for each cantonal court; cantonal judgments from 2006.

48 The corresponding data was treated as confidential in accordance with instructions.
Aspects of the study demonstrated specifically, however, that certain conditions can impose limitations on comparability:

- **Increase in number of staff appointed:** major increases in the number of staff appointed in the years 2007 and 2008 may lead to distortions on account of the procedure used in the surveys (number of cases was surveyed in relation to the year 2006, staff figures in relation to the year 2008). These errors will have to be corrected.

- **Share of capacity devoted to adjudication:** across Switzerland around 80% of the nominal percentage of the annual working hours of a full-time member of staff indicated was devoted directly to adjudication. The comparison must establish whether the share in the actual court to be investigated lies in this region.

- **Law on foreign nationals:** in cases relating to the law on foreign nationals, account must be taken of whether detention cases under this law are judged by the administrative court in the relevant canton, of if, as is the practice in other cantons, detention cases are dealt with by a “coercive measures court” (“Zwangsmassnahmengericht”), for the administration of criminal justice (e.g. in the Canton of Bern) or a special court of appeal (as in e.g. the canton of Aargau). The required evidentiary hearings in detention cases regularly consume more time.

2. **Survey’s Workload Assessment Findings for Persons involved in Adjudication**

The survey covering persons involved in adjudication (Survey B, the whole of Switzerland) provides – according to categories of case – the per case workloads listed in table 1 (in each case indicating the percentage of the annual working hours of a full-time member of staff).

<table>
<thead>
<tr>
<th>Category of case</th>
<th>Percentage of the annual working hours of a full-time member of staff per case across all cantons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning, construction- and environmental law</td>
<td>1.01</td>
</tr>
<tr>
<td>Compulsory purchase law</td>
<td>0.42</td>
</tr>
<tr>
<td>Law on foreign nationals</td>
<td>0.67</td>
</tr>
<tr>
<td>Public procurement</td>
<td>0.72</td>
</tr>
<tr>
<td>Social assistance and victim support</td>
<td>0.68</td>
</tr>
<tr>
<td>Road Traffic Act</td>
<td>0.65</td>
</tr>
<tr>
<td>Guardianship law and compulsory custodial care orders</td>
<td>0.73</td>
</tr>
<tr>
<td>Other administrative law cases</td>
<td>0.78</td>
</tr>
<tr>
<td>Direct taxes</td>
<td>0.73</td>
</tr>
<tr>
<td>Cantonal special taxes</td>
<td>0.65</td>
</tr>
<tr>
<td>Charges for specific services</td>
<td>0.86</td>
</tr>
<tr>
<td>Valuations/Buildings insurance</td>
<td>0.80</td>
</tr>
<tr>
<td>Other tax law cases</td>
<td>0.26</td>
</tr>
<tr>
<td>Invalidity insurance</td>
<td>0.59</td>
</tr>
<tr>
<td>Health Insurance Act</td>
<td>0.55</td>
</tr>
<tr>
<td>Occupational Pensions Act</td>
<td>0.53</td>
</tr>
<tr>
<td>Accident insurance/Military insurance</td>
<td>0.68</td>
</tr>
<tr>
<td>State pension scheme (AHV)/Compensation scheme for earnings lost while on military service (EO)</td>
<td>0.51</td>
</tr>
<tr>
<td>Unemployment insurance/Other social insurance law cases</td>
<td>0.38</td>
</tr>
</tbody>
</table>
Various results require elucidation:

- **Planning, construction- and environmental law:** in larger cantons with major construction projects, the value is slightly higher. Across the entire comparison cantons (Aargau, Basel-Stadt, Bern, Lucerne, St. Gallen and Zurich), an average value of 1.13% of the annual working hours of a full-time member of staff per case was obtained.

- **Compulsory purchase law:** the low number in comparison to other case categories of 68 cases per year makes it doubtful that an assessment of the average time involved is valid.

- **Valuations/Buildings insurance:** in this category of case, the annual number of Swiss-wide cases of 22 cases per annum is so low that an assessment of time involved may no longer be representative.

### 3. Workload Assessment on the Basis of Statistical Data

A point of departure for the workload assessment based on statistical data (survey A) was the total number of cases ordered according to categories of case. For the whole of Switzerland in the year 2006 this gives the following picture according to table 2.

<table>
<thead>
<tr>
<th>Category of case</th>
<th>Settled cases overall per category of case</th>
<th>As a percentage of all cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning, construction and environmental law</td>
<td>1666</td>
<td>7.9</td>
</tr>
<tr>
<td>Compulsory purchase law</td>
<td>62</td>
<td>0.29</td>
</tr>
<tr>
<td>Law on foreign nationals(^{\text{EU}})</td>
<td>2012</td>
<td>9.55</td>
</tr>
<tr>
<td>Public procurement</td>
<td>426</td>
<td>2.19</td>
</tr>
<tr>
<td>Social assistance and victim support</td>
<td>471</td>
<td>2.23</td>
</tr>
<tr>
<td>Road Traffic Act(^{\text{EU}})</td>
<td>1404</td>
<td>6.66</td>
</tr>
<tr>
<td>Guardianship law(^{\text{BR}})</td>
<td>451</td>
<td>2.14</td>
</tr>
<tr>
<td>Other administrative law cases</td>
<td>1533</td>
<td>7.27</td>
</tr>
<tr>
<td>Direct taxes(^{\text{EU}})</td>
<td>1080</td>
<td>5.12</td>
</tr>
<tr>
<td>Cantonal special taxes</td>
<td>77</td>
<td>0.37</td>
</tr>
<tr>
<td>Charges for specific services</td>
<td>75</td>
<td>0.36</td>
</tr>
<tr>
<td>Valuations/Buildings insurance</td>
<td>22</td>
<td>0.10</td>
</tr>
<tr>
<td>Other tax law cases</td>
<td>237</td>
<td>1.12</td>
</tr>
<tr>
<td>Invalidity insurance</td>
<td>4379</td>
<td>20.78</td>
</tr>
<tr>
<td>Health Insurance Act</td>
<td>1086</td>
<td>5.15</td>
</tr>
<tr>
<td>Occupational Pensions Act</td>
<td>892</td>
<td>4.23</td>
</tr>
<tr>
<td>Accident insurance/Military insurance</td>
<td>1855</td>
<td>8.80</td>
</tr>
<tr>
<td>State pension scheme (AHV)/Compensation scheme for earnings lost while on military service (EO)</td>
<td>866</td>
<td>4.11</td>
</tr>
<tr>
<td>Unemployment insurance/Other social insurance law cases</td>
<td>2447</td>
<td>11.61</td>
</tr>
</tbody>
</table>

