International Journal For Court Administration

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From the Executive Editor:
The Dark Side Of Court And Justice System Budgeting In Hard Times
By Markus Zimmer

Often diminutive but recurring indicators of fiscal improvement in government budgets in 2013 eased the multi-year cycle of reductions in funding allotments for a slight majority of the states in the U.S. However, their residual impact has persisted in the form of under- and unfunded capital and other improvement projects and diminished services in court and justice systems, recently headlined in closures of courthouses in small California and Mississippi towns. Moreover, the unanticipated default endorsement by the U.S. Congress of federal funds sequestration resulted more recently in rashly contrived automatic reductions in the federal courts’ spending authority, prompting 87 of 94 chief U.S. district court judges to complain in correspondence to congressional leaders in mid-August that “…they have forced us to slash our operations to the bone.” The simile is selectively applicable. Most recently, the federal government shutdown coerced additional reductions as trial and intermediate appellate courts struggled to avoid closing their doors during business hours.

Proactive responses to these hard times for courts have spawned an extraordinary blossoming of innovative ideas, many of which reflect ingenuity and creativity, for how courts and justice systems could do more with less. Their overall impact has tempered the earlier groundswell promoting court excellence in all things with steroid injections compelling us to focus equally if not more on improving efficiency, maximizing performance, stimulating effectiveness, intensifying multi-tasking, supplementing proficiency, streamlining processes, amending procedural rules, and the like.

Looming largely inaudibly in the background amid all this clatter are darker elements of coping with budget shortfalls, elements whose impacts diminish and even contravene the values that court and justice systems ostensibly were created to foster. In the federal sector, for example, a key component of the U.S. Judicial Conference’s response to bone-exposing reductions is the disparate impact in funding federal criminal defense services. These are administered under the auspices of the Judicial Branch for indigent defendants. Sequestration consequences for defender services total $50 million, triggering furloughs and layoffs of federal defense counsel and staff plus reductions in hourly rates for contract defense attorneys. There are no commensurate resource reductions for their prosecutorial counterparts, the U.S. Attorneys Offices, whose lawyers establish the pace and quantity of federal criminal litigation.

Involuntary debt accumulation among convicted felons through innovative cost-shifting schemes is another of these dark elements. Corrections systems, primarily on the state and local levels, have spawned an assortment of fines, case processing fees, inmate housing costs, and other user charges imposed on defendants. The assortment includes fees for public defenders, prosecution charges, jail and prison bills, court administrative services payments, and probation/parole services tabs. These are piled on top of restitution payment schedules. Circa 80 percent...Continued
of defendants ensnared in U.S. criminal justice systems qualify for court-appointed counsel based on assessments of their economic status as indigent. If employed while incarcerated, they are compensated at levels equivalent to cents on the dollar, essentially precluding their capacity to pay off accumulating fees and monthly interest charges that unpaid balances accrue. Some systems by statute seize up to one-third of funds provided by inmate families, many of whom are struggling mothers with children, perpetuating the poverty cycle through successive generations. When offenders are released, already impoverished and many devoid of high-school credentials, their employment searches invariably result in minimum wage positions insufficient to cover basic food, clothing, shelter and medical care expenses as their criminal justice fee accounts with monthly interest charges continue to mount and trigger coercive non-payment penalties. As the Brennan Center for Justice reports, sociological studies document that burdensome justice fees and fines tend to spawn recidivism.

Among the blackest of these dark elements is the abusive application of civil forfeiture laws that entitle law enforcement authorities at all levels to confiscate money and property from suspects on mere, sometimes contrived, grounds of suspicion rather than indictable offenses or adjudicated guilt. The value of such seizures, from which nothing is exempt, is diverted in numerous state and local jurisdictions to fund questionable expenditures incurred in the names of wars on drugs and crime. Such laws originally sought to dispossess criminal defendants of profits earned through highly lucrative illicit activities and to return them to victims or fund legitimate criminal justice initiatives. Over time, however, they have been loosely applied by some jurisdictions to deliberately seize cash, cars, homes, and other property under cover of flimsy or fabricated suspicion of criminal activity, often triggered through minority profiling. Where the deployment of such laws is aggressively sanctioned by corrupt police, prosecutors, judges and civil authorities, the cumulative value in millions of dollars of proceeds can stagger the imagination, wreaking economic devastation in the lives of innocent victims. Examples of particularly egregious uses of the proceeds include compensation bonuses for police and civic officials, luxury vehicle rentals, credit card late-payment fees, Halloween costumes, a popcorn machine, a thousand-dollar donation for a Baptist congregation key to the re-election of a county district attorney, a police boat valued at one-hundred-thousand dollars and a twenty-thousand dollar-plus beach party with a drug-prevention theme.¹

Looking over our shoulders into our own backyards is not always pleasant, but doing so soberly reminds us that no government, regardless of its level of economic and social development, is immune from misuse and abuse of political and statutory authority, and that the consequences of such abuse, almost always, fall disproportionately on the shoulders of the poor. As we negotiate the rapids of declining or stagnant government budgets, we all might be more conscious of the implications for justice of alternative schemes for generating funding for our courts and justice systems.

Some time ago, a Dutch politician expressed his distrust in the judiciary of the Netherlands. His prosecution for racism had been ordered by the appeal court of Amsterdam under charges of which he eventually was acquitted. The curious outcome of his distrust was a proposition that judges should be appointed for an initial six-year term. During that term, their judgments would be monitored by some objective standard to determine their predisposition in criminal adjudications. Where the outcome of the monitoring was that they were not too soft on crime, they would be considered eligible for reappointment. Some of those who shared the politician’s political background and predilections pleaded instead for judicial elections in the Netherlands. The idea was widely and publicly mocked by persons of other political persuasions. Nonetheless, I want to briefly consider the idea of judicial elections.

In the Netherlands, judges are selected by a committee, a joint venture of the Ministry of Justice and the Council for the Judiciary. Candidates for judicial office must be lawyers and are eligible for appointment after successfully completing several tests, including a psychological assessment, and finishing a post-university training curriculum. Demands placed on prospective judicial candidates establish a high bar, but selection procedures are not particularly transparent. Judges can take decisions with dire consequences for the parties involved in a case. The law restricts the exercise of judicial discretion in most cases, but occasionally judges have broad latitude in deciding certain types of cases. The concept derived from the French Revolution that judges simply apply the statutes to fact situations was outdated many years ago. Even within narrow margins, judges exercise power. They do account for their decisions in their opinions by summarizing the justification for ruling as they did. Judges can be recused if they only seem to be biased, and parties disagreeing with a judgment have recourse to appeal to a higher court. In countries whose legal systems are based on the continental or civil law system, the legitimacy of the courts seems to be guaranteed by judges being subject to statutory law, and their performance subject to review by the higher courts.

In Switzerland, federal judges are appointed by the Parliament for an initial six-year term; appointment to subsequent term is almost guaranteed. Only where a judicial position is vacated on whatever grounds do Swiss politicians take the liberty to appoint someone else. The composition of Parliament in terms of the number of seats held by the competing political parties at any particular time defines which of those parties may propose a replacement candidate. Politicians strive for proportional representation in the political landscape in appointing candidates to the Swiss federal judiciary. Because Switzerland is a federation of 26 cantons and four language groups, the federal judiciary should proportionally represent those four language groups. Occasionally, a populist party will publicly debate the performance of a particular judge who may participate, but generally such debates do not draw a widespread public response. This partisan election does not affect judicial independence. In the cantonal level judges are either elected by a popular vote or by parliament.

By comparison, the of status judges in the Netherlands who are members of a political party and who actively participate in the public debate may be vulnerable, even if the debate is not a political one. A Swiss judge may openly be connected to political party; that is considered normal, even though technically speaking, judges are supposed to refrain from engaging in political debates. For the same reason, judicial reticence is expected there. As in the Netherlands, judicial selection of candidates in Switzerland is not very transparent. On occasion, their expertise is questioned publicly, and opinion makers sneer that politicians appoint their friends to judicial posts.

In many ways, the USA is more democratic than the Netherlands. Many public functionaries have to run for election, particularly on the state and local levels. In many American states, state and local judges are elected rather than appointed. In some states, judicial elections are openly partisan, and prospective judges are required to run for elections.
and to actively campaign against their opponents. Such campaigns cost money. If you are running for judicial office and want to attract voters, you need to be visible. One way to achieve visibility is to have yourself sponsored. It is not unusual for judges in such partisan elections link up with organizations which donate funds to their campaigns. Research shows this has two consequences. First, judges who had their campaigns sponsored by businesses are inclined to judge in favor of businesses. Second, citizens of those particular states are resigned to the possibility of judicial bias as a consequence of campaigning as a part of the bargain. Campaigning for judicial elections contributes to citizens knowing “their” judges, and they appreciate that. Judicial elections increase the legitimacy of judges, and they support acceptance of judicial exercise of power by their citizens.

Looking at the Dutch judiciary, in particular to the policies of the Council for the Judiciary, one can only conclude that the legitimacy of judicial decisions -- timeliness, consistency in sentencing, juridical content quality, acceptance of decisions by the general public -- is considered problematic by the Council, not so much because of the content quality, but because they want to maintain public trust in the judiciary. Public trust in the judiciary, however, appears to be strongly related to the confidence of the public in the government in general. Public trust in the judiciary is quite high in the Netherlands -- about 60%. Therefore, the problem is by no means acute; however, when public trust erodes, it can be difficult to stem that erosion. And the Dutch judiciary is not uncontested in Dutch public debates.

That problem seems to be much less evident in most of the States of the U.S. and in Switzerland. Public elections of judges in countries like the Netherlands, France or Germany seem out of reach both as a matter of tradition and, in addition, because their constitutions provide that judges are appointed for life. But public elections of judges would in one stroke change the vulnerable position of judges between public and politics into judges who are perceived as judges of the public. When looking at the very carefully elaborated system of initial selection of judicial candidates based on their merit as lawyers in the State of Arizona, combined with a very transparent system of individual judicial performance evaluation in relation to retention elections, it becomes clear that a combination of both worlds is within reach. Chief Justice White Berch explained the success of the Arizona judicial appointment system by indicating that judges who performed badly in their initial term opted not to run for retention; instead, they usually quietly resign their appointments. And that explains public satisfaction with most of the judges in Arizona.

I am not certain if such an outcome is desirable in continental Europe. But I am certain that the subject is worth fundamental research into the relation between citizens and the judiciary and that such research could feed a serious (European) debate about judicial legitimacy.

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3 Charles F. Jacobs; Wendy Scattergood and Dave Wegge, Judicial Elections and accountability: A Survey of Wisconsin Voters, Paper Prepared for the annual meeting of the American Political Science Association, August 30-September 2, 2012 New Orleans, Louisiana,

4 Presentation of Arizona Chief Justice Rebecca White Berch at a seminar on judicial evaluation at the International Institute for the Sociology of Law in Oñati, Spain, May 2013.
Reconceptualizing Security Strategies For Courts: Developing A Typology For Safer Court Environments
By Professor Anne Wallace, Edith Cowan University¹, Professor Deborah Blackman, University of Canberra, and Dr. Emma Rowden, University of Technology, Sydney

Abstract:
There have been heightened concerns about security in courts in recent years, prompting a strong response that has largely been focused on perimeter security. This paper draws on recent research conducted in Australian on court user’s safety needs, to propose a typology for designing safer courtroom environments that moves beyond the entry point to the court, and incorporates consideration of process and design elements.

Keywords: Court Security; Court Users; Courtroom Design; Court Safety; Australia

1. Introduction
Courts in Australia have experienced heightened concerns about security over the past 30 years.² These arose, initially, as a result of a number of serious incidents of violence in court buildings and the shooting of a judge at their private home,³ and more recently, a senior civil servant in their workplace.⁴ The aftermath of 9/11 and the Bali Bombings and the trial of a number of alleged terrorist cases in Australian courts have further increased concerns about the possibility of terrorist attacks on court buildings.⁵

A strong response to these concerns has seen ‘a massive … injection of public funding into court security, along with training and infrastructure and research into the science of security.’⁶ Its major focus has been the taking of ‘extraordinary steps to ensure that those entering our courts pass through a secure point of entry.’⁷ These perimeter security systems usually involve tools such as scanners and metal detectors to search for weapons.⁸ Court staff are issued coded security cards for entry and required to carry photographic identification. Inside the court building, separate circulation zones for court staff, judicial officers, defendants, jurors, and the public are designed to avoid the risk of confrontation⁹ and surveillance tools such as CCTV cameras are used to monitor risk.¹⁰

These measures have largely been reactive, with a focus on physical safety. There has been little research into the actual and perceived safety needs of court user communities,¹¹ the psychological impact of court environments¹² and the extent

¹ Professor Anne Wallace PhD, Head, School of Law & Justice, Edith Cowan University, Australia, e-mail: a.wallace@ecu.edu.au
⁶ Sarre and Prenzler, above n 1, 27.
¹⁰ Sarre and Prenzler, above n 1, 26.
¹¹ Most of the literature on courthouse safety and security focuses on threats to the staff and judiciary (e.g: Griebel, M. & Phillips, T., ‘Architectural Design for Security in Courthouse Facilities,’ Annals of the American Academy of Political and Social Science, Vol. 576,
to which those environments increase stress or discomfort for participants in the justice system. The terms “safety” and “security” have often been used interchangeably in public debate and in the formulation of responses. This article draws on recent Australian research into the safety needs of court users, using a broad definition that, in addition to physical safety, encompasses psychological safety, cultural safety and safety of access, commonly termed “accessibility”. In our view, “safety” and “security” are distinct concepts and “security” is better understood as the range of strategies that might be deployed to address threats to safety. These include processes, such as risk management strategies and the deployment of security guards, and the installation of equipment, such as CCTV cameras, x-ray machines, walk-through scanners and other physical measures. While security measures are intended to ensure the safety of court users, the one does not necessarily flow from the other. This distinction is implicit in some of the existing discourse concerning safety in courts; for example, the Family Court of Australia’s 2004-5 Family Violence Strategy policy document, refers to the “primacy of safety”, that:

... requires a comprehensive, integrated approach to the management of security at Court premises and during all Court events. Security policy needs to be comprehensive to ensure that safety is a factor that is considered in relation to all Court processes as well as the Court’s physical environment.

Key themes and issues identified from our research findings are analyzed using a “hard” versus “soft” system approach, outlined below. This enables us to identify what types of security strategies might be directed to particular safety concerns, and where responsibility might lie for their implementation. A key finding is that safeguarding court users often requires a collaborative approach that moves beyond perimeter security.

2. Methodology

The data referred to in this article derives from a three-year study ‘Fortress or sanctuary? Enhancing court safety by managing people, places and processes’ funded by the Australian Research Council and supported by industry partners, including the Family Court of Australia, the Western Australia Department of Justice and Attorney General, the Courts Administration Authority of South Australia, Magistrates Court of Victoria, the New Zealand Ministry of Justice, Myriad Consultants Pty Ltd, PTW Architects, Lyons Architects and security consultants Connley Walker Pty Ltd. The project that sought to investigate the safety needs of court participants, to provide a comparative analysis of safety processes, practices and designs in five jurisdictions, document the safety experience and expectations of stakeholders, and to develop best practice guidelines for providing safer court environments.

This article draws on key themes emerging from interview and “court user jury” focus group discourse. Eighty-seven stakeholders were interviewed, using a semi-structured interview format. They include judges, magistrates, court officers, court security staff, prosecution and defense lawyers, specialist court staff who liaise with, or support, court users, victim support officers, community advocates and volunteer court support workers. 66 stakeholders participated in “user juries” who, after inspecting particular court facilities, were de-briefed on their observations and perceptions in a focus group using a semi-structured question format. They included stakeholders from community advocacy groups, and support services for victims of sexual assault and family violence, the physically and intellectually disabled, refugees and members of indigenous communities. Axial and thematic coding of the qualitative discourse disclosed a number of elements that, based on the experiences narrated by the interviewees and “user jury” stakeholders, were analyzed by the research team as impacting upon perceptions of safety within the court environment. Further grouping and analysis of these elements led to the development of a new typology of safer court environments.

Courthouse Violence: Protecting the Judicial Workplace (July. 2001), 118-131. There is large body of literature concerned with the safety needs of court participants such as victims of family violence, vulnerable and child witnesses, but little on the broader court user population. Security strategies involving environmental design focus on physical separation, segregation and the use of physical barriers to limit ‘breaches, with little attention is paid to design elements that might de-escalate violent situations, such as those suggested in the environmental-behavioural literature.


ARC Linkage Project LP0882179 (2008-11).


3. Developing a Typology for Safer Court Environments

Initially the elements identified in the qualitative data, or discourse, were grouped into broad themes. These themes highlight the key concerns of court users and court staff in relation to creating feelings of safety in court environments. The analysis below should be read not solely as a critique, but also as a way of categorizing current policies which, in some cases, are making steps in the right direction towards an integrated approach to providing safer environments for all court users.

To illustrate, we take an example mentioned frequently in the interview discourse: the fear voiced by victims of family violence about the potential for physical, verbal and other forms of intimidation on encountering the perpetrator in the court room or court building.\(^{18}\)

Table 1: Common themes in relation to safety of victims:

- **Preparation for the hearing/appearance**: There is a need for sufficient briefing information and support for the victim to be provided to ensure that their stress is not added to by inadequate preparation for the court event.

- **Waiting**: There is a requirement for both victim and perpetrator to wait for the matter to be heard. The provision of adequate waiting spaces within the court to avoid contact with the perpetrator is important for the safety of the victim while they wait for the court event.

- **Intimidation**: How are concerns about non-verbal intimidation, or ‘code’ that would be familiar to the victim, as well as direct physical or verbal threats identified and handled, is a significant issue that impacts upon perceptions of safety for victims.

- **Separation and segregation**: How the victim and the perpetrator might be kept separate, both prior to their respective appearances in the courtroom, and in the courtroom has safety implications. Former victims expressed the impossible situation faced in the public areas of the courthouse and having to choose between feeling fearful of becoming a ‘sitting duck’ waiting for the court appearance in waiting areas that are easily surveilled by court security staff, or risk being ‘cornered’ in the more hidden public areas, where harassment could occur out of the sight of security guards.

- **Security presence**: The visible presence of security staff, for example, in court waiting areas is a factor that might reduce the risk of violence or intimidation.