A second point of departure is constituted by the statistical data on staff in the courts.

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49 Only the share of the case dealt with by the higher administrative courts (cf. No VI. 2 above).
50 Only the share of the case dealt with by the higher administrative courts (cf. No VI. 2 above).
51 Only the share of the case dealt with by the higher administrative courts; in numerous cantons this case category comes under the jurisdiction of the civil courts (cf. No VI. 2 above).
52 Only the share of the case dealt with by the higher administrative courts; in some cantons there are special tax courts, which have not been surveyed (cf. No VI. 2 above).
Proceeding from the surveyed statistical values of case numbers and from the data on staff resources collected from the court registries, the value for the workload per case (expressed as a percentage of the annual working hours of a full-time member of staff) can be obtained for all the courts. By comparing, the following three values can be generated and analysed:

- Average workload per case across the whole of Switzerland on the basis of the comparison of all cases (21,793) and the entire available resources effectively devoted to adjudication (34,439 full-time staff): 1.89% of the annual working hours of a full-time member of staff per case;
- Median across the caseload figures collected for the individual courts in relation to the whole of Switzerland: 2.03% of the annual working hours of a full-time member of staff per case;
- Median across the caseload figures collected for the individual courts in relation to the comparison group (the cantons of Aargau, Basel-Stadt, Bern, Lucerne, St. Gallen and Zurich): 2.07% of the annual working hours of a full-time member of staff per case.

On the basis of Survey A, it may be concluded that in Swiss administrative courts across all case categories, an average case from the average of the comparison cantons requires approximately 2.00% of the annual working hours of a full-time member of staff.

The burden per case in hours is obtained by multiplying the percentage of the annual working hours of a full-time member of staff per case by 19.53

The ratio of lawyer per number of settlements in the year (and therefore the number of cases per lawyer in case category per annum) may in principle always be derived from the percentage of the annual working hours of a full-time member of staff per case, provided the number of hours worked per year is known. This value does not permit caseload management to be organized, however, and in the opinion of the authors it is not in other respects particularly meaningful.

4. Findings for Future Caseload Management Systems
   a. Recommended variant: management according to the percentage of full-time staff per case

The most advantageous method of caseload management is the one that proceeds via the percentage of the annual working hours of a full-time member of staff per case. As a point of departure, the benefits for caseload management of using the percentage of the annual working hours of a full-time member of staff include the following:

- The system could readily be adapted to personnel management (number of positions, upper limit on positions, etc.), because personnel management likewise normally uses the percentage of the annual working hours of a full-time member of staff as a basis.
- Such a system, for example, also enables an adequately accurate personnel need to be estimated directly from the number of unsettled cases.
- It also makes possible a proper allocation of cases on the basis of the level of employment – but this would require the taking into account of staff resources (expressed as a percentage of full-time employment) deployed on or withheld on account of matters other than court judgments.
- In the case of known annual working hours, it is always possible to recalculate in terms of working hours.
- It facilitates the simple calculation of how many cases of a certain case category should be completed annually by a lawyer.
- In the case of the same or similar annual working hours and also of the same of similar general procedural conditions, a benchmark with other courts becomes feasible.

53 The annual regular working hours for a full-time employee in Canton Lucerne amounts to around 2'050 hours (taking account of days that are not worked, but including vacation). From this must be deducted vacation of 20 days (if 8.4 hours are worked every day, this is equivalent to 168 hours). Assuming no absences due to illness, this results in around 1'882 hours of work for a full-time employee. Accordingly 1% of the working hours amounts to around 18.8 hours. See also the Staff Manual for the Canton of Lucerne. In most other cantons the working hours are similar.
On account of the imprecise nature of the results that depend on estimates, and also for the sake of the practicability of the future system of caseload management, it is, however, recommended that rough scale of approximate values be used, subdivided into a total of three to four categories.

**b. A Further Variant: System of Points**

The basic idea of this system is that although on the one hand the investigated bandwidth of the percentage of the annual working hours of a full-time member of staff per case is quite large, the relationship between the categories of the workloads established on the other hand is relatively constant and may be regarded as a reasonably secure value. The idea of the points system consists in proceeding from the workload difference between the individual categories of case and assigning the categories to a system of points with a scale of three, four or five points. Caseload management is then carried out based on these point numbers for the assigned cases.

**VIII. Conclusions**

1. **General findings**

   The research work presented above commissioned by the Administrative Court of the Canton of Lucerne has demonstrated that it is possible to construct caseload management systems for courts on the basis of estimated values. The study made possible for the first time Swiss-wide findings on the workload of the highest cantonal administrative and social insurance courts. At the same time, however, the limits on surveys based on estimates were also revealed (cf. Sections 2 and 3 below).

   Even the most reliable method, moreover, should not be allowed to divert attention from the fact that we are basically dealing with a mere quantitative record. This means first of all that the values collected are in need of elucidation, especially in the case of comparisons between several courts – and above all with regard to what we are looking at (test of legality or appropriateness) and in respect of the lower court (judicial authority or ruling authority). On the other hand, the values can only possess a qualitative informative validity if they can be seen in relation to the frequency and success rate of appeals. Or in other words: there is no art involved in spending little time on a judgment. Whether it is a "good" judgment or not is another question.

   In the area of administrative theory and research on courts, the study shows that in Switzerland little or nothing exists by way of an overview of the structure and workflow management of the administrative justice system. The modus operandi of administrative adjudication has hitherto hardly been investigated; in particular there is a lack of key management figures and uniform statistics that would permit comparisons between the cantons.

2. **Questions still open**

   The evaluation of the questionnaires raises, among other issues, the question of why there is a considerable difference between the estimates of the workload per case given in response to the questionnaires by those involved in adjudication (Survey B; Results see Sec. VII. 2) and the workload per case obtained from information provided by the court registries (Survey A; Results cf. Sec. VII. 3). Basically there are two possible explanations for this difference:

   - The persons involved in adjudication give an estimate for their workload per category of case that is too low, which would accord with standard experience in the case of this type of survey. This kind of erroneous estimate may,
However, have other causes (unfamiliarity with making estimates in percentages of full-time working hours, excessive modesty, in self-assessment, etc.).

The court administrative offices place too high an estimate on the level of productivity obtained from the nominal full time positions. It could well be possible that individual persons involved in adjudication devote a higher proportion of their working hours to continuing professional education, studying legal texts and instructing new staff or trainees than is generally assumed. In addition, it could be the case that absences due to vacation and illness have not been deducted from the nominal percentage level of employment, which would also push up the workload per case.

It is unlikely that this question can be answered with the required reliability by means of additional interviews (Phase 2). In contrast, a complete survey of working hours (Phase 3) would provide the required clarity.56

3. Possible Follow-up Projects

The figures for case workloads for the Administrative Court of the Canton of Lucerne are – as in keeping with the informative value of Phase 1 – flawed due to inaccuracies, and this could have a cumulative effect over several years on caseload management. As was already suspected when the work was begun57, sufficiently precise values can only be obtained using traditional business management time recording. In order to obtain this basic data, it would therefore be necessary to record the work of all legal and administrative staff on predefined categories of case, itemizing the time taken on each case, over a period of five to seven months (Phase 3).

4. Final Remarks

The overall study served first and foremost to develop a caseload management system at the Administrative Court of the Canton of Lucerne. The survey carried out involved setting foot on virgin territory, in particular because the parameters of the general procedural conditions, not to mention the allocation of personnel and the case figures of courts of this type had never before been investigated in Switzerland. Those results shown in the report and in the evaluation that have not yet been made available to the public58 must not therefore be used indiscriminately to provide benchmarks, other comparisons of efficiency or as a basis for reorganization measures.

Furthermore, it must be stressed that the study, in accordance with the assignment, primarily tackled quantitative aspects. The only qualitative aspect explicitly investigated is the success rate of appeals. The results of the quantitative surveys reflect the average of the qualitative performances of all the participant courts, due to the representativeness of the values obtained. On the question of whether this average corresponds to the current qualitative requirements for good justice system, no comments can be made.

Annex 1: Courts that participated in the Online Survey

AG: Cantonal Supreme Court (Part of Court: Insurance Court)
AG: Cantonal Supreme Court (Part of Court: Administrative court)
AI: Cantonal Court
AR: Administrative Court
BE: Administrative Court
BL: Cantonal Court, Canton of Basel-Landschaft
BS: Court of Appeal, Basel-Stadt
BS: Social Insurance Court
FR: Cantonal Supreme Court
GE: Administrative Court
GE: Cantonal Supreme Court for Social Insurance
GL: Administrative Court

56 On the various phases, see No. IV. 1 above.
57 See No. V. 1.
58 See also Note 48.
Annex 2: Categorization of Types of case

Criteria for forming categories of case:
- types of case in accordance with existing categorisation system used by the administrative court of the Canton of Lucerne as the starting point
- result must be suitable as regards numbers for the survey (around 15 categories of case);
- takes account of the number of cases for each type of case (where this is a large number of cases = own category of case);
- balance between the categories of case;
- business reports/number of cases/categorization by the administrative courts of the cantons of Bern, Lucerne and Zug as further basic principles.