- **Intelligence gathering, planning ahead**: The collection and analysis of data on case types and court users is a strategy employed by some courts to gather intelligence on the risk of violence and intimidation in order to make appropriate plans to prevent incidents. For example, all family violence cases might be listed in a particular court on a particular day, so that security resources could be concentrated in that area.

- **Breaches and escalation**: The need for clear guidance, not just for court staff, but for court users, as to when and how to report safety fears, is a significant factor in how breaches of security or escalation of violent behaviour is minimised. Stakeholders view a timely response to escalation of threats to safety as important.

Closer inspection and interrogation of the discourse revealed that there were two distinct ways of classifying these themes. The first method of classification identifies whether security measures to improve safety relate more to a particular physical location or more to a process operating within the court. The second uses “hard” versus “soft” systems analysis. We then combine both methods of classification to devise a typology that aims to recognize how responsibility for devising appropriate security measures might be identified. We argue that this provides a useful typology for analyzing, and improving upon, current court security strategies designed to provide safer court environments.

4. Potential Interventions

One way of looking at potential security interventions is to categorise them as either relating more to place or more to process.

- **Place** was where the potential safety solutions were aligned to the actual building or its layout.

Examples relevant to the perpetrator-victim scenario include: the location of security screening; the use of CCTV cameras to monitor movement through the building; the routes in and out of a building; the design of a waiting room;

\(^{18}\) Such an encounter might occur in relation to criminal proceedings for an assault, on a civil or criminal process for a restraining order, or for family court proceedings un-related to the violence itself.
the location of the front desk; the form and location of signage; design that creates potentially unsafe corners or corridors; and floorplan layouts that restrict opportunities to separate parties.

- **Process** was where safety solutions were aligned to processes that operate within the court building. Examples relevant to the perpetrator-victim scenario include: “gatekeeper” reception staff who advise timings and locations to court users; processes that do or do not enable anonymity, require court users to “wait your turn”, or do not enable separation; the availability of child-minding support; the clarity and application of rules; court users’ perceptions of acceptable behavior in the court building; the tension inherent in public proceedings about personal matters; providing sufficient preparation for the court appearance; and the level of empathy displayed by court staff.

Applying this classification to the themes identified in the data for our example revealed several limitations. While it is possible to identify some themes (such as intelligence gathering/planning ahead, breaches and escalation) as pertaining more to “process”, other themes (such as security presence, waiting, intimidation) could be supported or hindered by both the nature of the place or the process – see Figure 1. For example, “waiting” is often a requirement of the process by which cases are heard and managed. However, it also occurs in a physical place, such as foyer, or seating area outside a courtroom. “Intimidation” as a process, may occur in that physical space, where the perpetrator, their family or other supporters, are co-located with the victim witness. A victim might seek out a separate space or might be offered a separate, secure, waiting space, supported by a process within the court to enable waiting victim witnesses to be identified and offered that support. A “security presence” in the waiting area might detect, or deter, intimidation to some extent. Such a presence would relate to that particular physical space, but would be arranged by a process that identified the need for it. It might also ensure, for example, that security staff was alerted to look for more subtle signs of intimidation, such as non-verbal signals passing between the perpetrator and their supporters, and the victim witness.

The overlap also reveals another limitation: a “process” / “place” classification might suggest that responsibility for security can be clearly identified as either something that must be addressed by those responsible for writing courthouse design briefs for architects, (court administrators, building owners/operators, judiciary, or other stakeholders) or by those responsible for managing the people employed within the building or the cases heard in the court. In practice, identifying responsibility for devising and implementing solutions to safety concerns in court buildings is more complex.

5. **Responsibility for Devising and Implementing Solutions**

To overcome those limitations, we drew on Checkland’s work on systems thinking and the concept of “hard” versus “soft” thinking to analyze the discourse in terms of responsibility for devising and implementing solutions. This approach has been widely applied to decision-making across a range of fields.

In this conceptual framework, a “hard” system is one in which the observer or manager observes the system’s elements and assumes that they can manage it in such a way as to optimize its capacity to achieve pre-planned goals; it becomes

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about configuration and order. A specific application of hard versus soft, found in systems engineering, includes a sequence of problem solving steps: (a) define what is needed in the context of the existing system; (b) generate alternate systems that may satisfy the identified need; (c) select and implement one of these alternate systems; (d) monitor the effectiveness of the alternate system in meeting the identified need; (e) modify the alternate system based on feedback from the system; (f) introduce wider implementation of the alternate system and repeat the last two steps, as required. Soft systems, by contrast, are defined as those where the observer considers the system to be complex and created by those within it; change will emerge through learning about the system in conjunction with those who are a part of the system. Because it is assumed that individuals vary in beliefs and values, then improvements are expected to emerge through improved communication, collaboration and coproduction of the ideas.

The concept of hard versus soft systems has been applied more widely to a range of disciplines. Of interest to us in this paper is the application within the human resources arena (‘HRM’). Legge for example suggested two different models or orientations: “Hard” HRM orientation which is represented by the structure, functions and processes; and the “Soft” HRM orientation which focused on culture and behavioral orientations of organizational members. Consequently, hard HRM is unitary, focusing upon the resource side of human resources, that emphasizes costs in the form of “head counts” and places control firmly in the hands of management; the goal is to effectively align the human capital and numbers with the organizational requirements. Conversely, soft HRM assumes that the system will be more effective if employees are treated as valued assets who are an integral part of the system; improvement results from their commitment, adaptability and high quality skill and performance.

The themes identified in Table 2 below can be categorized as issues where managers can “do” something to apparently improve safety both in terms of Places and Processes. These are then determined as “hard”. Where the way that Place or Process is discussed implies a collaborative approach with multiple stakeholders, then this will be classified as soft – see Table 2 below.

<table>
<thead>
<tr>
<th>Hard</th>
<th>Soft</th>
</tr>
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<tbody>
<tr>
<td>Waiting</td>
<td>Intimidation</td>
</tr>
<tr>
<td>Security Presence</td>
<td>Intelligence gathering, planning ahead</td>
</tr>
<tr>
<td>Separation and Segregation</td>
<td>Preparation for the appearance/hearing</td>
</tr>
<tr>
<td>Breaches and escalation</td>
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</tr>
</tbody>
</table>

Table 2: Strategies and interventions identified for Safety sorted by Hard and Soft

6. Integrating the Classification of the Themes

By combining our two approaches to classification we have developed a typology to capture the themes and ideas emerging from the discourse. The purpose of this typology is to identify where influence and responsibility for improving court safety lies, and in doing so, assist courts in devising strategies to achieve it. We suggest that enhancing safety in courts requires collaborative approaches between those who create court spaces, those who manage them, those who devise court processes and the court users.

Table 3 below represents what we have called the four quadrants of court safety. On one axis, we have places and processes. Place denotes buildings but also includes architectural spaces, immovable objects, such as signs, furniture

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and equipment. Processes refers to any regulation, system or practice designed to frame the behavior of individuals. What becomes clear, as we develop the typology, is that a third “p” — people — is the subject of the other two, that is, places and processes. This includes those who use courts — litigants, media, members of the public, lawyers — and those who work in them — judicial officers, court staff, security personnel.

On the second axis, we use the word “hard” to denote something that is immovable, fixed or inflexible. It is likely that the people who are supported by hard processes are the court officials, judges and professional users, such as lawyers and prosecutors. “Soft”, on the other hand, denotes something that is focused upon ordinary court users and clients and is flexible, supportive and usually adaptable. The four quadrants are:

1. **Inflexible Environments** where the solutions are designed for the users through the architecture, building layout etc.;
2. **Regulatory Systems** where there are regulated, legislated and enacted processes which are designed and enacted for the users by others;
3. **Flexible environments** where the users are able to use and influence the places in ways that make them feel safer; and
4. **Supportive practices** where all involved work together to make the users feel as safe and secure as possible.

When the original elements identified in the discourse (Process and Place) are mapped to the typology the result is illustrated in Table 3 below:

<table>
<thead>
<tr>
<th>Places</th>
<th>Processes</th>
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<tbody>
<tr>
<td>Hard</td>
<td>Inflexible Environments</td>
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<tr>
<td></td>
<td>Regulatory Systems</td>
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<tr>
<td>Soft</td>
<td>Flexible Environments</td>
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<tr>
<td></td>
<td>Supportive Practices</td>
</tr>
</tbody>
</table>

Table 3: Four quadrants of Court Safety

Having applied the typology it becomes clear that the fundamental difference between the quadrants lies in who is responsible for the enactment of the safety solutions. To return to our example to illustrate:

The legal process involved will determine whether the victim and the perpetrator are required to be present at the same time in the same vicinity, which will in turn determine whether they have to wait (process) and where (place). The physical features of the court building will influence the extent to which an interaction between the victim and the perpetrator might occur: are there separate waiting rooms for witnesses and their supporters; are there discrete entrances for vulnerable witnesses? In terms of preparation, legal rules that apply for alternative methods such as video-link might play a role, (process) as might the availability or otherwise of those facilities (place). The provision of information to the victim about the processes and facilities could be important. The court itself might gather intelligence in a number of ways about the likelihood of encounters between a victim and the perpetrator (process), and might use surveillance systems to monitor the movement of the parties (place and process). The availability and form of support for the victim can be important in ameliorating stress and providing timely information on safety strategies (process). Screening systems at the courthouse door can detect weapons that might be used in a physical attack (place).

These can be further classified into safety issues that are aligned to the building and its layout and those aligned to processes that operate within the building.

Applying the typology (see Figure 3 below) helps us to see how safety might be analyzed, in order to be improved upon, in the given example:

<table>
<thead>
<tr>
<th>PLACES</th>
<th>PROCESSES</th>
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<tbody>
<tr>
<td>HARD</td>
<td><em>Inflexible Environments</em></td>
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<td>Separation</td>
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<td></td>
<td>Security Presence</td>
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<td></td>
<td><em>Regulatory Systems</em></td>
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<td>Breaches &amp; Escalation</td>
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Table 4: Victim of Violence: a safety typology
Table 4 demonstrates that there are certain aspects that are “inflexible” or difficult to adjust; they are “hard”. For instance, the physical limitations of buildings may or make not make it easy to provide separate and secure waiting areas to segregate victims and perpetrators, and to station security personnel at strategic points, although most courts provide perimeter-screening security. Surveillance systems and safety procedures for identifying and dealing with breaches of safety will exist; generally these might be capable of being adjusted over time, but not in the immediate situation. Waiting is an inevitable aspect to court processes.

However, supportive “soft” practices can make victims more informed about the process, their rights, the facilities and support available to them to deal with, or report, intimidation and make choices that will assist to keep them safe in the court environment. Intelligence planning enables the court to plan ahead minimizing potential conflict situations. These solutions require collaborative approaches between victims, their support groups, court and security staff. Enabling environments will also be user centric, they will be designed to assist users to easily find their way to places and facilities within the building that provide information or meet other needs: for example witness support facilities, legal aid and, importantly, facilities that provide for basic human needs such as toilets and drinking water, while they are waiting.

This example illustrates the application of the typology to only one situation where court users may experience safety concerns (although one that emerged frequently in the data.) Obviously what type of security measures are required to achieve safety for each individual court user in each court may depend on a large number of variables: the nature of the particular safety concern, the physical environment of the court, the type of matters dealt with by the court, the volume of cases, the demographic characteristics of the court’s users, its resources (both physical and human), the nature and availability of legal and support services, to name but a few.

7. Conclusion
In this paper we have used definitions of safety from court users to develop a four-quadrant typology of court safety. We use the axes Hard/Soft and Process/Place to establish the range of options available to court designers and managers in developing security strategies.

Current court security strategies are still often focused on hard systems, principally centered on aspects of place, such as “airport style” security screening and other features that emphasize perimeter security. However, in recent years there has been growing awareness that flexible environments and supportive practices can also play an important role in ensuring the safety of court users. This was borne out by the findings of this research, where court users were very clear that they need a combination of what we would describe as soft and hard approaches to assure long term, effective safety. Such approaches may also give the courts more flexibility to adapt to changing safety concerns in the future.

The typology we have developed is a useful way of identifying the elements of a court security strategy that encourages a holistic analysis of court user needs, and not just the provision of signifiers that a courthouse is “secure” or that a court process will be “safe” to participate in. In any given scenario all four quadrants should have entries addressing what is needed to ensure user safety. In order to ensure effective implementation of the strategies identified it will be critical to ensure that there is a focus on collaboration with the court users thereby enabling the co-creation of court safety. We advocate that further research is required to establish how to integrate court users into the development of these soft elements approaches to ensure that a full range of possible safety solutions is available to meet their needs.
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Could Innovation also Emerge from the Public Sector? Creating an ISO-like Judiciary Quality Management Standard
By Rodrigo Murillo, Bradford School of Management, U.K. and Roy Zuniga, INCAE Business School, Costa Rica

Abstract:
This paper explores the conceptual differences between the GICA-Justicia Project initiative and other available models,
process performance guidelines, and tools. Comparison was basically carried out through a review of specialized
literature, papers, and reports; semi-structured interviews and focus groups with experts in the judicial quality assurance
field from different countries; and applying the author’s experience as technical counterparts in the GICA-Justicia Project
(co-authoring a Quality Management Standard and training/auditing during the Quality Management System deployment
and accreditation stages). The paper is meant to unveil how the GICA-Justicia Quality Management Model and the
GICA-Justicia Quality Management Standard, as GICA-Justicia Project by-products, combine to create an innovative
process performance approach to quality assurance in judicial environments.

Keywords: GICA-Justicia Quality Management Standard, GICA-Justicia Quality Management Model, Judiciary Quality
Assurance, Judicial Process Performance Tool.

1. Introduction
As reported by Poder Judicial (2010b), an initiative called GICA-Justicia Project (GJP from here on), carried out in Costa
Rica’s Judiciary during 2009 and 2010, created the specific tailor-made GICA-Justicia Quality Management Standard
(GJP-Standard from here on) for Judiciary accreditations, by taking into account the particular characteristics of judicial
environments and linking ISO-9000 like compliance requirements in a holistic and systematic fashion, upon which
guidelines, a Quality Management System could be deployed.

The purpose of this paper is to describe the GPJ in-house experience; highlighting the novelty, systematic and holistic
features of both its GJP-Standard and also its Quality Management Model (GJP-Model from here on) created and
implemented. The paper targets to unveil to the reader the conceptual differences between the GJP-Standard and
other process performance improvement approaches available for judiciary environments. To the best of the
authors’ knowledge; heavily supported by literature review, focus groups and interviews to experts in the topic from
different parts of the world, besides their complementary experience as technical counterparts in the GPJ (co-authoring
the GJP-Standard and training/auditing during its quality management system deployment and accreditation stages), up
to date, this is the only available quality management standard specifically suited for adjudicative organizations where
auditing is vested on a national third party accreditation body. The paper keeps a chronological narrative sequence, in
order to aid the reader to follow GJP’s thread line.

2. Limitations
Literature review limitations to spot other approaches available that might rival the GJP-Standard, may constrain the
findings herein presented. For instance, although the literature review was chosen for being considered the most relevant
to the study, there is a chance authors may have missed some other relevant literature that could complement/enrich this
study, additionally to other similar initiatives that could potentially be developed in other parts of that world and which have
not been yet reported in journals or specialized literature. In addition, some may argue, especially the ones deeply
involved in the development and/or deployment of the models herein mentioned, that the analysis perspectives taken by
the authors might be debatable, due to a lack of deep knowledge and on-hands experience with the approaches. The
latter might also be influenced by approaches’ complexity and even conceptual differences. The authors intended at all

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Costa Rica
times to make justice to the approaches’ conceptual features found in literature review and supported by the interviews to experts.

3. The GICA-Justicia Project Experience
As stated in Mendel (2002 p. 410) when quoting Brunsson and Jacobsson (2000) “standardization refers to the attempts to explicitly formulate general rules defining and regulating activity”. In this way, standardization processes within organization are focused on developing procedures instead of setting goals and outcomes, and so, as cited by Meyer (1997 p. 10) in Mendel (2002 p. 410), this “content free rationalization imparts a procedural nature to quality management standards.” The impact result of the latter, when applied to organizations’ process and structures, is that it “produces a formal managerial reform program, which are combined with a monitoring mechanism or conformity assessment results in accreditation or certification regime” (Mendel 2002 p. 410).

For some years Costa Rica’s Judiciary had already incorporated within its strategic planning the provision of a tool to improve the delivery of quality judicial services to citizens, outlining an innovative project to design and implement a quality management model based on a set of costumed-made quality management standards for judicial environments; which could be foundational to trigger judicial quality management system accreditation processes in all types of courts throughout the country. Thus, in 2009 Costa Rica’s Supreme Court launched the GJP, reasserting its commitment to fill the gap of a specific quality management standard for the Judiciary (Poder Judicial. 2010a), structured with a target of consolidating public policy directly derived from the active involvement of citizens, in a quest to integrally solve judicial management and process performance issues (Poder Judicial 2010b). GJP’s ultimate goal was to improve service delivery for all Judiciary users; based on an approach that pursues transversal and replicable implementation of management practices throughout courts.

For data gathering and implementation purposes, two pilot offices were chosen: the Second Court of Appeal, in charge of labor and family matters, and the Domestic Aggression district court in the city of Heredia (See Appendix 1 for a description of the Costa Rica’s Judiciary System). The GPJ was carried out in almost 2 years, counting at the beginning with around 14 direct involved staff, split up into 10 judiciary civil servants performing administrative and coordinating tasks and a group of 4 technical advisors/consultants, within which the authors are counted.

3.1 The Familiarization with the Judiciary Stage
Initially, identifying and selecting most knowledgeable, cooperative and change-inclined judiciary’s staff as positive leaders to rapidly pass the voice that a particular project was being carried out, was a vital must-do initial endeavor, in special because judiciary staff number was small and was basically confined to two adjudicative offices. As technical team – which comprised the authors - was initially unacquainted of the judicial environment minutia; gaining insight into the subjective understanding of judiciary public servants was paramount. On the opposite side, as their field of work was legal, most judiciary staff was not knowledgeable of quality assurance concepts, and so, they were skeptical and fearful about the technical team, who were initially perceived as intruders. It was then necessary for the technical team to demonstrate their real interest on judicial servants’ daily stories targeting to gain their trust and so, as a natural effect, the underlying characteristics/nature of their conceptions and attitudes about process performance and process performance assessment could surface, besides of understanding, learning and speaking their judicial jargon. So that, natural, informal and unstructured ice breaking go with the flow interviews became a suitable means for the purpose pursued. Fully working along with judiciary staff provided a way to discover discrepancies between their says and beliefs and their real job performances. The fact that the technical team was neophyte to the judicial environment was considered propitious (from a more open mind to new ideas and concepts standpoint) as they naturally were compelled to make conceptual comparisons to other organizational cultures previously in contact with, which in turn contribute to a faster absorption of ideas and concepts and a better understanding of the Judiciary’s underlying organizational culture features.