<table>
<thead>
<tr>
<th>Category of case according to legal field</th>
<th>... contains following types of case</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative law cases</td>
<td>Planning proceedings, building permit procedure, exceptional authorizations Art. 24 ff. Spatial Planning Act, building inspection procedures, nature and cultural heritage, environmental law (incl. radio mast locations, UVP, law on harmful emissions), hotel and restaurant licensing, hydropower concessions, special use of public land (in particular building site installations).</td>
<td>These procedures are allocated to one category, as these days in the most cases a coordinated procedure has to be carried out, combining several of the procedure mentioned in one process.</td>
</tr>
<tr>
<td>Planning, construction- and environmental law</td>
<td>Procedure of formal and material compulsory purchase under cantonal law, irrespective of whether the purchase is made by the canton or</td>
<td>Without land reallocation and land improvement procedures.</td>
</tr>
<tr>
<td>Topic</td>
<td>Description</td>
<td>Reference</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>Law on foreign nationals</td>
<td>All decisions under the law on foreign nationals, incl. coercive measures.</td>
<td>In various cantons (e.g. Bern) a criminal court (not an administrative court) decides on coercive measures under the law on foreign nationals.</td>
</tr>
<tr>
<td>Public procurement</td>
<td>Contesting decisions on the award of contracts under the WTO regulations as well as under intercantonal and cantonal law.</td>
<td>---</td>
</tr>
<tr>
<td>Social assistance and victim support</td>
<td>Procedure relating to rulings and decisions under cantonal social assistance law as well as against decisions relating to the Victim Support Act.</td>
<td>---</td>
</tr>
<tr>
<td>Road Traffic Act</td>
<td>All administrative measures under the Road Traffic Act, incl. driving disqualifications; licensing procedure for sports events and test drives.</td>
<td>---</td>
</tr>
<tr>
<td>Guardianship law and compulsory custodial care orders</td>
<td>All cases under civil law in the field of guardianship (incl. law on children) and compulsory custodial care orders.</td>
<td>In various cantons, this is a civil law and not an administrative law matter.</td>
</tr>
<tr>
<td>Other administrative law cases</td>
<td>All types of case or cases of an administrative nature that do not fall into any of the above categories and that do not have charges/taxes or benefits or premiums under social insurance as their subject matter.</td>
<td>---</td>
</tr>
<tr>
<td>Tax law cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direct taxes</td>
<td>Direct federal taxation, direct cantonal taxation.</td>
<td>---</td>
</tr>
<tr>
<td>Cantonal special taxes</td>
<td>Special taxes under cantonal law, e.g. capital gains tax on real estate, real estate taxes, inheritance taxes, property transfer taxes etc.</td>
<td>---</td>
</tr>
<tr>
<td>Charges for specific services</td>
<td>Fees and other charges for specific services.</td>
<td>---</td>
</tr>
<tr>
<td>Valuations/Buildings insurance</td>
<td>Valuations of properties for tax purposes or for the purpose of the determining buildings insurance premiums; premiums and benefits under compulsory cantonal buildings insurance policies.</td>
<td>---</td>
</tr>
<tr>
<td>Other tax law cases</td>
<td>All other cases relating to public law taxes or charges imposed by the canton of by communal public corporations.</td>
<td>---</td>
</tr>
<tr>
<td>Social insurance law cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Invalidity insurance</td>
<td>All cases in this field.</td>
<td>---</td>
</tr>
<tr>
<td>Health Insurance Act</td>
<td>Health Insurance Act: cases relating to compulsory health insurance, premium reductions, arbitration courts: Occupational Pension Provision.</td>
<td>---</td>
</tr>
<tr>
<td>Occupational Pensions Act</td>
<td>Claim proceedings.</td>
<td></td>
</tr>
<tr>
<td>Accident insurance/Military insurance</td>
<td>All cases in this field.</td>
<td>---</td>
</tr>
<tr>
<td>State pension scheme (AHV)/Compensation scheme for earnings lost while on military service (EO)</td>
<td>All cases in this field.</td>
<td>---</td>
</tr>
<tr>
<td>Unemployment insurance/Other social insurance law cases</td>
<td>Unemployment insurance and all other social security cases.</td>
<td>---</td>
</tr>
</tbody>
</table>
Differentiated Use of Electronic Case Management Systems
By Erwin J. Rooze

Abstract

ICT is used to support and automate case management practices of courts. This use of ICT is here referred to as electronic case management systems. These systems can be applied at different levels of sophistication, on different types of caseflows and with different components. This article introduces the term "differentiated electronic case management systems", since the development and deployment of these electronic systems differs widely in level of sophistication and provided functionality and since these systems are capable of supporting the contingent use of differentiated case management. An overview of functionality of electronic case management systems found in research is given, using a distinction in four components. The lens of the contingency theory is used to discuss what relevance the different types of caseflows, components and levels of sophistication have for the differentiated use and development of electronic case management systems. Also discussed is what courts can do to harvest potential benefits of electronic case management systems.

Introduction

In this article the notion of an electronic case management system is defined and its key management aspects, its functions and perceived benefits are explained. Electronic case management systems automate and support the case management within courts. Perceived benefits are an enhanced efficiency, access to justice, timeliness, transparency and accountability. These systems can however be applied at different levels of sophistication with different benefits.

Electronic case management systems can even in one court be implemented at different levels of sophistication. In this article three levels will be used: basic, medium and advanced. Different caseflows may also use different functional components of electronic case management systems. That makes it important to find reasons behind these differences. Some lessons learned became available in an international qualitative research held between 2006 and 2008 after electronic case management systems, which covered a large number of European countries and Australia.

This article reflects on the findings in this research from broader theoretical concepts and proposes to apply contingency theory to case management and the application of ICT for case management. Court administrators should be aware of contingencies, understand the possible benefits of modern ICT and use this knowledge to help drive developments towards the differentiated use of electronic case management systems.

Case management

Case management is one of the main management activities in use within courts. The other main management effort is court management. While case management is connected to the primary processes in courts, and in our definition includes court administration and other processes that are directly related to case processing, the court management is connected to the secondary processes in courts and involves activities like strategy making, human resource management, research and development, ICT, finance, and maintenance of the build environment.

Case management is aimed at improving the primary processes of courts, which is processing filed cases to adjudication. Case management has originally been developed in the United States of America and other countries have adopted it. Many countries share the fact that it has explicitly been introduced as a concept to battle performance problems by introducing management concepts. Although differences in specific goals and implementation can be found, the shared

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performance morality is that cases should be resolved fairly and as promptly and economically as is reasonable in the circumstances of the case. That is important to society and for the reputation of the courts. Thus, the definition of case management used here is “Case management is the effort by courts (using any measure like administrative, managerial or introducing regulation) to handle cases in such a manner that they are resolved fairly and as promptly and economically as is reasonable in the circumstances of the case.”

A number of notions are connected to the goals of fairness, promptness and economical behavior. The fairness part can be found within the notion of procedural justice. The promptness and economics part of case management can be found within the notion of the efficiency of justice. The efficiency of justice was an important reason to develop the concept of case (flow) management in the United States and also has been identified as an important issue in the EU. By efficiency of justice is meant here that justice is done at reasonable costs to the parties and the court and within a reasonable time, that is without an abnormal delay that can be attributed to a court.

Procedural justice concerns the fairness, consistency and the transparency of the processes by which progress in a case is made. It means that fair procedures should guarantee that comparable cases are treated alike, parties are given adequate notice and the opportunity to express themselves, that the interests of all parties are taken into account and processes in court are transparent, without secrecy or deception. This concept can be approached from a philosophical viewpoint, and a social psychological viewpoint. Seen from the last viewpoint it is clear that when people find unexplained variations they tend to regard them as unfair, while upholding fair procedures tends to legitimize authority and helps to ensure voluntary compliance with the rules.

Components of case management
Electronic case management systems provide support and automation of the practices of case management. In order to support or automate case management, it is necessary to understand what the components of case management as a management effort are. Important is the notion of making progress in cases, from the moment a case starts when an initiating document is filed, until its lifecycle within a court ends when the case closes for any reason and is archived. A typical process in court consists of at least these generic subprocesses: (a) receive documents; (b) administrative preparation; (c) content preparation; (d) court decision-making; (e) content elaboration; (f) administrative completion; (g) send and archive. A number of services can be created within electronic case management systems to support or automate these generic subprocesses.

All of these subprocesses have a logistical aspect, since both a file and person(s) need to be present. Some of these subprocesses are purely administrative and performed by administrators and some are the domain of legal clerks and judges, who pay more attention to the contents of the case. All activities performed in the case need to be compliant with laws and rules of procedure, and breaking them could lead to a mistrial. From this description and analysis of case management in courts on a high level of analysis, the following four components emerge:

1. administrative management;
2. logistics management;
3. procedural management;
4. content management.

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5 In the European Union a specific program was launched, see CEPEJ (2006): European Judicial Systems, European Commission for the Efficiency of Justice.
10 See Rooze et al. (2007): footnote nr. 9.
The first component of case management is *administrative management proper*. It starts with the recording of the initiation of a case and ideally continues to document every action and decision associated with the case, resulting in a comprehensive case record. Administrative systems must ensure that the location of court files and records are always known, whether the case is active and in frequent circulation, or in archive status. When enforcement is within the court's authority, good administrative management ensures that the system can track whether an enforcement action has been filed, a judgment or fine paid, or a penal sanction imposed.

The second component of case management is *logistics management*. In general, logistics management guides the flow of the case through the overall process from receiving a new case until its disposition, archiving and enforcement. During its flow a case is passed on between people with subsequent tasks. Without adequate logistics this flow has many unnecessary waiting stacks and the efficiency of justice is in peril. Within logistic management the people, documents, time and rooms need to be allocated to activities and events. Especially the document logistics within a court are huge, since the case file needs to remain complete and available for judges and staff working on the case.

The third component of case management is *procedural management*. Obeying procedures is of high importance within courts since the relevant procedural requirements are stated by law. Procedural management ensures that the progress made in a case meets these requirements. This includes checking when an initiating document is filed whether a court has the right jurisdiction, checking if the parties act within the time limits if an (electronic) signature needs to be placed on documents and is present, if a court fee has to be paid and has been paid and if the case is filed within the time limits set by law. Other procedures are to protect the rights of the parties, and it is important for courts that these procedures are under control.

The last component of case management is *content management*. A number of tactics can be used by judges to effectively manage cases from a content perspective. One of those tactics is the creation of tracks for specific caseflows. Another tactic used within justice content management is to use standard text blocks in new documents. The benefits are an increase in the efficiency of work and a more uniform decision of judges in similar cases, which can contribute to a perception of procedural justice. Justice content management even can get as far as complete automation of text, for instance in money claim procedures when the defendant decides not to use the right of defense and the decision of the court can in large part be automated within the content management component of electronic case management systems.

**Differentiated case management**

Differentiated case management is a refinement of the concept of caseflow management. Caseflow management introduces more control over progress in a case by the court and typically involves a number of regulations like setting a standards schedule for events and a timetable to case processing. The introduction of this concept is commonly attributed to Maureen Solomon. At the time it was introduced, courts in the US needed to find answers to diminish backlog, battle inefficient work and improve services, and the answer was to rely less on the pace set by lawyers and create active control over case progress in the hands of the court. Another typical measure is to assign the case to a judge (acting as a “case manager”) within the court who is responsible for handling it for the duration of the case.

The concept of differentiated case management adds the logic of contingency, or the dominant logic that "No single formula for caseflow works in every courthouse in every caseflow. There is no best way to manage cases in a specific setting. Contingency theory applies to case-flow management." Contingency theory within management science originates in the work of Lawrence and Lorsch, and postulates that the structure of a (unit of an) organization is

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12 See for instance Saari (1982), footnote nr. 4, page 71.