As complementary tasks to get acquainted with Judiciary’s systemic and process performance patterns and structural service delivery flaws, other sources of information were also reviewed: a Judiciary’s internal good management practices pool, previous newspapers’ publications pointing out process performance problems, service delivery user’s complaints provided by Costa Rica’s Judiciary Service Comptrolling body and a national service perception survey performed by a third party consulting firm. The analysis of all of this data targeted

3.2 The citizens’ participatory workshops stage
During a two month window, 17 citizens’ workshops were carried out throughout the 15 Costa Rica’s jurisdictions, where 1100 participants were accounted (Poder Judicial 2009). Workshops participants were requested to both fill out 2 questionnaires: a) an in-house semi-open questionnaire intended to capture service delivery experiences and general process impressions and perceptions about the Judiciary b) ServQual-Service Quality (Parasuraman et al 1988), chosen to systematically capture and measure user’s service delivery satisfaction (See appendix 2 for the description of the
ServQual model), in order to identify problems and their underlying causes related to service performance. Problems spotted by ServQual were thought to provide an empirical structure to subsequently write the GJP-Standard and for process improvements’ implementations. The original ServQual version was thoroughly reviewed and adapted to adequately it to Costa Rica’s judiciary jargon, which required of several lengthy meetings and small pilot runs to validate wording, avoiding as much as possible the tool’s denaturalization.

Additionally as reported by Poder Judicial (2010a), the adapted ServQual version was employed in a nationwide survey for all Costa Rica’s jurisdictional districts by means of a stratified sampling plan, using a 94% confidence level and a 3% error factor, pursuing to obtain an average service delivery satisfaction index for the average costarrican judiciary user. Results showed that up to 85% of national end users had some sort dissatisfaction with the services provided by the judiciary. As targeted, findings helped in spotting the main sources of users’ dissatisfaction, where the most prominent sources tuned out being low service delivery speed, service delivery within a promised time window, constant unwillingness to answer queries, lack of accurate report upon service conclusion and lack of commitment of judicial public servants to perform as promised.

3.3 The GJP-Model and GJP-Standard development stage

Due to their close relatedness, the GJP-Standard emerged simultaneously with the GJP-Model.

3.3.1 The GJP-Model

As reported in Poder Judicial (2010b), the GJP-Model was developed as a mandatory foundational requirement not only supportive of the specific GJP-Standard development but also for any other future judiciary related quality management standards that could potentially be created. The GJP-Model was primarily founded on the explicit needs of Judiciary’s internal and external users previously identified during the familiarization stage (Poder Judicial 2010a), and its functional role was to become the highest rank ruling guideline for establishment the of any quality management standard related to the GICA-Justicia initiative in particular or any other quality management standard related to the Judiciary in general. The rationale was that, as explicitly required by the GJP-Model, insofar as adjudicative offices engage in continuous improvement cycles, a particular focus should be given to users’ service requirements satisfaction, for which, quality objectives, management time cycles, labor quotas and performance evaluations must be set and adapted in a permanent, continuous and sustainable fashion. Figure 1 shows the GJP-Model.
The GJP-Model’s components and supportive constituents are shown in appendix 3, described and adapted from Poder Judicial (2010a, p. 39). As the GJP-Model’s purpose is generic, the terminology used is also generic.

3.3.2 The GJP-Standard

The GJP-Standard was created by taking into account all particularities of adjudicative functions, including administrative, civil, property or criminal and others, putting together the core requirements of any quality management standard and including adjudicative processes performance specifics, in accordance to Poder Judicial, (2010a) as cited in Zuniga and Murillo (2013). The GJP-Standard provides minimum regulatory character within its description and consequences, especially because its guidelines only relate to process performance matters and avoids intervening with adjudicative topics which are already set by national legislature (Poder Judicial 2010a). As stated by Zuniga and Murillo (2013), the GJP-Standard was written employing characteristic adjudicative jargon to help public servants working in this environment to easily familiarize with it. Its requirements intend to apply to any judicial office exercising adjudicative functions, regardless of its size.

The Validation Workshops

The GJP-Standard went through several development stages based on a buy-in philosophy of getting all stakeholders on board to incorporate their views into its structure. Initially, several drafts were written, as a joint effort of technical staff and judiciary internal personnel, employing as inputs all findings previously gathered. After this iterative process was finished and a solid draft had emerged, a series of lengthy and comprehensive review and validation workshops initiated, which at the end aggregated more than 300 people (Poder Judicial 2010b). The first validation workshops were performed with internal judiciary public servants, and later on, national experts deeply knowledgeable of the local adjudicative environment were included. As the GJP-Standard progressed, international experts, with several years of experience implementing quality management systems in adjudicative environments, mainly based on ISO 9000, were also requested to participate (Tukiannen et al 2009). It is worth noting that the first version was written and approved not to remain static but to evolve over time, adapting it to adjudicative offices changing needs as a result of the various stakeholders’ direct feedback.

The Structure

The GJP-Standard comprises 5 main chapters linked to one another as its target is to perform systematically, and includes appendixes that explain concepts, internal and external bodies’ requirements and vocabulary. The following is brief explanation of its 5 chapters:

1. Quality Management System Organization: quality management system basics are defined, as well as transversal deployment guidelines in gender equality, vulnerable populations’ accessibility, transparency, ethics, free citizens’ participation and involvement and environmental management. General requirements to deploy a documented quality management system are outlined and quality management system manager’s general characterization and related responsibilities are provided.

2. Documentation and Communication Management: Basic documentation hierarchy and guidelines for tracking documents and versions required by the quality management system is described. Moreover, guidelines to establish communication from/to end user and internal judiciary servants are described, as they are the main focus of the quality management system, and so, they are potentially a feedback source for improvements to be introduced in the quality management system.

3. Resources’ Management: Guidelines to properly manage required resources for the quality management system are given and general internal processes’ functioning are described; specifically the ones related to facilities, IT systems and services, and staff, based upon the fact that human resources are the most important assets for court to deliver judicial services (selection, competencies, and training, and career development are described)

4. Judicial Process Realization: The basic, general and common characteristics of the non-jurisdictional processes related to judicial offices are described, given that GJP-Standard pursues to become as standard and applicable as possible to any adjudicative office. General requirements regarding time management, documents and file management, hearings’ management and input/output activities management are described by means of a related process delivery approach which is basically focused on liking users’ requirements with their satisfaction. The general process delivery approach allows detecting and managing improvement opportunities through non-compliance management and corrective and preventive measures implementation. As seen on Figure 2, the process delivery approach that characterized any generic judiciary process sequence comprises the 4 main steps and 4 ancillary activities. Every step and ancillary activity is explained in appendix 4, adapted from Poder Judicial (2010a, p 44). As in the case of the GJP-Model terminology employed is generic.
5. **Performance appraisal and quality management system improvement**: The required general guidelines for the quality management system improvement are described, specifically emphasizing on tracking performance indicators, system auditing, non-conformities management, end users satisfaction measurements, civil servants performance assessment and internal reviews.

3.4 The Quality Management System Deployment Stage

Judiciary public servants, involved in the project since the beginning, were trained by the technical team as *internal quality management system managers*, *system’s owners or system managers* in another words- whose task was to understand the GJP-Standard’s requirements and then, create and/or gather the necessary evidence to proof non-applicability or requirements’ compliance, in addition to coordinate, implement and track all changes required by the deployed *quality management system*. The intensive training was a *guided learn-by-doing process*, in which *system managers* and other judiciary servants accompanied the technical team in the creation and development of all the quality management system’s compulsory documentation: a *quality manual*, clear set *quality objectives*, written *protocols* explicitly required, written *protocols* to document courts’ internal management practices, management practices *instructives* and *records*. Since there were not previous references for many of those documents, it was necessary to create them *from scratch*.

Additionally and as formally required by the GJP-Standard, at least one *internal audit* was required to be performed prior to the *accreditation audit* in order to determine quality management system’s compliance, for which the technical team served as *internal auditors*. On their side, *system managers* supported by another designated personnel were dedicated to prove compliance to GJP-Standard’s requirements and also to adapt corrective actions when non-compliance issues were pointed out by *internal auditors*, under this very same *learn-by-doing* philosophy.

Regarding improvements’ introduction, the initial process performance changes were put into practice, targeting to correct the dissatisfaction sources pointed out by ServQual. As expected, implementation also required of an extensive training to judicial public servants by carrying out several meetings and coaching sessions in order to explain to them about the changes to be introduced and medium term benefits expected from their short term efforts. By introducing in detail the steps to follow, much of the shared organizational fear to chance, turned into a cooperative attitude in most judiciary servants within the pilot courts. The many cultural organizational findings, which surfaced during the stage of familiarization, were extremely useful during those coaching-like meetings. One of the major implementation challenges encountered on one hand by *system managers* and on the other by regular working personnel was to establish and
implement performance goals and work quotas to speed up the system’s throughput in both pilot courts, as a way to increase cases’ backlog drainage. Some practical implications of the GPJ will be shown in a subsequent section.

3.5 The Quality Management System Accreditation Stage
A sine qua non condition for the quality management system accreditation to take place implied the creation of a Judicial System’s National Accreditation Body, called National Quality and Accreditation for Justice (SINCA-Justicia in Spanish); in order to comply with one of the GICA-Justicia Quality Management Model’s guideline which explicitly required: “the involvement of a National Authority for Quality and Accreditation for Justice” (See sub-phase Accreditation within Phase 2 in appendix 3). SINCA-Justicia was legitimized through the approval of a national bill signed in 2010 by Costa Rica’s President, the State Minister and the Justice Minister, comprising 7 impartial institutions from different sectors (Poder Judicial 2010b, p61). This body was an independent third party nationwide accreditation committee in charge of approval or rejection of quality management systems through accreditation audits. It actually held a session to determine, who, taken from the pool of technical counterparts, were going to serve as accreditation auditors, and so, the authors were legitimized as such. The thesis behind SINCA-Justicia’s decision was that due to the novelty of the GJP-Standard, only the technical team involved in its development, were capable of deeply understanding GJP-Standard’s minutia and systemic linkage. The option of familiarizing external experts in quality assurance with general GJP-Standard’s requirements was overlooked due to GJP’s time constraints. Thus, it is important to notice that during the implementing stage, out of the technical team, authors were kept away from helping judiciary servants in deploying the quality management systems in both pilot courts, as they needed to be as detached as possible from a previous knowledge about the quality management systems in order to maintain impartiality and objectivity. It is also worth noting that during the accreditation audits, judiciary servants served as observers to legitimize transparency during the entire process.

Every single GJP-Standard requirement was typified and assessment points were allocated in order to count with a positivist weighting rationale to determine quality management system’s compliance, regarded in terms of non-conformity, low non-conformity, high non-conformity and conformity. The Domestic Aggression District Court had a maximum achievable score of 1500, out of which it scored 1423 points and so reaching a 95% compliance level. According to the final assessment audit report (Poder Judicial 2010b) 4 low conformities, 0 high conformities and 44 conformities were found, in addition to 12 non-applicable requirements. The Second Court of Appeal, also had a maximum 1500 achievable score, reaching a 81% compliance; within which 8 low conformities, 0 high conformities, 49 conformities and 3 non-applicable requirements were found (Poder Judicial 2010b). Both courts approved the accreditation audit, as the minimum compliance percentage guideline set by SINCA-Justicia was 80%.

3.6 Continuous Improvement and Institutional Replicability.
The idea behind the 2 pilot’s experiences was to initiate a GJP-Standard replication quest in other district courts: quality management good practices implemented and proved successful were expected to be passed on, adapted and then adopted. For such purpose and in order to comply with the GICA-Justicia Quality Management Model requirement “to constitute an internal Quality Management Office” (see mainstay 3: Integral system approach in appendix 3), a specialized body called CEGECA (in Spanish Centro de Gestión de la Calidad: Judiciary Center of Quality Management) was formally created with Supreme Court’s approval (Poder Judicial 2010b, p76). With a modest financial and human resources allocation, CEGECA’s initial responsibility revolved around the centralized management of:

1. Implementing quality management systems based on the GJP-Standard in the different courts aspiring to be accredited,
2. Tracking performance improvements for the accredited courts, in a centralized fashion.
3. Evaluating, developing and advising best practices for current accredited courts or courts on the accreditation path.
4. Drafting, reviewing and proposing new versions of the GJP-Standard based on improvements opportunities found during implementation experiences.
5. Coordinating and participating on the development of new quality management standards’ drafts related to other judiciary bodies.
6. Coordinating and performing pre-accreditation audits.

4. GJP-Standard: Is it really an innovative quality assurance approach?
As reported by Ng (2011 p. 111) “next to quality organization theories and learning organization theories, there also exists models of quality, both nationally and internationally.” The United States Trial Court Performance Standards and Court Tools, the Dutch RechtspraakQ, the Finnish Quality Benchmark Project in Rovaniemi, the German Lower Saxony benchmark effort, the Australian Justice Scorecard, Singapore Quality Award, the Swedish Working with Quality in Courts Manual, European Commission for Efficiency of Justice (CEPEJ)’s Checklist for Quality Justice, International Consortium
for Court Excellence, the EFQM (European Foundation for Quality Management) Award are all available approaches/models specifically intended for the judiciary, pursuing quality assurance and process performance improvements (United Nations 2011).

4.1 The Conceptual Comparison to other Approaches
The above-mentioned approaches/models have common characteristics of focusing on users’ satisfaction measurement, court management, personnel, financial and material resources, access to law and justice, court processes, among others (CEPEJ 2008, p. 251). As previously stated in literature review, those approaches work “well in promoting specific important areas of quality of justice” (Contini and Carnevali 2009, p. 9), and with the exception of CEPEJ’s Checklist and specially the Swedish approach, their problem is their “narrow view of quality” and a paucity of an “inclusive supportive dialogue and organizational learning” focus (Contini and Carnevali 2009, p. 9). Benefits of the latter are highlighted precisely because judicial quality can be assessed and improved by contribution of all actors: judges, managers, stakeholders (Contini and Carnevali 2009, p. 15) since as stated by United Nations (2011 p. 101): “performance evaluation must be assessed not only with legal and managerial methods, but also by creating channels to listen court users and more generally public expectations.” In what follows a brief review of the known quality assurance approaches/models in what pertains their general quality management affine features is given:

Standards developed by the National Center for State Courts during mid-90s, are a set of 22 goals and 68 indicators, and not quality management standards for quality assurance accreditation per se, which regular basis measurement may become difficult to sustain (Schaufler 2007). In addition the Australian Justice Scorecard and Singapore Quality Award although intended for the judiciary quality assurance purposes, are basically self-assessment tools which very much resemble the well-known Malcolm Baldrige Award.

Rovaniemi’s benchmark project basically concentrates on developing in-house quality indicators for 6 areas: process, decision, treatment of the parties and service users, proceedings’ promptness, judge’s competence and professional skills, and adjudication’s organization and management, where each year potential improvement that merit further attention may be addressed during the quality conference. The measurement methodologies comprise self-evaluation, surveys, evaluation by a group of expert evaluators, statistics, and statement by the courts itself. The German Lower Saxony effort basically is founded on this very same concept, so that, both models become in a general sense self-assessment tools, which was particularly corroborated for the Rovaniemi’s benchmark project case by Tukiainen (2009).

As stated in Zuniga and Murillo (2013), CEPEJ’s 200-items operating performance checklist is basically an introspection questionnaire for self-assessment of judges, courts or entire judiciaries, covering macro/micro dimensions and including stakeholders’ voices. Unfortunately it has limitations transforming quality assessment into “innovation, organizational change or specific policies” as stated by Contini and Carnevali (2009, p. 10), in contrast to the Swedish Quality Work Manual, which relies on quality improvements boosted through joint reflections, incorporating the legitimate voice of all internal/external relevant players. So, instead of simply reaching sets of goals as the other approaches do, it seeks incremental improvements in service areas considering local needs: resources, organization and users’ expectations (Contini and Carnevali 2009, p. 11). The Swedish dialogue model takes into account suggestions of both internal staff and external users, gathered through interviews carried out by judges themselves, later used for quality circles-like meetings (Hagsgard 2008, p. 1), which is certainly a clear notion of a foundational continuous improvement quality assurance principle.

Rechtspraak in the Netherlands, share many similarities with the GPJ-Standard conceptions as it is a judiciary’s common and overarching quality system, intended to apply to all courts pursuing quality improvements in a planned manner (Netherlands Council for the Judiciary 2008). Rechtspraak is based on the INK (Instituut Nederlandse Kwaliteit: Dutch Institute for Quality) model which is based on the EFQM model) which its conceptual framework and comprises 9 areas: leadership, strategy and policy, management of staff, management of resources, management of processes, customers and suppliers, staff, society and management and finance. In addition a tenth area of improvement and innovation was added. Each court and each sector within a court has its own set of quality regulations which are used to measure all ten areas, through a mix of adjudicative and process performance quality dimensions: independence and impartiality, timeliness of proceedings, expertise of the judges, treatment of the parties at court sessions and judicial quality, setting targets for them. As they are constantly under development the quality system certainly exhibits process improvement characteristics. It is based on four measuring instruments: court-wide positioning study, client satisfaction survey, visitation and audits which performed by court’s staff in the very same way internal audits are carried out for the GPJ-Standard. In addition, there is a complaints procedure and a peer review or intervision, where the latter is a type of consultation between colleagues performing the same work but not working together, which primary target it to improve the judges’ individual performances in special related legal and adjudicative matters (Netherlands Council for the
are to be highlighted as founder members. 2

It appears that exits a difference regarding the accreditation process, as in the case of the GJP-Standard, in the sense that “courts worldwide can voluntarily assess and improve the quality of justice and court administration they face”. So that, the IFCE does not actually requests a fixed set of performance tools, remaining flexible for a court to choose how it desires to address a particular issue. As stated in ICCE (2013a, p. 7) the idea is “to closely link globally accepted performance measures with the Framework methodology and to articulate best practices in court and judicial administration”, exactly matching the concept behind the GJP-Standard which does not explicitly state how improvements should be done and what tools are to be used for such a purpose.