13 Quote from Saari (1982), footnote nr. 4, page 76.

dependent on the specific external conditions. They defined differentiation as the state of segmentation of the organizational systems into subsystems, each of which tends to develop particular attributes in relation to the requirements posed by its relevant external environment. Later Galbraith stated a number of key assumptions underlying contingency theory: (a) there is no one best way to organize; (b) any way of organizing is not equally effective. Scott added a third assumption, namely that the best way to organize depends on the nature of the environment to which the organization relates.

Within many courts different organizational units can be found that match different areas of law like civil law, commercial law, criminal law and administrative law. These different kinds of law clearly differ in their relevant environment. While units of commercial law deal with the business world, units of criminal law deal with the security world of police and prosecution. Within these different subsystems a number of case types can again be treated differently by the court since they have to meet different requirements in order to reach a fair, timely and economical disposition of cases that satisfies the needs of society. When these case types are again differentiated into different tracks, it is common to refer to this as differentiated case management.

Especially in the United States differentiated case management has been a focus of development by the central government. Differentiated case management aims to optimize the use of resources by allowing different tracks. A track is a combination of a policy and a standard schedule of events for dealing with a case. Another organizational measure typical of differentiated case management is to introduce a thorough assessment of cases whenever they are filed, in order to clear administrative issues and define what track it must follow. Differentiation in case management leads to further optimization because the needs of cases can be better served and cases that can move fast are not obstructed by a waiting stock of slower moving cases.

Levels of electronic support for case management in courts

Electronic case management systems can be applied at different levels of sophistication. The focus on the basic level is to provide a reliable electronic case administration, resulting in control over case files and records, improved data exchange and reliable management information. At this basic level data is read from official documents and fed into records of databases. This data is read downstream in case processing to generate a schedule of events, work lists and to inform other officials.

The medium level of sophistication in electronic case management systems supports the court tactics to improve the flow of cases. It involves a range of activities in case (flow) management like support to apply standard schedules for a case type and an individual case specific schedule with milestones that demarcate when an activity can start and has to finish. This is important both from the perspective of efficiency of justice and procedural justice and can be achieved when different sources of data as on case numbers, calendars and involved court officials are intertwined. This creates the opportunity to create dedicated personal listings and notifications, which judges, clerks and administrators use to work within the schedule and finish before milestones.

The advanced level of sophistication is reached when the system can handle case files and documents in digital form. At the entry of this level, communication with the court is by electronic means like e-mail or by using forms on the internet websites. This level can culminate into an electronic court (e-court) if all work within the court is done paperless. An electronic court can internally process received digital documents through all phases of the process within the electronic case management system and archive finished cases in a digital archive.

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15 The attributes in the study of Lawrence and Lorsch were (a) degree of structure; (b) interpersonal orientation; (c) time orientation; and (d) goal orientation.
19 By the US Department of Justice for more than 15 years, see Gist (1995), footnote nr. 4.
Level of sophistication | Management area | Description of typical effort
--- | --- | ---
ADVANCED | Content management | **Case content automation**: automation of life-cycle of documents, improved analytic aids for judges and improved text editing, multimedia logging.
 | Procedure management | **Case handling automation**: elimination of duplicate activities and integration of checks into smart documents/forms.
 | Logistics management | **Caseflow automation**: predefined workflows transport digital files to persons.
MEDIUM | Content management | **Case content support**: electronic documents are inserted with case data and standard text blocks are available.
 | Procedure management | **Case handling checkpoints**: intake of documents and collection of court fees is improved, notifications are made and scheduled automatically and signals on milestones are planned.
 | Logistics management | **Caseflow support**: scheduling and allocation of capacity are combined, people receive forms, lists and signals that help to prepare forthcoming events.
BASIC | Administrative management | **Case administration systems**: registration and recording of documents, events and results.

Table 1: Description of levels of sophistication in electronic case management systems

Functionality found within electronic case management

In this paragraph a summary of functionality is listed that was found in research\(^{20}\). The intention is not to be complete. The functionality is grouped using the four functional components of case management.

The logistics management includes the following blocks of functionality:
- **Milestone planning**: Concerns the creation of a time schedule that includes important events and milestones, such as the maximum date for the filing of a document, a hearing or a court session. Depending on how the procedure progresses, the milestones can be reset.
- **Capacity allocation**: A good scheduling and calendar system is connected and makes it possible to allocate capacity (people and court rooms) to a case.
- **Workflow management**: Delivers an action needed and/or the case documents to the right user and checks whether the activities are done in time and within quality boundaries.
- **Tracking and tracing**: Information on the exact location of case files, the progress made in a case and what track a case has entered.

The content management aspect includes:
- **Logging facilities**: Recording of all actions and statements made in a case. If necessary (depending on the procedure and case type), these actions include audio and video recordings of events.

\(^{20}\)See Rooze et al. (2007), footnote nr. 9.
• **(Dynamic) templates:** The production of official documents is facilitated by the dynamic selection of a template and standardized text blocks.

• **Digital archiving:** The digital documents received and produced in a case are stored in a digital repository in compliance with the relevant laws on archiving.

The procedure management aspect includes:

• **Procedural checkpoints:** Checks to guarantee that formal actions in a case like the payment of court fees are taken. Checkpoints are based on formal requirements found in law, court rules or case law. Building these into electronic case management systems improves procedural justice.

• **Milestone signaling:** A milestone is a specific date and time before which a defined action has to be completed by any party or the court. The electronic case management system needs to be able to check if a required action has been performed, and can send a notification to the person responsible for the action.

• **Automatic actions:** The system can carry out a number of simple and repetitive administrative activities. A simple action is to automatically send out a notification. A more complex action is for instance to render a decision anonymous before being posted on the internet as case law.