The set of improvement tools is taken from a spectrum of approaches, models and tools used by the different ICCE’s members (See appendix 5), some of which are mentioned in or related to this paper: such as United States Trial Court Performance Standards and Court Tools, Dutch RechtspraakQ, Rovaniemi’s Quality Benchmark Project, Singapore Quality Award and CEPEJ’s Checklist for Quality Justice. The rationale for this arsenal of different approaches, models and tools to exist is actually very pragmatic since as reported by ICCE (2013a, p. 26) “a court should not be hesitant having identified a problem or area for improvement to look first at what else has been done around the world to address similar court issues”, which “can save resources and time by providing some ideas of what may or may not work”. The latter certainly matches the encompassing supportive replicability principle of the GJP-Model.

Although structured differently, the IFCE’s seven areas comprise all the GJP-Standard’s adjudicative offices dimensions, pursuing the same holistic and systemic linkage. In fact, conceptually speaking the IFCE’s goes beyond the performance dimensions of the GJP-Standard, in the sense it aggregates a Public Trust and Confidence dimension as it is argued that “without public trust a court is hampered in its ability to function as an effective court” (ICCE 2013a, p. 11). Although the GJP-Standard claims to be a tool to increase public trust in the Judiciary, that fact is it does not incorporate a specific chapter with requirements to assess this dimension. In fact, this paucity in the Latin-America’s court systems is considered to be due of its idiosyncrasy, maturity and especially its reluctance to somehow be assessed by the public.

The IFCE’s flexibility concept extends to the adjudicative office’s willingness to embark in its pursuit for court excellence in the since that “courts worldwide can voluntarily assess and improve the quality of justice and court administration they deliver” (ICCE 2013a, p. 6), which is also an important premise in the GJP-Standard accreditation quest. However it may appear that exits a difference regarding the accreditation process, as in the case of the GJP-Standard all requirements

2 The additional members are: Australian Capital Territory Magistrates Court, Commonwealth Judicial Education Institute (Canada), Council of Judges of Courts of General Jurisdiction of Ukraine, County Court of Victoria, Australia, Customs Appeal Tribunal Malaysia, District Court of New Zealand, Dubai International Financial Centre Courts, The European Commission for the Efficiency of Justice (CEPEJ), Family Court of Australia, Federal Circuit Court of Australia, Judiciary of Guam, Judiciary of Swaziland, Land and Environment Court of New South Wales (NSW), Magistrates’ Court of Victoria, Australia, Magistrates Service of Papua New Guinea (PNG), Palau Supreme Court, Queensland Civil and Administrative Tribunal (Australia), Spring Singapore, Supreme Court of Brazil, Supreme Court of Victoria, Australia, Supreme Court of Nepal, Supreme Court of the Philippines, Supreme Court of Seychelles, Supreme and National Court of Papua New Guinea (PNG)and the World Bank.
must be met - unless non applicability is demonstrated - in order to be awarded with the accreditation, and so it turns into a pass-no pass process. In the case IFCE it appear that is up to the court which areas are to be assessed since as stated by (ICCE (2013a, p. 26): “in the end it is for a court itself to decide what it wishes to do”, argument which is actually reinforced by ICCE (2013a, p26) by stating that “the Framework is flexible and allows each court to determine its own priorities and therefore its own path to improving its performance”.

Although both approaches follow a weighted auditing scale, the major difference between them is precisely the auditing process. First, as previously stated the GJP-Standard adheres to a pass/no pass scheme meanwhile the IFCE is assessed in notchs as “excellent, very good, good, near benchmarks, poor or no results” (ICCE (2013a, p23) and so the scale is divided in 3 pass notchs and 3 no pass notchs. The latter is certainly more advantageous, as it poses more challenges to the court which had passed the audit in order to keep on improving the quality management system towards excellency, where it is the “court that controls and undertakes the process and it is the court that sets the targets it will measure its performance and success against” (ICCE 2013b, p. 2). Secondly, and although the same principle is followed by both approaches as “courts see their own performance from one limited perspective but engaging with court users opens up a range of new perspectives” (ICCE 2013a, p. 15), the major difference is actually concern to the way the whole auditing process is carried out. Although the IFCE “calls for active involvement of the court’s other professional partners, including the legal profession/bar, public prosecutors, law enforcement agencies, and other governmental and non-governmental agencies” (ICCE 2013a, p. 15) it remains a self-assessment process, contrary to the GJP-Standard accreditation process which is vested on SINCA-Justicia as a third party external body. Another difference is that in the case of GJP-Standard, intervals are set by SINCA-Justicia every two years, although in the case of IFCE “is recommended that courts should aim to do an annual self-assessment but the timing is a matter for each court (ICCE 2013a, p. 13).

In summary, as stated by Contini and Carnevali (2009) when cited by Zuniga and Murillo (2013), even when Swedish Quality Work and the CEPEJ’s checklist, in addition to the Dutch RechtspraakQ and the International Framework for Court Excellence seem to perfectly align to a general quality assurance philosophy, pushing evolvement within time through stakeholders contributions; and even when they both aim to be similar to Kaizen (continuous improvement) or TQM (Total Quality Management) models exploiting available resources to get better services, redesign procedures, structures and relationships with users/stakeholders; they both lack of a paramount quality management systems’ feature: assessment from a neutral third party.

Nevertheless, it must be noticed that although the EFQM is a self-assessment tool (as previously stated), the EFQM Award has been considered one of the most stringent compliance model as only 10 out of around 30000 companies implementing the EFQM Excellence Model worldwide get to be chosen champions each year. In fact, a team of independent assessors, chosen out the pool of EFQM members, spend an average of 300 hours reviewing documentation and conducting interviews on-site per applicant, in order to gather a holistic overview of organization’s strategy deployment. Moreover, it is vested on an EFQM Jury, as an independent body comprising of senior managers from leading organizations, to review applications and determine the level of recognition to be awarded (EFQM 2013). As per the latter, the model becomes a third party audited tool, however, and even when there are public institutions applying for the award, literature review did not render a case of its application in an adjudicative organization.

The fact and the matter is that traditionally, as stated by United Nations (2011), judiciary inspection/auditing bodies have collected information and evaluated courts’ functioning from legal perspectives, and then reported to both governance bodies and/or the public. Documental search rendered the existence of only one third party body (United Nations 2011 p. 115) performing similar functions to SINCA-Justicia: the Inspection Directorate of Jordan Ministry of Justice, assessing performance of all types of courts considering both legal (law proper application and cases’ procedures, decisions’ soundness, postponements’ reasons) and managerial (sentence issuing time, cases’ yearly percentage) performances. Although Directorate’s audits are targeted to be performed monthly, tight evaluation schedule and limited resources available has pushed internal inspections to be performed yearly, based on specialized criteria and special subordinates’ performance assessment forms (United Nations 2011 p. 116). Prior to Directorate audit, internal audits were performed within courts, which is a distinctive quality assurance system internal audits’ feature. However, and although Directorate is a governmental legitimized body as SINCA-Justicia is (Poder Judicial 2010b), audits are performed following a set of criteria and not proper Quality Management Standard’s guidelines, which is a foundational requirement for any quality management system’ deployment.

4.2 GJP-Standard’s Holistic and Integral Foci
The view of judiciary performance in developed countries, as claimed by ICCE (2013 p. 27) is that “almost every court faces the same kinds of problems of limited resources and increasing workloads with judges and staff working exceptionally hard and seeing no answer but more resourcing.” However, in governmental bodies, especially in Latin-
America on top of the latter, a lack of commitment of public servants, high bureaucracy and uncoordinated processes and decisions might also converge to negatively impact service delivery and process performance, which in turn force a characteristic “adding patches” issue solving function (Parody et al 2009), without integrally boarding the problems from their very same roots. Those short term problem solving implementations, which in many cases lack of technical rationales as they simple obey to occurrences of decision makers, end up being just a waste of resources as concerning issues are only partially or never solved (Hernandez et al 2009). In fact as stated in ICCE (2013 p. 27): “management by anecdote and feelings has no place in modern management and history has shown that invariably rushed responses exacerbate rather than alleviate problems.” The absence of sustainable solutions to process performance issues has been a distinctive common denominator of Judiciary institutions in Latin America and the GJP initiative has actually targeted, at least conceptually, to become an integral tangible solution to it (Parody et al 2009). Unfortunately, to the time being, only 5 accreditation experiences have been successfully achieved in district courts in Costa Rica, for which there is no yet, much available empirical data to support the practical holistic benefits of the GJP-Standard and the GJP-Model. So that, both GJP-Standard and GJP-Model holistic approach could only be conceptually decanted, until more empiric evidence becomes available to prove its live systemic potential, since as supported by ICCE (2013 p18): “actions may well be considered anecdotally to be working well, but only through measurement and feedback will the real impact be identified”. 

The GPJ pursued to concentrate all judicial reform efforts under a single management policy. This policy - intended also to strengthen other public policies - targeted to be governed by rules and minimum regulatory requirements for all processes (with a direct impact on the quality of justice service) performed within the Judiciary. It is evident then that the GPJ was conceptually designed to agglutinate all required efforts, stakeholders and institutions related to judiciary process performances’ issues and render an integral quality management standard which aim was to solve the intricate issues related to judiciary process performance. The creation a GJP-Standard required the cooperation of many agents, in especial technical personnel that could systemically analyze and link complaints, requirements, comments and technical advice provided by national and international stakeholders and capture them together into a quality management standard. The richness of all the data sources used during the entire GJP-Standard and GJP-Model creation, certainly provided a mixture of different points to views, incorporated in the holistic/systemic GPJ character.

As recognized by Tukiainen (2009): “the GPJ was extremely ambitious in the sense that it had a much broader and systemic focus, surpassing the characteristics of the project in Finland which basically revolved around just setting performance goals for courts and judges.” The previous statement was extremely revealing to corroborate the conceptual integrality of the GICA-Justicia approach; in especial because a common denominator in literature points out Rovaniemi’s Project as a benchmark for judicial institutions in Europe, which in addition is a continent with a longer tradition for standardization (Mendel 2002 p. 413). Nonetheless, when compared to above mentioned approaches, the GJP-Standard exhibits a major deficiency, as it fully lacks of internalizing the costs of quality related to the process performance. There is vacuum in general, regarding assessing judicial processes from a monetary perspective, as in general, performance is not linked to budget allocation in the Latin-American Judiciaries. In that sense, an accredited court could reach a high performance regardless of the resources required to achieve that and so become effective but not efficient.

4.3 GJP Standard’s Systemic Linkage Features

The main features that characterized any quality management standard are easily identifiable on the GJP-Standard. The GJP-Standard is divided into a series of five chapters which are interrelated to one another, and their specific requirements are systemically linked. The GJP-Standard specifically requires that whole quality management system must be fully documented, existing a very well defined hierarchy of documents. Requirements for documentation control are specifically set for the quality management system and as it evolves, manuals, procedures, records, etc., are mandatorily required to be updated and obsolete documentation identified with supersededes nomenclature.

The GJP-Standard requires for a quality management system to be set up that a system’s manager be designated and becomes the system’s owner in charge of coordinating the quality management system deployment; certainly another clear common characteristic of any quality management system. The system’s manager task is also vested, but in a higher institutional hierarchy, on the CEGECA body, as the judicial office with the responsibility of the institutional coordination of quality assurance matters: implementation, training, and coordination of the various internal quality management systems’ deployment efforts.

Although distinguishable in many of the above mentioned approaches, another GJP-Standard important feature is its expressed requirement - when deploying a quality management system - to get embarked in a continuous improvement quest through the implementation corrective actions: in the best case when high/medium non-conformities are found
during internal audits performed by either the internal court personnel or by CEGECA, or in the worst case when low non-conformities are spotted by SINCA-Justicia at the time the accreditation audit is carried out.

In fact, the existence SINCA-Justicia as a third party impartial body is probably one most prominent characteristics of the whole GICA-Justicia quality assurance institutional mesh, as the body was specifically created to only serve the GPJ initiative. This formal and institutionalized body actually serves as a formal Standard Development Organization (SDO), providing the proper conditions for both the GJP-Standard and the GJP-Model to evolution: insofar as flaws in the current version of the GJP-Standard are found, changes are introduced, pushing the its evolvement in a continuous improvement cycle.

In summary, as suggested by all the previous arguments, a quality assurance process performance initiative, founded on a tailor-made ISO-9000 like quality management standard specifically designed for judiciary environments - assessed by a formally legitimized third party body - had not been carried out or least had not been reported (Contini 2013; Ng 2013), until the appearance of the GJP-Standard in 2009.

5. Practical Implications
In accordance to Zuniga and Murillo (2013 p.8) within judiciary environments there is a widespread perception quality management systems are just a means to measure performance to justify staff downsizing; blinding them to foresee the potential they offer to perform better. In addition, it exists a constrain regarding extra process capacity (more staff than required), as staff relocation to other judiciary areas is not as immediate as in private firms, especially because labor code protects judiciary public servants (if calculated, those idle positions would certainly surface process inefficiencies financially speaking). During the GJP-Standard deployment phase, process turn around experiences were executed successfully, not without facing the initial resistance from judiciary staff, skeptical of the future possible results but majorly reluctant to have their performance assessed. There were many process performance benefits derived from its implementation. Herein we present only a high impact example within a six month window, as the Second Court of Appeal experienced a case’s backlog drainage from almost 650 cases to the targeted average of 200 cases as reported by Zuniga and Murillo (2013). See figure 3.

Figure 3
Longitudinal view of back log behavior in the Second Court of Appeal in Costa Rica, before and after the deployment of the GICA-Justicia Quality Management Standard.
Source: Zuniga and Murillo (2013 p 7)

As reported by Marin (2013) for the five courts accredited in Costa Rica up to date, the integral solutions promised were not that evident for judiciary staff at the beginning; however, as time has gone by, processes in courts have thoroughly improved and judicial servants have acquired consciousness of the systemic implications when underperforming, creating a more disciplined working environment. It would have been almost impossible to persuade the judiciary’s staff just by providing qualitative arguments, for which the solid numeric data collected, was paramount in grounding and clarifying judiciary’s staff perceptions about the process performance and end user´s requirements.
6. Assertions
When it comes to the judiciary, the authors agree on the argument that “the mere existence of court policies and procedures by itself does not guarantee excellence in court performance” (ICCE 2013a, p.18). In fact, Hagigh (1992) when cited by Mendel (2002 p. 413) argues that adherence to a particular quality management standard ensures, through a third-party verification and internal “surveillance” audits, that an organization counts with a documented quality management system, understood as a written set of rules and procedures, following the quality management system’s guidelines. Thus, although many of the approaches and models herein explored intend to improve process performance and service delivery for the judiciary, none depicts an ISO-9000 standard like structure, especially in the sense that accreditation is mandatorily carried by a neutral national third party body. Many academics and practitioners in the specific judicial quality management field, especially researching and working in developed countries, may agree that performance assessment (See Appendix 6 for performance evaluation benefits) and quality management operationalization may need to be as flexible as possible and so, reducing the constraining mandatory requirements imposed by ISO 9000 like quality management standard. However, the operational reality of Latin-American judiciaries, where budgets are not related whatsoever to staff performance in particular or court performance in general; and where it exists a spread-out reluctance of judiciary staff to open to performance assessment; the binding nature of the GJP-Standard -after a court has voluntarily agree on its adoption- constitutes an reinforcing and leveraging feature to promote accreditation. This argument justifies the great paucity the GJP-Standard exhibits regarding the assessment of costs in relation to process performance. Nevertheless, as recognized by Zuniga and Murillo (2013 p. 8) “it should be taken into account that quality standards cannot be universally and indiscriminately applied to any and all situations. It is possible that in certain countries, the characteristics of courts do not allow deployment or they may render it useless.” In fact, regarding Central American countries – which could be extrapolated to the entire Latin-America - it is also recognized that “underlying structural conditions in the system need to be addressed first” (Zuniga and Murillo 2013 p.8).

The entire GPJ was designed to respond innovatively in filling some gaps found in all other approaches analyzed on this study, by creating a model adjusted to the specific requirements of the Judiciary sector, in a quest for quality assurance and sustainable service delivery performance improvements through deployments of quality management systems in all related environments. Although, the other models may comprise particular dimensions and characteristics that represent distinguishing features, such as the Public Trust and Confidence dimension depicted by the IFCE, the GJP-Standard has also its own novel features that only such a specific quality management standard may offer. For instance it comprises guidelines for alternative conflict resolutions or court functioning concerning vulnerable population sectors, paramount elements of any judicial environment that would be fully overlooked by any other quality management standard such as ISO 9000 just to mention the most well-known one. Those adjusted requirements for the judiciary environment make the GJP-Standard an ISO-9000 standard like innovative continuous improvement tool, provided that the absence of quality-performance cost related requirements is ignored.

In the light of the New Public Management approach, concerning judicial systems, two key statements describe how the GJP-Standard could become a promising process performance improvement tool. The first one, as stated by Moore (1995, p.28): “The aim of managerial work in the public sector is to create public value just as the aim of managerial work in the private sector is to create private value”. The second one is excerpted from a study published by CEPEJ, where Berthier and Pauliat (2008) state: “The administration of justice is now viewed as a tool supposed to restore the public’s confidence in their justice system”. The fact that Costa Rica’s Judiciary is a public institution turns the GJP-Standard into a potential new innovative tool promising to improve judicial process performance. Its implementation in adjudicative offices could directly benefit national budgets, employees’ working milieus and especially end users, who among other things will see a positive impact in their service experience through faster response times, just to mention one key factor. The GJP-Standard is a potential public value creation tool, targeting on one hand to improve citizens’ perception of service quality and on the other hand regaining public confidence in the judiciary. As a matter of fact, from an organizational reputation point of view, the GJP-Standard adoption represents a potential performance credibility seal for the judiciary in the same way the ISO 9001 standard for instance, provides service quality management credibility to traditional organizations.

The subsequent effects of the five current GJP-Standard implementations are to gradually reproduce, not only in all district courts throughout Costa Rica, but also internationally. The fact that the GJP-Standard is new in the worldwide scenario and Costa Rica is the only country in the world embarked in its implementation provides the country’s judiciary an exploitable frontrunner’s advantage towards accomplishing this goal within Central America. GJP-Standard targets to become a widespread and well-recognized quality management standard within Latin-America’s Judiciaries, with which it shares process, cultural and organizational similarities.

Although very professionally executed, the entire GPJ has lacked of proper reporting in peer reviewed journals or affine literature, and thus limiting its potential contributions to the current body of knowledge on the topic, besides unveiling to
the international practitioners community, especially in Latin-America, its potential as a sustainable judicial problem solving tool.

Bearing all the previous in mind, a natural question that could potentially emerge is how many other initiatives could eventually be carried out around the world, exhibiting quality assurance characteristics, about which the authors and the international community interested in judiciary quality assurance and process performance improvement topics, are not aware of, due to a paucity of formal reporting. Thus, all the arguments herein expressed are conditioned to a broadening of the reported literature/practitioners universe as stated in the limitation section of this paper.

7. Future Research

Undertaking multiple case studies and replicate them by multiple examples is recommended. However this is something impossible for the entire GPJ and the GJP-Standard development as they were unique experiences that could not be replicated under the same conditions. What is possible and naturally pursued by any quality assurance approach is to replicate GJP-Standard deployment in a series of different district courts throughout Costa Rica and internationally, a certain fertile field for future research. If the potential for the GJP-Standard to become a widespread and well recognized quality assurance tool is recognized, the Latin American countries— as procedural, cultural and organizational similarities are shared—would represent a pool of novel information for further research. Of course, the latter requires Judiciaries’ explicit commitment to adopt the GJP-Standard.

In addition, contacting academics and practitioners who wrote documents used in literature review could be beneficial, as they can recommend complementary literature to thicken the specific knowledge pursued herein, especially regarding those other affine efforts being developed, but which have not yet been published or reported; as they represent the potential data sources to further take this current study under a narrative approach, broadening and complementing the universe of quality assurance approaches.

8. Literature


Marin, E. Telephone interview re. CEGECA’s current organization and GJP’s latest achievement in Costa Rica with Rodrigo Murillo, 21/06/2013


Tukiainen, Maarit. (2009) Interview re. features of the GJP-Standard compared to other international quality approaches for the judiciary with Rodrigo Murillo, 08/12/2009.


Appendix 1. Costa Rica’s Judiciary System

The adjudicative scope consisted of Full Court (when the Supreme Court exercises its adjudicative role), Courts of Appeal, Tribunals, Lower and Higher District Courts.

The courts and tribunals were created on the basis of their jurisdiction in relation to the subject, amount and territory. The jurisdiction was determined by the Full Court by its own territorial division (other than the Administrative Territorial Division of the Republic of Costa Rica as defined by the Constitution), which posits the principle of adequate public services, taking into account aspects concerning the citizens’ access to justice. According to the Organic Law of Judiciary, they were integrated by the number of judges considered as necessary. There were various tribunals and district courts according to its subject, as well as mixed courts (dedicated to several subjects, consistent with the number of cases to be seen), which are listed below:

### Tribunals (composed of three or more judges):

- **Criminal Court of Appeal**
- **Civil**
- **Criminal**
- **Juvenile Criminal**
- **Administrative**
- **Family**
- **Labor**
- **Agricultural**

### District Courts

- **Lower Amount**
- **Misdemeanor**
- **Criminal**
- **Juvenile Criminal**
- **Sentences’ Execution.**
- **Traffic**
- **First instance in civil, family, agricultural, alimony, labor, domestic violence, childhood and adolescence, administrative and civil estate.**

The Supreme Court consisted of 4 high level tribunals, which with the exception of the Constitutional Court, were primarily responsible for handling appeal recourses.

- First Court of Appeal: civil, commercial, agricultural and administrative litigation.
- Second Court of Appeal: labor, family and civil cases where the appeal recourse was not jurisdiction of the First Court of Appeal as provided by law.
- Third Court of Appeal: Sentences issued by a tribunal of Supreme Court judges in a criminal subject (If the sentence was previously issued by a single judge, the appeal case was decided by the Tribunal of Criminal Appeal)
- Constitutional Court: in charge of protecting and preserving the principle of Constitutional Supremacy (provided that no rule, treaty, regulation or law of the country's legal system, could be above the Constitution.) by means of the action of unconstitutionality. Besides treating legislative and constitutionality judicial consultations, it was responsible for the protection of fundamental rights through the writ of habeas corpus and amparo.

Recourses of appeal from courts of first instance in higher amounts or inestimable amount were the responsibility of tribunal of three judges with jurisdiction on the particular subject. If the amount exceeded the set quantity, the case could be elevated to a Court of Appeal, where the First or Second Court of Appeal had to jurisdiction to resolve depending on the subject. Appeals from lower amount district courts of first instance in civil, labor and administrative disputes were subjected to review by higher amount courts, but never reached the Court of Appeal give the fact an appeal recourse could not be filed.
Appendix 2. ServQual Model

The gap model assumes that users establish service quality based on the difference between expectations about what they will get and perceptions of the service that is actually delivered. The higher this difference, the higher dissatisfaction.

Service Quality (Satisfaction) = Expectations - Perceived Service

The model uses the 10 dimensions identified by Parasuraman et al (1985), which are related to the quality characteristics in the public sector:

- **Access**: how accessible is the public servant and how easy is to contact him/her.
- **Responsiveness**: willingness of public servant to help users and provide prompt service, being aware of the need for flexibility in customizing the service towards the particular requirements of users.
- **User understanding**: judicial servants effort to understand users and identify their needs
- **Communication**: listen to users and recognize their comments, besides of keeping them informed in a language they can understand
- **Reliability**: the ability of public servant to perform the expected services in a reliable and accurate fashion.
- **Courtesy**: public servant’s respect, consideration and friendliness.
- **Credibility**: public servant’s truthfulness and honesty
- **Professionalism**: knowledge and skills required to provide the expected service.
- **Security**: no risk, danger or doubt perceived by users.
- **Tangibility**: physical characteristics such as facilities appearance, technology, equipment and staff, who are seen as contributing to the staff ability of provide a service given level.

On later studies, dimensions were aggregated and reduced to 5:

- **Tangibles**: Appearance of physical facilities, equipment, personnel, and communications.
- **Reliability**: Ability to perform the promised service dependably and accurately.
- **Responsiveness**: Willingness to help customers and provide promised service.
- **Assurance**: Judicial servants’ knowledge, courtesy and ability to convey trust and confidence.
- **Empathy**: the organization provides care and individualized attention to its customers.

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Correspondence between SERVQUAL Dimensions and Original Ten Dimensions for Evaluating Service Quality

**Source**: Parasuraman et al (1985)
Appendix 3. GICA-Justicia Quality Management Model’s constituents

Mainstays of Quality Management Model.
The 3 mainstays conceptually underpin the GICA-Justicia Quality Management Model:

1. **Justice sector’s public policies in service management** as they are an essential foundation to achieve an efficient functioning of organizations in this judiciary sector. They must be oriented to guarantee users’ rights and should not only be limited to requirements’ compliance and law enforcement. The various tools and instruments they propose must transcend to be used as inputs of continuous quality cycles implementation. The judicial organizations with the willingness to undertake a continuous improvement Quality Management System implementation quest, facilitate management practices’ efficiency improvement achievements, as well as services’ provision.

2. **Users’ rights.** The GICA-Justicia Quality Management Model must be capable of not only identifying users’ service requirements but also gauge them in order to plan, execute, control and adjust the judicial organizations’ quality objectives.

3. **Integral system approach.** The model establishes rules to align the various efforts emerging from the different management practices in judicial organizations, both internal and external, pursuing continuous improvement through the synergic leveraged gained. It is suggested to pertaining governing body in the Judiciary, to constitute an internal Quality Management Office, on which the Quality Management System deployment functions could be centralized and widespread throughout the entire judicial organization.

Aaxes of Quality Management Model
The GPJ-Model has 3 crosscutting axes:

1. **User’s satisfaction** responds to the fulfillment of their expectations, given that their requirements have been explicitly defined.

2. **The judicial organizational commitment** requires that public servants understand the model and also get involved in the implementation of their stages, which facilitates the detection, analysis and elimination of compliance constraints set in the judicial organization quality objectives.

3. **Good management practices** pursued collaboration between different offices within the judicial organization. Offices already accredited with GJP-Standard are encouraged to share among each other the implemented management practices identified as successful. The ultimate goal is to standardize them, through the creation of protocols, instructions, records and other documentation.

Phases and sub-phases of the GJP-Quality Management System Model deployment.
As a general rule all GPJ-Model phases and sub-phases must be guided by those axes, regardless if the judicial organization is going through a design stage, implementation, execution and/or validation. The 3 model phases comprise the continuous improvement cycle:

**Phase 1: Redesign.** Based on the continuous improvement cycle, aims to achieve incremental improvements in the organization management processes, by data collection and its analysis. The sub-phases of this methodology are:

a. **Identification of management and adjudicative procedures.** User’s service requirements must be identified and defined, the operational requirements set out in legislation must be properly understood, a responsible for each of the activities must be established and organization’s quality objectives must be determined.

b. **Mapping and measurement.** Management and adjudicative procedures flow map must be created, including at least: measurement of current process times, volume of input and output cases and process capability.

c. **Self-assessment and diagnosis.** Collected information must be analyzed in order to determine process impact factors and to identify improvement opportunities. It is important to spot process bottlenecks and resource constraints, in order to propose an improvement plan containing corrective and preventive measures, targeting to decrease the impact of process causes in a prioritized fashion. It should identify the control points and develop performance indicators in order to monitor management practices.

d. **Redesign implementation (management improvement).** Plans set in the previous sub-phase must be implemented. At least it is required to implement new management process times and work quotas in addition to the establishment of performance indicators for each sub-phase implementation plan.

e. **Management control.** As a validation sub-phase, the proposed solutions performances are assessed. The formulated indicators must be controlled and the set plans and proposed improvements objectives must be followed-up.
Phase 2: Accreditation. The stages for this phase must be coordinated with the Quality Management Office established by the judicial organization for that effect, which are defined as follows:

a. Previous study and planning for the Quality Management Standard implementation. A permanent staff must be constituted within the adjudicative or management office, which must be trained for deployment and implementation of any of the GICA-Justicia related quality management standards.

b. Preliminary assessment of quality managers and peers. The judicial organization opting for accreditation must request a preliminary assessment to the Quality Management Office, which must designate quality managers unrelated to the office. Quality managers should preferably be familiar with management practices to be audited in order to be able to recommend corrective or preventive actions to the adjudicative or administrative office in accordance to the non-conformities identified. Besides, they should also recommend to the Quality Management Office, the accreditation opting office suitability to formally engage in the accreditation or to implement improvement plans prior to the accreditation audit.

c. Implementation of improvement opportunities. The preventive and corrective improvement plans proposed in the previous sub-phase are implemented, so performance indicators are established. The expected outcome is that the office demonstrates its suitability to undergo the accreditation process.

d. Accreditation. For this sub-phase a National Authority for Quality and Accreditation for Justice must be involved. This external body has the responsibility of accreditation of the Quality Management System deployed in any organization belonging to the judicial sector. In order to execute its duty, it must appoint an auditors’ team for the specific task, who will conduct the formal accreditation audit according to any specific applicable Quality Management Standard, chosen from the GICA-Justicia Quality Management Standards’ family (Up to date this only one Quality Management Standards but Costa Rica’s Judiciary expects this family to grow in the medium range). The adjudicative or administrative office complying with the minimum requirements of any of the GICA-Justicia Quality Management Standards will be subjected to accreditation.

e. Monitoring and control. As for any deployed Quality Management System, follow-up maintenance and improvements are expected in order to over time transform the system into a robust organizational tool for continuous improvement. The indirect result is the commitment strengthening of all stakeholders involved and/or related to the Quality Management System.

Phase 3: Repeatability. An accredited adjudicative or administrative office can serve as peer reviewer for their counterparts’ accreditation processes, sharing its proven successful management practices. In general, this phase intends to standardize management practices, as well as to accelerate the learning curve of new adjudicative or administrative offices opting for accreditation, and so reducing deployment times. The sub-phases are:

a. Peer Collaboration. Adjudicative and administrative offices must assist their counterpart offices aspiring to establish Quality Management System. Only management practices approved by the judiciary’s Quality Management Office could be adopted and implemented.

b. Best practices sharing. It comprises the collection, classification and evaluation of management practices of various accredited adjudicative and administrative offices.

c. Standardize implementation procedures. Judiciary’s Quality Management Office seeks management knowledge within the various accredited adjudicative and administrative offices. The implemented Quality Management System and associated good management practices should be transferable to all offices within the organization seeking accreditation. Management practices must be approved and validated by organization’s Quality Management Office in order to turn them into organizational crosscutting management references, targeting reductions of learning curves and Quality Management System deployment times.

d. Quality Management System continuous improvement. Comprises the global monitor and control of all already accredited judicial organization and/or administrative offices’ Quality Management Systems. It intends that deployed Quality Management Systems reach sustainability and get continuous feedback from both the judiciary’s organization’s staff and also from external users, under a citizens’ involvement approach.

e. Re-accreditation. Future accreditation processes intend to provide sustainability to the Quality Management System previously achieved by a particular adjudicative or administrative office. It implies that at set intervals, Quality Management System re-assessments are run on accredited offices, in order to demonstrate they keep compliance with the particular requirements set by any of the GICA-Justicia Quality Management Standards the office have been accredited with.
Appendix 4. Process delivery approach’s main phases and ancillary activities’ explanation

Main Phases

- **Inputs’ Management:** Any management practice that represent information inputs for the office opting for accreditation must be identified, characterized and monitored, as it triggers execution of activities, procedures and internal interrelated management practices. These management practices could be transversal to the entire judicial process and include users’ visits, phone calls, documents and legal notices reception, among others. Additionally it comprises evidence administration and registration, custody chain of property and assets, and phase monitoring through performance indicators.

- **Appearances’ Management:** It relates the identification and characterization of the management practices executed for planning and controlling the hearings and appearances agenda within the adjudicative office opting for accreditation.

- **Resolutions’ Management:** Management practices related to case resolution must be identified / characterized and performance indicators to integrally monitor them must be established.

- **Outputs’ Management:** Management practices transversal to entire judicial process must be identified, characterized and controlled. These may include legal notifications, notices, phone calls, evidence requests and records, among others.

Ancillary Activities

- **Time Management:** Performance indicators must be developed, implemented, planned and verified by means of defined controls at set time intervals. The objective is to analyze all management practices of the judicial process within the adjudicative office, in order to determine and fix processing times and work quotas.

- **Case, Documents and Files Management:** The execution of management practices for controlling, classifying and monitoring cases, documents and files must be identified and characterized, so that they could be tracked both physically and in the information systems. Thus, when required, the expedite access to them must be ensured.

- **Supportive Activities:** Coordination of common management practices between the adjudicative office and other administrative and technical offices must be promoted.

- **Alternative Dispute Resolution:** The adjudicative office must count with information and guidance channels in order to inform users of their right to access alternative dispute resolution channels in cases where existing legislation allows it.
Appendix 5. Listed resources available for courts under the International Framework for Court’s Excellence.

1. Checklist for Promoting the Quality of Justice (Courts European Commission for Efficiency of Justice – CEPEJ-)
2. Evaluation of the Quality of Adjudication in Courts of Law (Consultative Council of European Judges – CCJE-)
3. How to Assess Quality in the Courts? (Court of Appeal of Rovaniemi, Finland)
4. Quality of the Judicial System in the Netherlands (Netherlands Council for the Judiciary)
5. Quality of Judicial Decisions (Opinion No. 11) (Consultative Council of European Judges -CCJE-)
6. Medium-Term Strategic Framework (Department of Justice, Republic of South Africa)
7. Reforming Mediterranean Civil Procedure (by A. Uzelac)
8. Judicial Reform Index (Serbia American Bar Association)
9. Her Majesty’s Court Service Business Plan (Ministry of Justice, United Kingdom)
10. Assessing the Need for Judges and Support Staff (by Victor Flango & Brian Ostrom)
11. State Court Guide to Statistical Reporting (managed by Brian Ostrom & Carol Flango)
12. Trial Courts and Organizations (by Brian Ostrom et al)
13. Towards Greater Organizational Excellence (Subordinate Courts of Singapore)
14. Implementing the IFCE as a “Holistic” Means for Achieving Excellence (Supreme Court of Victoria)
15. The Baldrige National Quality Program
16. The European Foundation for Quality Management
17. The Singapore Quality Award
18. The Singapore Quality Award with Special Commendation
19. The Balanced Scorecard Institute
20. Summary of the Balanced Scorecard Strategic Planning System
21. SixSigma
22. The International Organization for Standardization

Source: ICCE (2013c)
### Appendix 6. Performance evaluation benefits

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public reporting</td>
<td>To make more transparent the amount and the quality of work done by each single court, and to increase transparency of court operations. This can be done via web, newsletter, press releases, annual reports or taking advantage of any other means available to each given system.</td>
</tr>
<tr>
<td>Improve user orientation</td>
<td>The knowledge gained through user surveys can improve the user orientation of courts and thus their degree of satisfaction.</td>
</tr>
<tr>
<td>Identification and promotion of good practices</td>
<td>Identify the better performing courts, investigate the reasons of better performances, and search for good practices. Once good practices have been identified, guidelines and recommendations can be issued.</td>
</tr>
<tr>
<td>Organizational learning</td>
<td>The information provided by performance assessment should be exploited also to carry out joint enquiries within courts and between courts and stakeholder to investigate the different areas of operations and identify possible improvements.</td>
</tr>
<tr>
<td>Identification of training needs</td>
<td>A performance assessment should offer also focused information to identify training needs and to set up training programmes.</td>
</tr>
<tr>
<td>Reward organizational performance</td>
<td>Disseminate the ranking of all of the courts (clustered in homogeneous categories) in accordance to their performance (such as productivity statistics) so to stimulate friendly competition between courts and reward better performing courts.</td>
</tr>
<tr>
<td>Reward individual performance</td>
<td>Having data at individual level can be useful to evaluate individual productivity of judges and employees, as well as the results reached by heads of courts and court administrators.</td>
</tr>
<tr>
<td>Resources allocation</td>
<td>Caseflow and resource data are needed to set up effective methods for calculating human resources and judgship needs and to allocate an appropriate budget to each single court.</td>
</tr>
<tr>
<td>Strategic planning</td>
<td>A regular evaluation of the judiciary is the milestone of any reasonable strategic plan. The knowledge produced with evaluation is indeed required for addressing capacity building, improve the key values inspiring the functioning of justice and finally increasing legitimacy.</td>
</tr>
<tr>
<td>Resource competition</td>
<td>Judiciaries are in competition with other branches of the public sector for attracting public funds. A good performance evaluation is an asset in such competition.</td>
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**Source:** United Nations (2011, p. 112)
Knowledge Transfer As A Leverage Of Change: The Case of the Public Prosecutor Office of Naples

By Daniela Piana1

Abstract:

The public prosecutor’s office (PPO) of Naples is the largest prosecutorial institution in Italy. Because of its size, visibility and location in Naples the PPO is an interesting and difficult case from an organization development perspective. Innovation programs can be challenging there. Nonetheless this article seeks to see whether there is innovation in the PPO of Naples. To do so it will consider the program called “work experiences” implemented in the PPO of Naples in the first semester of 2013. It was designed within the general framework of a joint partnership signed by the University Federico II and the public prosecutor office of Naples and provided the human resources of undergraduates and graduate students, selected on the basis of merit, and assigned to specific organizational units within the PPO. The program proved to be effective in triggering processes of micro-innovation within these units and in promoting a collective awareness of the tacit knowledge within the informal organization of the PPO.