The administrative management includes:

• **Record creation and update:** At the time of case registration, an electronic file is created that shall contain all the current and future data and documents pertaining to a case. It bears the identifier of the case, date of creation, the names and addresses of the parties and all other data. It should be easily accessible and chronologically record of actions and filings in a given case.

• **Case progress:** A good overview of the time elapsed and insight in the current status of the case (e.g. waiting for action by parties).

• **List making:** Lists of past events in a case, of court orders and judgments, or a daily calendar.

• **Archiving record data:** When case disposition occurs, it is recorded in the register. The final entry in the case record indicates where the file folder is stored as a closed or archived cases. The data of the electronic case record will be digitally archived as well.

• **Management Reports:** Good court management requires a capacity to understand and act upon management information. There are several basic management reports that can be generated like the produced caseload report, the pending workload report and a report on the amount of time needed to reach milestones and disposition. These reports can be made on a case type or unit basis.

### Electronic systems for (differentiated) case management

Above the argument was set forth that the logic of differentiated case management can be found in the contingency theory. Different areas of law (like criminal law and civil law) need another caseflow management structure in process and organization. An important assumption of this article is that following contingency theory this different structure leads to a different need of functionality in supporting systems and ability to develop systems on the medium and advanced level of sophistication. This results in a differentiated development and use of electronic case management systems.

Following contingency theory the relevant environment in (differentiated) case management will be the local judicial system. A relevant question is if more universal types of environments can be discerned that would lead to a different structure of systems. A differentiation in types of caseflow would be based on certain commonalities in how cases are treated, and would be close to the concept of tracks. Three dimensions are relevant to identify such commonalities: (I) the number of cases; (II) the complexity of cases; and (III) the judicial attention needed. In the literature a differentiation

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21 Gist (1995) states that the design of tracks within a differentiated case management depends on the circumstances of a local judicial system, such as the range of case processing characteristics and requirements presented by the caseload.


23 For the third dimension see Gist (1995), footnote nr. 4.
into three typical “tracks” within differentiated case management surfaces. These tracks are used indifferent from type of court or area of law and provide a solid base for proposing three types of caseflow:

- **Mass caseflow**: case types with a large numbers of cases of a low complexity. These cases do not necessarily need the attention and involvement of a judge;
- **Complex caseflow**: case types with a small number of cases of a high complexity. These cases require special and even specialized\(^{25}\) attention;
- **Regular caseflow**: all other caseflows, but in general the case types with a medium number of cases of a medium complexity. Cases in these flows do need attention, but are not exceptional.

Examples of case types within mass caseflow are traffic violations and small payment orders. A further differentiation into tracks can be made, for instance a fast track for non-disputed payment orders. Examples of case types in the complex caseflow are intellectual capital disputes and international crimes involving software technology.

The research\(^{26}\) showed that some European countries in their efforts to use court technologies have made a jump on the mass caseflow from the basic level of sophistication to the advanced level of sophistication, with a heavy dependence on logistic management functionality. On the complex caseflow a strong development in the content management functionality could be detected, with a lot of effort in development from the judges themselves. Case types within the regular caseflow have been heavily influenced by efforts of caseflow management in order to reach a higher degree of procedural management leading to a situation wherein courts are “in control”. The regular caseflows showed the slowest development in applying electronic case management systems. Fast development only showed when new systems are developed for all of the judiciary at once, for instance in Western Australia.

<table>
<thead>
<tr>
<th></th>
<th>Basic level</th>
<th>Medium level</th>
<th>Advanced level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mass flow</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Complex flow</td>
<td></td>
<td>Logistics management</td>
<td></td>
</tr>
<tr>
<td>Regular flow</td>
<td></td>
<td>Content management</td>
<td></td>
</tr>
</tbody>
</table>

**Table 2: Typical speed of adoption of higher levels of sophistication in electronic case management systems**

The notion of differentiated electronic case management is proposed since the development and deployment of these systems is differentiated and the latest (advanced) technology supports the specific concept of differentiated case management. More precisely, the term is used for the following reasons:

- The level of sophistication of use of electronic case management within specific courts and national judiciaries is differentiated, to a large degree reflecting types of caseflows;
- The support or automation offered by electronic case management systems is tailored to the needs of specific types of caseflows, and these needs differ among types of caseflows, resulting in a differentiated use of functionality available in electronic case management;
- Advanced electronic case management systems make it easier to create the arrangements necessary for differentiated case management;
- The main benefits that can be achieved by applying electronic case management systems are different across different types of caseflows.

To elaborate on the last bullet point, the main benefits achievable in the mass caseflow result from logistics functionality while the main benefits in the complex flow result from content management functionality. The reason is another...


\(^{25}\) See Mak (2008), footnote nr. 22, page 6.

\(^{26}\) See Rooze (2007), footnote nr. 9.
distribution of work and time consumption over administration, legal case preparation, court sessions and writing court documents. While in the mass caseflow most of the time of the court consumed is by administrators, the large majority of time spent by the court on cases in a complex caseflow is from legal clerks and judges. From the perspective of the efficiency of justice, this means that the benefits need to be gained in a totally different kind of work: administrative work versus knowledge work. This leads to a differentiated approach to structure and support of flows of cases, and this may lead to a different return on investment ratios of electronic case management systems over these types of caseflows. Since in a mass caseflow a lot of the documents are relatively simple and can be standardized, the administrative work can be automated and courts can reach out for the advanced type of electronic case management systems and introduce the e-court.