Keywords: Prosecutor Office; Organizational Innovation; Knowledge Transfer; Learning by doing.

1. Introduction

The public prosecutor’s office of Naples is the largest prosecutorial institution in Italy. It is staffed with more than 100 Senior Prosecutors and 9 Vice Chief Prosecutors2, in addition there is the administrative staff and police officers attached to it. It is located in an extremely challenging region with a high rate of organized crime activity. According to the Ministry of Justice, during the period 2009-2011 the average number of criminal proceedings filed in the Naples district increased to 159,815, whereas it reached “only” 127,966 in the district of Rome. These figures report only the ordinary proceedings; they do not include those handled by the District Anti-Mafia Directorate (DDA). According to the Italian law, the District Anti-Mafia Directorates are sub-units of the public prosecutor offices, even though not all public prosecutor offices have a DDA. In the case of Naples 30 out of the 100 Senior Prosecutors are assigned to the DDA, which is coordinated by two of the 9 vice-chief prosecutors. This shows a high organizational complexity. Moreover, in the context of the Italian criminal justice system the PPO of Naples can be considered one of the most visible prosecutorial institutions of the country, taking media coverage and the important corruption and organized crime cases filed in at Naples ordinary court.

Furthermore, the average administrative staff age is high: 59.1 years.3 According to current national career patterns in the judicial sector most of the clerks and administrative staff do not have any possibility for promotion.4 Also the rate of staff turnover in the administration is fairly low.5

Because of its size, visibility and location in Naples, the PPO is an interesting and difficult case from an organization development perspective. Innovation programs can be challenging there: transaction and communication costs are high and moral costs are equally high in case of a failure. Furthermore, teamwork is costly, ease of communication in the organization is difficult to achieve and consequently a rapid sharing of knowledge and information is not spontaneously realized. Nonetheless the PPO in Naples succeeded in improving its performance.

In this article I will try to reply to the following research question: why was the innovation program in the PPO of Naples an initial success? To answer I will rely on the results of a qualitative research project. In doing so, I will first briefly explain

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1 Contact author: Department of Political and Social Sciences, Strada Maggiore, 45, 40100 Bologna – Italy d.piana@unibo.it. The author is indebted to the public prosecutor office of Naples and especially to Dr Giovanni Melillo and Dr Agostino D’Abelardo for allowing data collection and data analysis during the period December 2012-May 2013. I am also indebted to the University of Naples and especially to Prof. Massimo Marrelli and to Dr Alessandro Buttà for discussing some of the ideas of this article. The responsibility for the concepts and the theses expressed herein is exclusively to the author.

2 Italian High Judicial Council, www.csm.it (last access September 2013).

3 First Instance Tribunal of Naples, Administrative Head Officer, Official Document, last update December 2012.

4 Source: Ministry of Justice.

5 Interview to of administrative chief unit, Naples December, 2012.
the methodology, followed by a description of innovation theories for the justice sector, including those of the CEPEJ of the Council of Europe. Then I will describe a program called “work experiences” (WEP) implemented in the PPO of Naples in the first semester of 2013, constituting the innovation drive. I will assess the results achieved regarding the theoretical framework, and especially in terms of transferability and sustainability.

1.1 Methodology
The empirical data presented is framed in the context of organizational theory, especially the concepts of “tacit knowledge” and “reflexive knowledge”. The methodology used in this research is qualitative. The case study is based on two rounds of data collection; data covering the official documents as well as the perceptions of key actors by conducting interviews. The interviews were conducted by the author during the period December 2012 - June 2013. I used a standard protocol for the students and half open questionnaires for the others interviewed. The students were selected on the basis of the tasks assigned, to maximize their representativeness. Those interviewed were: the chief and deputy chief prosecutor, those responsible for the Innovation office, six coordinators of the administrative units, 20 students appointed under the work experience program, the Rector of the University of Naples (UNINA), two supervisors acting on behalf of the University, and finally the expert responsible for the impact assessment. The actual impact assessment, which would complete this analysis, is not yet available, because there has been insufficient time since the innovation program considered here ended.

2. Knowledge transfer and Council of Europe Opinions as heuristics for this case study

2.1 Theories and Discourses on Innovation In the Justice Sector
The innovation debate on the justice sector is broad and multi-disciplinary. From the point of view of literature on court management and judicial administration the issue of ensuring efficiency/effectiveness on the one hand and protecting independence on the other has been broadly considered. Scholars have depicted its theoretical nature (Mohr and Contini, 2007; Voermans, 2007; Langbroek, 2010; Kosar, 2013) and have transformed these abstract views into concrete policies (Mak 2008), Steelman et al., 2004, Bunjevac 2011, Hanson et al., 2010).

For a public prosecutor’s office two more points are important. The first concerns the need to ensure data protection, especially during the investigations and before the trial stage. The second point refers to the peculiar institutional nature of a public prosecutor office. Whereas a court plays the role of an impartial dispute resolution mechanism (Shapiro, 1971), a public prosecutor’s office is orientated to play the role of a goal-orientated institution. Its goals consist of uncovering, prosecuting, and sanctioning the prosecution of crimes. I will come back to this aspect later on.

From the point of view of the policy discourse the aspects mentioned are at the core of the agenda of international organizations and generally of all those agencies that are involved in the programs of judicial reforms, rule of law assessment and quality of justice assessment (Fabri et al., 2005; Pauliat, 2007; Piana, 2010; Colombet and Gouttefangeas, 2013). However, these policies do not rely on a comprehensive and consistent analysis of the role played by knowledge and knowledge transfer in this field. As a matter of fact, any action of judicial reform, especially those promoted by external watchdogs, do exploit the mechanisms of knowledge transfer. Presumably, the idea of the transfer of knowledge as a leverage of change appears insignificant if compared with the policy principles and goals fixed in the European discourse about the quality of justice and the rule of law. In the framework of the European policy of rule of law promotion and of judicial co-operation, some ambitious goals have been set. Especially the Council of Europe, that has forcefully promoted the quality of justice by means of a number of legally but not binding instruments (Piana, 2010).

In one of the recent documents drafted by the Consultative Committee of European Prosecutors (CCPE) it is clearly stated “Even if the powers of prosecution services to manage autonomously their own budgets and resources vary from one member State to another, autonomy of management represents one of the guarantees of their independence and efficiency. Therefore, relying on professionals in management and elaborating common principles as regards the management of means, particularly financial, is indispensable” (2012, art. 11). In other words: the CCPE highlights two points:

1) The differences in the way prosecution services are organized in Europe;
2) The importance of managerial accountability, also where the principle of prosecutorial independence has been realized (as referred to in the preamble of the Opinion n. 7).

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6 A work experience program consists into training activities and working activities carried on within a private or a public institution.

7 Relationship between prosecutors and the prison administration, Opinion n. 8.
PPO’s are very important institutions for the correct, predictable, and legitimate implementation of the rule of law. This is even more critical in those countries where PPO’s are front running in the fight against organized crime, such as Italy, a condition which leads PPO’s easily to engage into policy making, develop goal orientated management, and ultimately a problem solving approach in prosecuting crimes. Despite the traditional format which is typically featured by civil law countries, which are marked by a rule-based rather than a case-based adjudication and prosecution, in Italy costs/benefit ratios and strategic rationality are more natural and intensive in PPO’s than in courts. For example, in Italy the fight against organized crime requires the planning of investigation, somehow the prevention of counter-acts from criminal organizations, and a forward looking approach. As a consequence, PPO’s demand a well-developed organizational approach in terms of goal-oriented management.

Combining the goals commended by the CCPE and the theoretical views on organizational learning and organizational accountability I can highlight three key points.

First and foremost, the respect for legal procedure is necessary but not sufficient to ensure the respect of the principle of rule of law in the realm of criminal justice. Managerial accountability needs also to be considered. From the literature we know that this works only if human and material resources are used and allocated according to a multi-annual plan.8

Second, limitations on monetary and human resources. The increased demand of ‘accountable justice’ corresponds in theory to an increased demand of resources, such as IT, specialist staff, vocational requalification, etc. However, this is not a viable solution. In the specific case of Italy one cannot expect an expansion of the public expenditure to give a strong answer to the demand of justice because the public expenditure is under strict control (both at domestic and the global level) (Natalini and Di Mascio, 2013).

Third, those who have managerial responsibilities in the Italian PPO’s face a challenge: improving the service they offer to the citizens by means of a more effective and efficient management of the existing resources rather than by means of financial increase.

Knowledge management and knowledge transfer is an unusual manner to approach the desire for organizational inflexibility. Let’s refer here on the scholarship stream which considers knowledge as a social practice and develops the distinction between tacit and explicit knowledge (Polani, 1964) Tacit knowledge is produced and managed in a specific way. Further research showed that tacit knowledge can be intentionally transferred via a process of knowledge conversion in a complex organization (Nonaka, 1999). This allows staff units to reframe and retrieve existing knowledge conceptually. Nonaka focuses on the creation of organizational knowledge, i.e. “the process of making available and amplifying knowledge created by individuals as well as crystallizing and connecting it to an organization’s knowledge system (Nonaka, and Krogh, 2009, p. 635). Without entering into the scientific debate on knowledge as a key analytical tool to explain organizational phenomena (Argyris and Schon, 1978; Jelinek, 1979; March and Olsen, 1989; Turner, 1994) I present here an analysis of intentional and non-intentional consequences originating from a process of knowledge transfer. Scholars as well as practitioners know that ‘knowledge adopts alternating forms so as to mutually enhance tacit and explicit elements. Because knowledge is the capacity to act based on explicit and tacit elements, enhancing this capacity means making use of existing and new tacit and explicit knowledge’ (Nonaka, and Krogh, 2009, p. 638).

Why is this point interesting for our case study? The story of the Work Experiences Program displays two important elements which both fit the description above. The first one is the launch of a process of knowledge transfer as a way to reach a “reflexive knowledge” (Schön, 1984) of those who are employed in the PPO of Naples. This fuels 1) a better exploitation of tacit knowledge; 2) a critical assessment of routines practiced for years and years without any external scrutiny. The second element regards the resources management. The WEP is framed into a broader framework of inter-institutional cooperation between the PPO and the University of Naples, which aims also to combine an efficient provision of expertise (from the University to the PPO) with the guarantee of the institutional autonomy of the PPO in using this expertise.

3. A Successful Innovation Program
The case of the PPO of Naples seems particularly worth telling because it encourages taking seriously the process of knowledge transfer as a way to innovate in a resilient way. Why is this so important?

Most of the Italian judicial offices are medium or small-sized. Naples, as a few others, belongs to the group of the large-sized offices. Beside this, in Italy courts and PPO’s suffer a shortage of administrative staff. In some cases the gap between the formal formation and the actual endowment of administrative human resources reaches 30%. This holds also...
for Naples’s offices. More importantly, the lack of any credible policy aiming to offer vocational and in service training to clerks and secretaries as well as the refusal or the incapability of the last four governments to introduce junior staff into the judicial sector (as administrative staff) created a critical situation:

1) No professional or monetary reward can be expected by administrative staff employed in the judicial sector;
2) No potential to transfer know how and knowledge exist. Senior clerks are often working without any contact with colleagues under 40 years of age;
3) The prospect to retire undermines the motivation to learn new skills, such as the capacity to work with specialized and advanced IT tools (to manage the cases, to manage the budget, etc.).

These specific features mark the Italian judicial system, both in the civil and in the criminal field. They impede the effective implementation of any innovation if this requires the active participation of both the judicial and the administrative staff. Once the project has been concluded the knowledge produced is almost redundant, without any chance of being transmitted or integrated with other types of know how. Because innovation and change demand continuity in time the lack in change of personnel is a real obstacle to the improvement of the quality of Italian justice.

4. A Case of a Grounded and a Participated Innovation

The judicial district of Naples is located in the administrative region called Campania. This has for long time been one of the Italian regions targeted by the European regional policy. Financial resources provided by the European Structural Funds (ESF) regularly supported programs of vocational training. They represented an external stimulus for a more efficient and effective encounter between the labor market and higher education. However, the judicial sector remained marginalized during the first three rounds of European regional policy planning. This has changed over the last three years, when the Italian government decided to address the financial resources of the ESF for the judicial sector.

The first two steps in the direction of setting up a new practice of organizational innovation are accomplished outside the judicial sector. The first one takes place rather within the University of Naples. This consists of the launch of a functionally specialized organizational unit within the University Federico II. This is called the Center of Specialized Projects Coordination (COINOR). The purpose of this unit mainly consists of raising funds and managing projects, going through the entire project cycle from the design to the final evaluation and accounting. The second step comes from the engagement of the Region Campania into several activities aiming to promote the full exploitation of the professional, technological, and highly specialist expertise existing in the local area.

These two steps stipulated two favorable pre-conditions: managerial capacities and monitoring capacities provided by an external institution (COINOR) legitimized by the University.

The “work experience” program (WEP) was the initiative of one of the vice-chief prosecutors of Naples, Giovanni Melillo, who administer the managerial competences developed throughout the program as delegated vice-chief prosecutor for the PPO management. The WEP was designed within the general framework of a joint partnership signed by the University Federico II and the public prosecutor office of Naples. This joint partnership creates a new policy window for tailored services provided by the University or some of its sub-units under the umbrella of a formal agreement. Up to now this has been put into motion by means of a number of micro-instruments, such as an agreement for the provision of expertise and knowledge in the fields of toxicology, information technology (to mention some) and prospectively in statistics.

Table 1 below shows a synoptic view of these micro-instruments. The reader can easily detect the added value not only in terms of content – knowledge and expertise – but in terms of method – the process whereby inter-institutional trust has been built and strengthened. To make this happen, participants involved have been forced to overcome internal barriers in both organizations. Therefore, the individual commitment to the first steps proved to be a dramatically important condition to the setting up of this partnership.

Tab. 1. Micro instruments of the inter-institutional cooperation UNINA-PPO

<table>
<thead>
<tr>
<th>Instruments</th>
<th>Goals</th>
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<tbody>
<tr>
<td>Framework agreement</td>
<td>Development of research activities and applied research aiming at fostering processes of technological innovation, rationalization of the production cycle and of the services offered by the PPO.</td>
</tr>
<tr>
<td>Joint agreement between COINOR and the PPO [JA 1]</td>
<td>Methodological and professional support to back up: administrative activities; management; human resources empowerment.</td>
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<table>
<thead>
<tr>
<th>Instruments</th>
<th>Goals</th>
</tr>
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<tbody>
<tr>
<td>Addendum to the joint agreement N. 1</td>
<td>COINOR is vested with full competence as administrative and technical unit managing the IT platform used to trace the entire management of seized cars (two institutions involved: PPO and Prefecture)</td>
</tr>
<tr>
<td>Joint agreement between the Department of Chemistry, the PPO and the District Carabineers Headquarter.</td>
<td>Highly specialized toxicological analysis of narcotics</td>
</tr>
<tr>
<td>Joint agreement between the Department of Advanced Biomedical Sciences</td>
<td>Highly specialized toxicological analysis of narcotics</td>
</tr>
<tr>
<td>Joint agreement between the Department Experimental Medical Sciences</td>
<td>Highly specialized toxicological analysis of narcotics</td>
</tr>
<tr>
<td>Joint agreement between the Department of Electric Engineering and Information Technology</td>
<td>Support to the development of IT tools</td>
</tr>
<tr>
<td>Joint agreement between the Department of Political Sciences</td>
<td>Training of judicial police staff; support to collection and analysis of statistical data with specific significance for the PPO management.</td>
</tr>
<tr>
<td>Work Experiences – joint agreement between UNINA, the Naples first instance court and the PPO</td>
<td>Start-up September 2012; WEs last six months; extended under a national governmental financial agreement.</td>
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</tbody>
</table>

The significance of these agreements is manifold. It establishes a mechanism of trust building between two institutions and the organizational units that operate within each of them. It represents a solution to circumvent the barrier created by the national deficit of public money, which would have put under pressure the capacity of the PPO to sustain the costs of high quality expertise and professional counseling. Furthermore, it is up to the PPO to ask for the services and the expertise of the University. Hence, the PPO preserves its autonomy, exemplified in this context by the power of initiative. The agreement exists and gives a formal framework. Only on the basis of the objectives and the functional needs of the PPO that these agreements are activated and the mechanisms of collaboration put into motion.

The WEP emerges in this context. It has been conceived to tackle three major problems faced by the public prosecutor office and, likely, by most of the larger Italian judicial institutions:

- The lack of personnel change in the administrative staff which reduces the enthusiasm of clerks and administrative operators to engage in innovative experiences
- The lack of specialized non legal training for the administrative staff
- The low level of inter-organizational knowledge transfer and knowledge management (this latter problem affecting the judicial as well as the administrative staff)

The design of the work experience is inspired by the possibility of a mutually profitable exchange between the judicial offices and university. This is to be measured in terms of knowledge management, whose main components are knowledge production and knowledge transfer.

With the financial resources provided by the ESF and put at the disposal of the work experience project by the Region, the university launched a call for graduates or undergraduates – but in the last year of enrollment – students. The winners will benefit from an integrated training program which will be deployed within the judicial offices of Naples, i.e. the first instance court and the public prosecutor office. The call covers 165 places: each of them corresponds to a 500 Euro monthly salary. The launch of the project has been modestly covered by media. However, events promoting students’ participation took place within the university (such as http://www.news.unina.it/dettagli_area.jsp?ID=12627).

5. The Innovation Office

The first objection addressed to projects aiming at the development of modernization and rationalization processes in the public sector is the low capacity of the recipient organization – in the case analyzed here the PPO – to be ahead of the entire process of project implementation.

I argue that in the case of the WEP the design of the program supported the actors involved during the implementation process.

This is composed by five steps:

- the creation of the WEP steering committee
- the selection of the candidates
• the training of the candidates
• the assignment of the selected interns to an organizational unit
• the appointment of a responsible person within each organization unit, whose task is to ensure that the interns have clear tasks and receives feedback
• the creation of an innovation office with a team within the PPO given the responsibility to ensure the effective implementation of the WEP (and eventually of other innovation programs).

The WEP started with the evaluation of the candidates. Most important, given the cultural background of Italian justice organizations, is the extension of the WEs beyond candidates with a legal profile. Almost half of the candidates are students with a law degree. However, social sciences broadly speaking are well represented.

Once the selection reached its conclusions, the selected candidates were assigned to the six sub-projects to which they had requested in their applications. The correspondence between the initial request of the candidates and the actual assignment was extremely high (92%)\(^9\). Only two candidates have been reassigned because they were not able to develop fully their daily activity. The first activity which sees a joint management of the project consisted of the organization of training sessions. This happened with the participation of the academic staff of the university as well as with the judicial staff of the PPO. Student surveys highlighted the moderate effectiveness of these first training sessions, which in some cases were considered to be too theoretical and abstract.

What students consider as the key turning point in terms of vocational training is the “learning by doing” activity which takes place in the unit where the student is assigned under the supervision of high or medium ranked administrative or judicial officers.\(^10\)

This specific part of the training activity turned out as the most appreciated and the most valuable of all, according to both students and staff. In most of the cases the daily activities – which are practical in their own nature – are backed up by sessions – mostly informal and without the need of preliminary planning – where the responsibility of the sub-project details the range of activities performed in the areas where the students are. Theoretical and practical training proved very effective. Of course, students in the WEs also benefitted from their previous training in their academic programs. A high number of people assigned to six different projects in more than thirty different offices spread over a fairly extended location might create a dispersion of information and a lack of coordination. This has been prevented with the creation of a comprehensive system of governance, pivoting on the Innovation office and providing a system of mutual control designed as a matrix. Six individuals (tutors) are responsible for each sub-project. Horizontally however, across the different offices where the students were assigned, highly or medium ranked administrative officers were given the responsibility of tutoring the students that are assigned to a particular administrative service. The coordination of the entire WEP was ensured from two sides. On the one hand, all individuals assigned to a sub-project, which shared the same type of tasks and the same type of organizational problem with which they have been asked to deal are under the coordination of the tutor. On the other hand all the staff units that interact with the students assigned to a specific administrative or judicial organizational unit (such as the human resource department; the IT department, etc.) were coordinated by the Steering Committee and the Staff of the Innovation Office.

The entire machinery worked only because of the full engagement and the personal commitment of the head of the innovation office.\(^11\) This is in ensured on the basis of three mechanisms. The first has been the human reward of interacting with the interns. Senior clerks felt valued by transferring their tacit knowledge to these young employees. Secondly the communication among all people involved has been fostered and guaranteed by the Innovation office coordinator. He has performed the function of a “complexity reduction” mechanism and, at the same time, has played the role as a creator of the collective memory. The time spent in the different rooms where the administrative staff was working next to the interns has been an investment of temporal and cognitive resources. This has paid off especially when considering the fact that after three months all people involved were aware of what was going on in other parallel units. A collective knowledge has been created and this has also facilitated the creation of reflexive knowledge. The last mechanism consisted of scheduling regular formal and informal meetings, engaging also with the judicial staff.

I noticed that the involvement in the WEP has been used in itself as a reward. The visibility, the refreshing feedback (working with young people with new ideas and new energies) had a revitalizing effect, and responsibility assigned by the high ranked officers (the vice-chief prosecutor on the basis of the delegation he received from the chief prosecutor) created, altogether, a favorable condition for the commitment of the administrative staff.

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\(^9\) First report of the WEP Steering Committee.
\(^10\) Interviews to three administrative chief units, Naples, December, 2012.
Furthermore, the appointment of one high ranked clerk as Innovation Office coordinator has represented a reward, close in terms of motivating effects, to a real promotion. The same applies to the administrative coordinators. In general these last ones offer a particularly positive appraisal of the entire experience.

These choices represented a way to localize – and therefore rationalize – the managerial responsibility. As I said in the first paragraph one of the lessons drawn from past experiences of organizational innovations inserted in the judicial sector is the critical dimension of the managerial accountability. Once the innovation program starts the responsibility for what happens should be clearly indicated and made visible. This allows also allocating of moral costs in case of a failure. Moral costs are surely crucial in contexts. In fact the Italian system does not allow monetary sanctions in case of low performance. One of the problems that the leaders of this project wanted to avoid is the ineffectiveness of the implementation process. The set-up of a mechanism to assign clear responsibilities is a way to monitor and revise the implementation process along the way.

The governance of the entire project performed well in terms of effectiveness. All persons surveyed declared that they felt supported along the whole process. Horizontal mechanisms of exchange and mutual supports among the WEP beneficiaries have been also set up. This has been facilitated by the informal sessions of training organized within the specific services where they have been assigned.

A crucial aspect which deserves some supplementary attention is the delegation mechanism. Within the judiciary delegation, which is intimately linked to responsibility and accountability, has a very rare application. The head of the judicial office however did delegate some responsibilities. In an interview with Giovanni Melillo, vice-chief prosecutor, he confirmed that he wanted to create an organizational mechanism which, once on the right track, could move on without his permanent and daily drive. This can function properly only under conditions of delegation to staff units who have adequate skills. In a sense, the vice chief prosecutor, as a policy entrepreneur, in setting up a system of governance to steer the innovation processes, wanted to create the conditions for permanent change. To do so he detected latent managerial capacities and skills among the staff already employed in the office and thereby delegated accordingly the responsibility of monitoring the implementation process of an innovation program. 12 The strategic choices made to set up the program and the governance of the implementation process are good indicators of leadership. This latter comes out as a key pre-condition for a successful innovation program.

6. Monitoring Processes and Work-Projects
The work experience model incorporates three mechanisms of quality assurance. The first one targets the implementation process. Regular meetings are held among the work experiencing staff and those responsible of the innovation office. This creates a feedback mechanism and accordingly the refinement of two aspects: 1) the match between the expectations of the interns and the actual tasks they are expected to perform; 2) the match between the institutional goals and the actual impact of the WEP in terms of vocational training. The second mechanism is of pure governance. It consists of a series of meetings among those actors that participate with different responsibilities in the project. This also involves the permanent contact with the university. This contact however is strengthened via informal and one to one interactions and communications. The third mechanism is the evaluation of work-experiences. After three months the interns have been asked to design a project which consists of a proposal to improve the daily working life within the unit where they are assigned. Here one of them is illustrated to show how it touches the behavioral as well as the cognitive dimension of individuals within the organization.

The starting point of the project design is the map and the analysis of the current system to pay wiretapping costs. This is an extremely sensitive budget line from a local and a national point of view. The Naples PPO engages in a regular and intensive investigative strategy to fight against mafia activity. Stringent budget control is therefore crucial in this prosecutorial office. More generally the Italian debate reached an acute tension about the management of wiretapping as an investigative instrument. Therefore, a visible and effective policy to hold wiretapping costs accountable and to ensure an efficient and transparent payment seemed to be highly desirable. A group of 15 interns, working in four different administrative units (management and security of IT data unit; a specialist team to prosecute crimes against people and property; a specialist team in pre-trial investigating activities concerning crimes against public administration and financial crimes; economic and financial management of the administrative processes unit) gathered and listed a number of shortcomings affecting the current system. The first problem encountered is the lack of an integrated net-based management which enables sharing information; the system relies on the hard copies of the invoices, and the timeframe (the entire administrative proceeding required to finalize the payment is 17, months on average).

12 Interview to dr Giovanni Melillo, May, 2013, Naples.
The project-work falls into a project of micro-innovations in three moves. First, the entire information flow concerning the invoices should be based on an IT system. Second, a shared and internally accessible folder should be created in order to reduce unnecessary transaction costs (communication among the units is phone based or directly face to face). Third, regular use of the digital signature that allows the prosecutor assistant to validate the invoice and to speed up without any further intermediate step the finalization of the payment.

From the objective point of view – actions and behaviors – the project-work creates a chance for improvement. It addresses the time frame, the costs of printed papers, the communication and the transparency of proceedings. However, these effects can be jeopardized or simply ignored once the interns have reached the end of their training process and the WEP is over. The project work creates a reason to launch a discussion within the administrative unit. The discussion creates awareness and a collective experience of debate. These are in themselves positive outcomes for an organization where the opportunities to exchange ideas and to critically review the daily working practices have always been very few. As a matter of fact the group of 15 interns worked in permanent cooperation and under the supervision of the units’ chiefs. This situation created an incentive not only for the interns to learn but also for the administrative and the judicial staff to teach. Teaching means here different sub-processes of knowledge conversion and knowledge transfer. Each intern is socialized in the organizational daily life. To do so clerks and administrative staff units who get in touch with her or him are in the position of explaining the daily organizational practices that represent the living organization, the so called informal organization, i.e. the part of an organization that cannot be inferred from the organizational organogram. Secondly, once the goal of the interns to critically assess these practices, the employees are asked to make explicit the unspoken premises on the basis of which they act and the reason for that behavior. Routines and habitual problem solving strategies are accordingly worded and phrased in such a manner that they will be become part of the explicit knowledge. This process in itself creates an incentive for a rise of awareness and thereby of a critical reflection about the daily organizational practices. These two steps – socialization and externalization – took place in four different units (as mentioned above). Since the project-work covers the work of all of the interns they are asked to integrate the explicit (externalized) knowledge acquired from personnel and to combine it into a comprehensive scheme. This has happened under the supervision of the units’ chiefs. The combined effect of the externalized knowledge has been shared and made accessible to all people working in the units engaged into this exercise. Finally the project-work designed to improve the practices adopted in these units has been presented and discussed. In this way it started to represent a common frame, a starting point to discuss, a sort of cognitive focal point.

The project-work can improve the way the wiretapping costs are paid. Moreover a person who performs a regular and specialized role is asked to externalize, critically assess, and change her or his way of doing things, the learning effect does not only concern the specific routine. It concerns also a meta-level, i.e. the capacity of learning. She or he will know – and will be aware of – how to externalize, teach, describe for other persons (a potential public), and critically assess the way she or he works. Furthermore, if this process runs in a collective context and the awareness is not only individual but is collective then one can expect that mutual expectations of knowledge conversion rise. The need to describe and justify the ways of doing things they follow is a way to force – without any legal instrument – to improve themselves not for other reasons to protect their self-image.

Discussion: what can we learn from the work experience program?
Out of the large varieties of experiences carried on within courts and – to a lesser extent – within public prosecutor offices, an external observer, getting a comparative picture of this phenomenon, is in the favorable position of detecting some, key lessons to be drawn.

- Changes introduced because of external leverages collapse and disappear easily once the external inputs - sometime in the format of a clear constraint – dissolve. This holds in the cases of all most twinning and Erasmus projects, whereby inputs that have been pointed, adopted, partially made into daily practice and then never made into an institutionalized routine within the targeted judicial office.
- Changes come under the spotlight of the donors – such as the EU or the national authorities – only if the change agents show up. Without individual factors triggering the process of change this latter does not move on. This favorable condition is not only crucial in the stage of the start-up; rather it proved also to be fundamental to give continuity and thereby sustainability to the change itself.
- The injection of innovative inputs into a complex organizational matrix is an open process. In most of the case studies described in the current literature, the need for a permanent monitoring process which readjusts the process of implementation and creates opportunities to adapt day by day is easy to understand. In most cases this capacity of governing the change has been interpreted as a pure

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13 Documents submitted to the Committee of Coordinators, May, 2013.
external audit. This mechanism misses completely the potential force embedded into the individual capacity of self-monitoring which is specially featured by aging staff.

- In the justice sector most of the judicial reforms spanning from innovating IT platforms to training clerks and judicial staff units demonstrate a peak in performance immediately after the first implementation step and then a reduction in performance which is directly related to the lack of a systemic view of the outcomes (not just the products) provoked at the macro level (at the level of the entire judicial office).

Can we argue that the WE program escapes some of the risks featured by the bulk of the programs of quality of justice promotion, especially of those that have been implemented without any injection of new human resources into the targeted office?

The research project I carried out pointed to some favorable conditions, which seem to be necessary for the successful implementation of an innovation program in a complex organization like the PPO of Naples. The first one is the existence of a change agent.

Change agents are located in the top of the partner organizations and are the engine of the entire project design. During the implementation process they have delegated but once the project comes to the end the impulse of the change agents is needed again. This is also due to the lack of internalization of the project within the judicial office. People who did not get in touch directly with the interns did not have the chance to challenge the eventual cognitive barriers raised against any change (since it is a costly and time consuming activity). A more publicized awareness of the project should be promoted within the judicial office. This can also be phrased in terms of institutionalization. Only when the practice of injecting new human resources in the organization will be considered as a value in itself regardless the leadership of the actor that is promoting it, this will become part of the organizational life.

The second favorable condition falls into the availability of financial leverage. The European Structural Funds will come to an end and the future sustainability of the project needs to be ensured. This has been already been done with the extension of the project under a governmental finance program. However, a more comprehensive activity of fund raising should be made. This might involve also COINOR. A recent act adopted by the Ministry of Justice creates a formal basis to extend the training process of those people that have participated in training projects at the provincial or regional level. This offers a financial framework under which the interns compensation can be ensured for an extended period.

A third positive determinant is the introduction of a goal oriented management.

Despite this might evoke internal barriers the latent effects produced by the collaboration with the interns should be crystallized and consolidated into a collective discussion to set up a system of goal oriented management, not only at the macro level, but also at the micro level, within the administrative services.

7. What Needs to be Monitored Further?

First, the reversibility of the positive effects. To ensure this latter transfer of knowledge held by senior administrative staff should be intensified. Second, the sessions of training offered at the beginning of the project have been evaluated by the students as the less effective part of their experience. One possibility is to postpone theoretical and general sessions to the end. Formalization and abstraction should come later than practice and daily activity.

Why, to sum up, is this case so interesting for practitioners, judicial staff and judicial policy makers? This mostly refers to the structure of the mechanism set up by the PPO in collaboration with the University. First appoint the policy entrepreneur, namely the vice-chief prosecutor, who during the start-up stage and is still within the judicial office. This comes from an improbable, but extremely positive combination of the strong motivation and capacity of the policy entrepreneur (which is in this case was the vice chief prosecutor) the availability of latent capacities and skills brought into the projects by key administrative officers; such as the responsibility of the Innovation Office and some ordinary public prosecutors. The second and eventually more critical point refers to the creation of a specialized structure to manage the innovation in detail. This initiative fits perfectly with a functionally specialized conception of innovation. The governance of all change processes triggered by any strategy of organizational innovation should be integrated and handled as a specific function of a large-sized organization, such as the PPO of Naples. This is also coherent with the idea of knowledge transfer as a leverage of change. In fact the process of socialization, externalization, conversion and internalization does not take place within the formal boundaries of an administrative unit. Knowledge flows beyond and across the cutting lines of the organogram. An integrated view is therefore of utmost importance to avoid redundancy and

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14 Act n. 101/DG/37 April, 23rd 2013.
15 For the first six months, the financial resources came from the European Structural Funds assigned to the region of Campania, where Naples is located.
to ensure efficiency. The third point we want to stress here is the fact that the driver for change is within the judicial organization. In Italy the institutional status of the public prosecutor is characterized by individual as well as systemic independence. Judges and prosecutors are appointed by the High Judicial Council, which is the body of judicial self-government. Accordingly the executive does not have any say on the prosecutorial choices. In terms of PPO management the offices retain some autonomy too. In large offices, such as Naples, The chief prosecutor delegates a vice-chief prosecutor to settle the organizational plan (“piano organizzativo”) as well as the managerial strategies of the office. Therefore, in the Italian system, the institutional independence and the autonomy of the PPO are fairly high. The program I described here seems to be a way to combine the provision of fresh resources fueling the micro-processes of innovation without jeopardizing the autonomy of the office.

8. Conclusion

To sum up, the project features three positive characters. The first one is the injection of refreshing energy and resources. All interns witnessed the extremely positive attitude of the staff they have been working with for six months. The second one is the drive to an enhanced and more forward looking knowledge management system within the judicial office. If the change of personnel does not take place the knowledge transfer is interrupted. This does create several problems. Knowledge is lost and the capacity of the staff to see the solutions they adopted and the ways they do things from a different point of view is very low and jeopardized with the passing of time. Teaching activities, particularly when informal, are extremely effective in motivating the staff to share their knowledge (organizational and specialized in case of judicial staff) and to see what it is used to do from a new point of view. This does not in itself ensure the success of future innovations. But it creates favorable grounds where the seeds of innovation can be cultivated. A third point refers to the responsibility for the management. Italian judicial institutions have traditionally been used to thinking about their own organizational life as something which falls under the care of the central institutions. Self-organization used to be very rare. Nowadays this has been changed profoundly. However, self-organization is fairly risky in terms of accountability. The clear assignment of tasks and intermediate goals is a step towards a more accountable self-organizational pattern of innovation.

These remarks go hand in hand with the problems mentioned in the Introduction. This is one – presumably the most compelling – reason for a judicial office to resist structured cooperation with the external environment. In those cases where this difficulty does not exist, judicial offices have always been concerned by the image offered to the local community. Not only do they need to be independent. They also need to be perceived as such.