Benefits of a differentiated use of electronic case management systems

Information and communication technology (ICT) changes the world profoundly in many ways. All kinds of benefits have been attributed to the use of ICT-systems in judiciaries. As early as in the publication of Gallas and Gallas technology is mentioned as an important change factor since it can have effects on the nature of litigation and effects on the quality of court services. The use of ICT certainly is considered a key element in improving the administration of justice. Another benefit claimed for is a promotion of democracy. However, the discussion of benefits is here narrowed down to two concepts that are of primary importance to case management by judiciaries: (a) the efficiency of justice; and (b) procedural justice.

As discussed, procedural justice concerns the fairness, consistency and the transparency of the court processes. Well developed and implemented electronic case management systems make it possible for a court to stick more closely to a published standard schedule and timetable, since the court can track cases better, control the use of resources and notify and inform all on what has been decided and what is to be expected. Benefits of developing to the advanced level are that automatic checkpoints on procedural aspects can be introduced and advanced use of content management functionality may benefit the consistency and transparency of court decisions.

As discussed earlier, by efficiency of justice is meant that justice is done timely and at reasonable costs to the parties and the court. Case delays are an important source of inefficiency and should be reduced by applying electronic case management systems, since it is possible to send notifications to those involved in society, send signals to judge(s) and clerk(s) on upcoming milestones, detect in advance the buildup of a waiting stack and allocate resources to avoid or reduce it. Handling the mass flows can be made far more efficient by applying electronic case management systems on the advanced level. Both the intake and internal processing of these cases have been completely automated, only needing time of clerk and judge when the defendant responds. This means that a considerable amount of human resources in the court can handle other caseflows, and the quality, efficiency and procedural justice aspects in other caseflows can be enhanced. Examples of these systems in Europe are those dealing with small money claims in England and Austria.

The efficiency of justice can also be enhanced in the complex flow on the advanced level of sophistication, that is when documents are digital and content management systems are used. Since these cases are complex from a legal point of view and contain a lot of pages and/or court sessions, it becomes better possible to have a complete and up-to-date case file, instant access to material, and make retrievable cross references in the material. The experience in the Netherlands (a continental law country) and Western Australia (a common law country) indicates that the time needed for judges to analyze material is typically cut in halve. This amounts to a sharp increase in efficiency in large and complex cases.

29 See USAID (2001), footnote nr. 28.
30 The system in England is called ‘Money Claim Online’ and in Austria it is called ‘Mahnverfahren’.
In general, applying the medium level of sophistication in electronic case management systems makes it possible to exercise greater control over progress of cases. The benefits sought after are an increased ability to handle rising numbers of cases while avoiding a buildup of backlog. The basic case administration is in such good shape that new services can be added for the users of courts. Internet services that provide timely information and the ability to use advanced web forms can result in a feeling of more procedural justice. The use of advanced web forms can reduce the amount of mistakes made in legal documents by people who correspond with a court, and make it possible to automate a part of the checks needed by administrators, which amounts to enhanced uniformity and efficiency. A good example in this area is Singapore.

Advanced electronic case management systems make it possible for courts to work digitally and practically paperless, since they create adequate logistics of digital files between people. Technologies are used like document management systems, workflow systems and records management systems, which are also available combined under the name of enterprise content management systems. Applying these standard or tailored systems makes it possible as well to introduce a more structured approach into the content management component of electronic case management. For instance, structured forms can be made available, the completeness of required data can be checked and archiving can be automated. An extra benefit is that the digital availability of documents makes it possible to enhance the access to justice, by providing an on-line access for society to files and information. Secured access to files over the internet by judges creates the benefit to work independent of location, which is effective for all judiciaries but most efficient for judiciaries in scarcely populated areas when huge traveling distances need to be crossed. This can for instance be found in Western Australia.

A note of caution on benefits of IT is appropriate. The medium and advanced levels of electronic case management systems have not been widely developed yet but they will probably be widely developed in the next decades. A recent study by Reiling concluded that the discourse about IT tends to be optimistic but is not solidly founded in empirical proof. Publicly available empirical study into the support by IT of judicial processes is scarce. Velicogna found many failing ICT-project in the Justice area in Europa. Both Reiling and Velicogna however state that overall the impact of IT on court administration has been positive.

Conclusions

In essence, basic electronic case management systems have had a positive effect on courts by providing a reliable administration that made it better possible to track cases, introduce process improvements based on facts, communicate better with other authorities and be better accountable to society. At present, advanced electronic case management systems will be implemented in more and more courts and make it possible to support differentiated case management and introduce the electronic court.

International research reported in this article has lead to the conclusion that the development and deployment of electronic case management systems is differentiated, especially in Europe. The advanced level of sophistication is predominantly used for mass caseflows, and in some countries has evolved into e-courts already. Based on first experiences it is believed that the use of electronic case management systems on the advanced level of sophistication will lead to large benefits in the efficiency of justice and procedural justice. Expected is that the use of electronic case management systems will remain differentiated in the near future, since the needs within different areas of law, case types and tracks within caseflows are not the same. This contingency leads to different requirement for electronic case management systems and different benefits that can be harvested.

Court administrators should be aware of this contingency and be ready to approach the issue of developing and implementing electronic case management systems from a functional perspective mainly based on a differentiation in types of caseflows. However, this should be counterbalanced by adopting a financial perspective that focuses on re-use of functionality and integration of electronic systems. This article proposes an integrated model of functionality on multiple

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31 See Reiling (2009), footnote nr. 28, page 273.
levels of sophistication that is fundamental to all electronic case management systems. The identified building blocks of functionality can be used within all areas of law and all case types and their tracks. This model can help to identify a contingent differentiation but also a financially viable integration of functionality and systems. Court administrators should be aware of the possibilities and help drive developments beyond electronic case administration that advance the rule of law.

References
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