The WEP is framed into a context of inter-institutional cooperation where the knowledge management and the knowledge transfer takes place in a two move game. First, from the university to the PPO. Second, alongside the regulations adopted in each agreement (as listed in the table 1), from within the ordinary daily activities in the PPO-organisation, to the university. Those internal activities are ranging from investigating, processing data, managing costs and expenses, etc. The system set up features of an intrinsic openness based on the organization of the UNI-PPO cooperation in the shape of a menu. Know-how and knowledge is requested under one or more than one of the agreements. So for instance, if the analysis of toxigenic substances and drugs is needed the PPO has at disposal the possibility to refer to the specialized and highly advanced scientific and technical knowledge of the departments of Chemistry, Biomedical sciences, Experimental medical sciences, etc. For these reasons this system has so far been able to combine a bilateral cooperation with the autonomy of the office.

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16 Interview with dr Giovanni Melillo, May, 2013, Naples.


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Training and Recruitment of Judges in Germany
By Johannes Riedel

Abstract:

Training of German judges is part of general legal education which is the same for all regulated legal professions (judges, prosecutors, practicing lawyers, lawyers in administration and private employment). This uniform qualification is acquired by passing two exams administered by the state, i.e. the Länder (not the Federation), the first exam after university studies and the second exam after state-organized practical training. The paper gives an overview of this system of legal education.

Germany, as a rule, has career judges. Courts of first and second instance are administered by the Länder, therefore the Länder judicial administrations are also responsible for recruitment of young career judges. General criteria for appointment to any public office are laid down in the German constitution (Grundgesetz). Apart from this, selection proceedings differ in detail, although elaborate lists of criteria (employee profiles, competence profiles) are widely used. Professional competence is judged with emphasis on exam results; personal competence and social competence are assessed in interviews with appointment commissions or staff managers of ministries of justice. The paper provides details of these proceedings and also gives the author’s personal experience with recruitment proceedings in the Court of Appeal district of Cologne.

Keywords: Legal education; Recruitment; Competence Profiles; Judges; Germany

1. Introduction

Germany is a federal state. Judicial authority in Germany is shared between the Federation (“Bund”) and the sixteen “Länder” (states, provinces). Under article 92 of the Grundgesetz (constitution), judicial power is exercised by the Federal Constitutional Court (Bundesverfassungsgericht), by the other federal courts provided for in the Grundgesetz itself, and by the courts of the Länder. Federal courts are the Federal Constitutional Court in Karlsruhe and the five highest courts of the Federation, i.e. the Federal Court of Justice in Karlsruhe (Bundesgerichtshof, civil and criminal cases), the Federal Labour Court in Erfurt (Bundesarbeitsgericht, labour cases), the Federal Administrative Court in Leipzig (Bundesverwaltungsgericht, administrative law cases), the Federal Social Court in Kassel (Bundessozialgericht, social security and social insurance cases) and the Federal Finance Court in Munich (Bundesfinanzhof, tax cases). The five highest courts of the Federation are courts of last instance, generally hearing appeals on points of law only. By contrast, the courts of first instance in all five branches are courts of the Länder. Likewise, the higher regional courts (regional courts of appeal, Oberlandesgericht, Landesarbeitsgericht, Oberverwaltungsgericht, Landessozialgericht) existing in all branches except in tax cases are administered by the Länder. Thus, the German judicial system is peculiar in that the courts of first and second instance, in general, are the responsibility of the Länder whereas the final courts of appeal are the responsibility of the Federation. Cases usually begin at a Länder court of first instance, may go through a (Länder) regional court of appeal and eventually may end up in the relevant federal court. Therefore, the system establishes a single jurisdiction quite unlike the system in the United States of America with both state and federal courts of first instance and of appeal. Judges in the courts for which the Länder are responsible are employed by the Länder whereas

1 The following article is based on a former publication in “Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Europe”, Bologna, 2005; this publication was the result of a research project conducted by the Research Institute on Judicial Systems, National Research Council, Italy, in partnership with the Centre for Judicial Studies of the University of Bologna. Parts three and four of this paper are based on a paper given by the author at a workshop on Evaluating Judicial Performance which took place in May 2013 at the International Institute for the Sociology of Law in Onati, Spain. The author is president (chief justice) of the court of appeal in Cologne, Germany. For over 30 years, he has been working as a judge in courts of law in Bonn and Cologne in judicial work as well as in the judicial self-administration of the courts and as a civil servant in the Ministry of Justice of North-Rhine/Westphalia in Düsseldorf in the function of head of the department for legal education, training, continuing education, international activities and also in the function of director of the state law exam office. While every attempt has been made to collect reliable data, the great diversity of rules, regulations and their practical application in the German judicial administrations and the fact that many procedures are under review has made it nearly impossible to give a detailed up-to-date account. Although the author is confident that the overall picture is correct he is well aware of the risk that some of the details reported may not or no longer give the exact state of the relevant practice.
those appointed to the federal courts are employed by the Federation. The main features of the German system of jurisdictions are shown in table 1.

In this paper, emphasis is put on recruitment of judges in what in Germany are called the “ordinary” courts of justice, i.e. the courts hearing civil, family and criminal cases. These are the courts where about 75% of all judges are employed; administrative court judges make up about 11%, social and labour court judges about 5% each and tax court judges about 4%. The ratio of “ordinary” court judges and prosecutors is about 3 to 1. The overall number of judges in Germany is approximately 20,000 and the total number of prosecutors about 5,000.2

The following account is an attempt to report the present situation and the rules and regulations applied in the German Länder. The great diversity of these rules and regulations and of their practical application as well as the fact that many procedures are under constant review, however, presents the risk that some of the details reported may not or no longer give the exact state of the relevant practice.

2. General Requirements and Training of Judges

2.1 General requirements

Germany, as a rule, has career judges, which means that judges spend all or most of their working life in the judiciary. Their career usually begins at a court of first instance and therefore in the employment of one of the Länder. Consequently, it is the Länder administrations that have to organize the system of first recruitment for the judiciary. Within the Länder the Ministry of Justice of the Land usually organises this process; in some of the Länder, appointments for the social and labour courts come within the scope of the Ministry of Labour and Social Affairs. In about half of the 16 Länder, judicial electoral committees (Richterwahlausschüsse) participate in the process of recruitment and appointment.

The general criteria for appointment to any public office – and this includes any position in the civil service and any judicial office - are laid down in article 33 paragraph 2 Grundgesetz. According to this article all German citizens have equal access to public office according to their aptitude, qualifications and professional ability. This guarantees equal access to a judicial office for everyone. In addition, section 9 of the (federal) German Judiciary Act 3 prescribes that judicial tenure may only be given to a person who is:

- a German national in terms of article 116 Grundgesetz,
- prepared to at all times uphold the free democratic basic order within the meaning of the Grundgesetz,
- qualified to hold judicial office (according to sections 5 to 7 of the act),
- able to provide the social competence necessary for the office.

These criteria are binding on the bodies competent to decide on recruitment and appointment. Any alleged violation of equal access to public office is open to judicial review before the administrative courts.

2.2 Professional Qualification – Legal Education

Professional qualification to hold judicial office is regulated in section 5 of the (federal) German Judiciary Act. Professional qualification to hold judicial office is also a necessary prerequisite for admission to professional legal practice, according to section 4 of the Lawyers Act.4 These two provisions are the technical legal foundation for the long-standing German tradition of unified theoretical and practical training for practising lawyers, judges, prosecutors and also lawyers in the civil service. Consequently, Germany does not have specific initial training for future judges and there does not exist specific initial training for future practising lawyers. The professional qualification to hold judicial office (Befähigung zum Richteramt) as certified by passing law exams organized by the state is the (only) professional entrance qualification for all regulated legal professions.5

Section 5 German Judiciary Act states that in order to qualify to become a judge (or via section 4 of the lawyers act to become a member of the bar) an applicant has to complete legal studies at university, pass a first exam, do an apprenticeship and pass a second state examination. The course of study at university lasts (on average) four years.6

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2 cf. table 2
3 Deutsches Richtergesetz (DRiG) of April 19, 1972, Bundesgesetzblatt 1972 I p. 713, as amended per December 12, 2011, Bundesgesetzblatt 2011 I p. 2515; the most recent amendment concerning legal education was by the act to reform legal education of July 11, 2002; the amendment introduced the requirement of “social competence”
5 Certain exceptions for lawyers from other countries, especially from within the European Union, are neglected here.
6 s. 5a DRiG, cf. note 3, supra
Subjects of study have to include central fields of civil law, criminal law, administrative law, constitutional law, procedural law plus legal theory and the historical, sociological and philosophical foundations of law, including relevant aspects of European law. In addition to compulsory subjects, students must also study further legal subjects of their choice ("Schwerpunktbereiche", for example, international law, European law, insurance law, media law etc.). The course of study is concluded by passing a first examination which is split up in two parts, an exam on compulsory subjects before a state exam board and an exam on subjects of choice before the law faculty.

University education is largely theoretical. Studies concern the knowledge of important codes and acts and court decisions. Students rely mainly on textbooks. Casebooks are rare, because emphasis of the courses lies more on principle than on precedent. Practical implications of legal principles are not covered in depth; procedural law is dealt with only briefly. In spite of this emphasis on theory, a decisive element of university education in law is training in the methods of "solving" a case, a legal problem. Strict logical thinking, exact interpretation of statutes and precise deduction from principles ("Subsumtion") lie at the centre of this methodical training. In addition, the reform of 2002 placed more emphasis on practical aspects of the law, above all on the way a practising lawyer deals with legal problems, how he perceives the case and how he can act to influence the outcome of legal disputes. It is in the course of this reform that many law faculties have introduced courses on the law of the legal professions, on drafting contracts and also moot courts. According to the law on legal education in the Land North-Rhine/Westphalia, essential fields of study include, for example, the law of contract, tort, chattels, real property, consumer credit,

- an overview of family law and the law of succession upon death,
- an overview of exemplary parts of mercantile law, of company law, of labour law,
- core subjects of criminal law,
- an overview of criminal procedure,
- constitutional law, general principles of administrative law including procedure, the law of local government,
- European law and an overview of private international law.

This covers a wide range of legal fields. In addition, what may belong to “principles” or “overview” in any given field is open to discussion. Universities or examination boards do not have strict or binding curricula. Students are free to choose the time when they want to enter the exam on compulsory subjects before the state exam board. In fact, more than half of the students enter their first exam after about 4 years of study. The reason for this is that students who enter their first examination after only four years at university are entitled to an extra attempt if they fail the examination.

The state part of the first examination is organized by a state-administered examination office which is usually attached to a higher regional court. Examiners are university professors, judges and - occasionally - other practising lawyers. The examination consists of six or seven written (supervised) tests and an oral examination. Supervised written tests deal with cases or legal problems of (mostly) undisputed facts. The oral examination usually lasts four hours and covers various subjects, again discussing simple legal problems. A group of up to six students is examined by a panel of three examiners; in some of the Länder candidates also have to give a short speech on a legal problem being presented to them at the morning of the oral exam. The panels of examiners for the oral examination are composed by the director of the examination office; as a rule, one of the three examiners is an expert in civil, one of them in criminal and the third an expert in administrative law. As regards the part of the first examination administered by the law faculties in fields of specialisation ("Schwerpunktbereiche"), it is open to the law faculties to decide on the details. As it appears at present, most faculties require students to write some kind of thesis and at least one supervised test; in addition, there are also oral exams.

After the first exam there is a period of practical training, literally called preparatory service, followed by the second state examination. As pointed out above, it is the rather unique concept of the German legal education system that it is essential for all future lawyers (i.e. judges, prosecutors, barristers / solicitors) to do this preparatory service and to pass

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7 The law of legal education was reformed substantially in 2002. Before 2003, apart from compulsory subjects students had to study subjects of their choice which were then part of the exam set by a state exam office. The aim of the reform was to put more emphasis on profile building both for universities and for students and so the exam in special subjects chosen by students is now set by the law faculties ("universitäre Schwerpunktbereichsprüfung", cf. s. 5, 5d DRiG, note 3, supra)
8 s. 11, Gesetz über die juristischen Prüfungen und den juristischen Vorbereitungsdienst (Juristenausbildungsgesetz Nordrhein-Westfalen – JAG NRW) of March 11, 2003, in force since July 1, 2003 (Gesetz- und Verordnungsblatt – GV.NRW. – für das Land Nordrhein-Westfalen 2003 p. 135), as amended per April 21, 2009 (GV.NRW. 2009 p. 224); all the other Länder have passed similar legislation in order to regulate the details left open by the federal act of July 11, 2002, cf. note 3, supra
9 s. 25 JAG, cf. note 8, supra; as a rule, the examination can be repeated once if the student fails; with the so-called „free shot“ attempt, students are offered a third try.
10 s. 10 JAG, cf. note 8, supra
the second state exam. The overriding idea of this uniform legal education is to provide young lawyers with inside knowledge of most legal professions and to guarantee an equal level of competence for all legal professions. The duration of preparatory service is 2 years, and it entails various different stages of training. Students are employed by the state (the judicial administration) as civil servants in training and are paid a small monthly allowance while in preparatory service. They have to spend a few months each in a court for civil law suits, in a criminal court or a prosecutor's office, in a local or government administration, with a practising lawyer (barrister/solicitor) and at other places of their choice. In North-Rhine/Westphalia, trainees have to spend:

- a) 5 months with a court for civil law suits at first instance,
- b) 3 months with a prosecutor or in a criminal court,
- c) 3 months with an administrative office (usually on the local level),
- d) 10 months with a practising lawyer (solicitor, barrister),
- e) 3 months at a place of choice - where training is offered in a special subject of his or her choice.

The subjects of this examination are by and large identical with those of the first exam; they include however procedural law at a much deeper level. Papers and questions are usually set not from the abstract point of view of a legal scholar but almost invariably from the point of view of the court that has to give the decision in a case or of the practising lawyer who has to deal with a given situation for his client. Again there are written (supervised) tests and an oral examination. Written tests usually require the drafting of a judgement, of an indictment and, to an increasing extent, of a pleading or application - given from the barrister's point of view. Oral examinations (five to six candidates being examined by a panel of three examiners, selected by the director of the examination office) begin with a short speech which the candidate has to give on a simple practical case, again mostly from the barrister's point of view. The candidate is presented with the case on the morning of the examination and is allowed one hour of preparation; the speech should not last more than ten minutes and should end in a proposal for a practical decision. After every candidate has given his speech, the oral examination takes place in the form of a discussion covering everyday practical situations, for example, simulating the visit of a client to a solicitor, a procedural situation during a trial in court, a factual or legal problem that may arise in local administration. In short, in all phases of this examination, candidates do not only have to show their abstract knowledge of the law but also their ability to work with the law in a practical situation and to weigh and choose between a number of options which seem to be open to them.

11 cf. s. 35 JAG, note 8, supra; the emphasis that the reform is putting on training for private practice is shown by the fact that, under previous regulations, the stage with a practising lawyer was only 4 months whereas now it is 10 months; federal law prescribes at least 9 months, s. 5b para. 4 DRiG, cf. note 3, supra. This takes account of the fact that more than 80 percent of successful candidates end up in private practice.
12 s. 43 JAG, cf. note 8, supra
13 s. 51 paragraph 3 JAG, cf. note 8, supra; conditions vary a bit in detail among the Länder but are generally comparable
At the end of all this, those who are successful are qualified to hold any position as a lawyer (i.e. judge, prosecutor, barrister). By that time, the average age of a student is about 28 to 30 years. Their chance of being appointed as a judge or employed as a lawyer in the civil service, however, depends not only on their passing these two law examinations but also on how well they have passed them. Only a better than "average" performance in the examinations, for example, may open the opportunity to becoming a judge; in spite of the meaning of the word "average", only about 15% of all students receive marks that are called "above average". The rate of failure in the final exam lies around 15% with an additional rate of failure of about 30% in the first exam. The remaining 70% "average" lawyers have to look for jobs in industry or go into private practice. With the number of successful law students having grown steadily until a few years ago, the number of self-employed lawyers in private practice has risen dramatically with the result that some of them have a hard time earning their living. At present, about 160,000 lawyers are admitted to private practice in Germany although the rise has somewhat slowed down in recent years.

2.3 Further Prerequisites
Federal law does not provide for any further prerequisites. As far as can be seen, no further requirements are laid down by the laws of the Länder either. Apart from the professional qualification acquired by the two law exams (Befähigung zum Richteramt within the meaning of section 5 of the Judiciary Act) no further professional experience is necessary. There is no policy of recruiting judges from the ranks of other legal professions although applicants who have been in private practice for a few years with some experience in litigation are generally welcome. In addition, for the purposes of appointment for life, time spent in other legal professions may be taken into account. There is no minimum or maximum age although, of course, when appointing future career judges, the duration of future working life until the compulsory retirement age of 67 may be taken into account. Likewise applicants for the judiciary - like all applicants for the civil service - have to provide a health certificate in order to allow a prognosis whether the retirement age is likely to be reached in their case. On the other hand, the law requires preference to be given to handicapped persons in cases where they have met all other criteria at a level equal to that of other applicants. Finally, as is the case with all applicants to the civil service, they should be of good moral standing, i.e. they have to provide a report from the registry of criminal convictions and they have to make a declaration as to whether and in what way they are indebted. It can be assumed that if these matters give rise to objections they will not be appointed.

3. Procedure of Recruitment and Selection

3.1 Competent Authority
As has been shown, the process of recruitment and appointment of career judges is in the hands of the Länder judicial administrations. In some of the Länder, this matter is dealt with in full by their Ministry of Justice whereas in other administrations the authority to decide on recruitment and on the (first) appointment has been transferred to the presidents of the higher regional courts (i.e. the Länder courts of appeal). In some administrations candidates can apply at any time, and selection proceedings are held continuously throughout the year as vacant positions have to be filled, whereas in other cases applicants for judicial office are sought by job advertisement (Ausschreibung – public tender). Job advertisements are intended to ensure that applicants have equal opportunities of access to public office and that at the same time the most suitable applicant can be selected from as large a group as possible. Where proceedings are commenced without prior advertisements, it is assumed that those interested in the judiciary will try to acquaint themselves with the procedure that has been adopted and apply on their own initiative; it is expected that this is the group most interested and most suitable for judicial office.

In half of the 16 Länder, judicial electoral committees (Richterwahlausschüsse) also participate in recruitment. These committees are parliamentary committees. Their members are appointed for a parliamentary election period and, as a rule, chosen by a parliamentary vote, in some cases on the basis of nominations of relevant professional groups (e.g. the judiciary, the bar). There are some differences between the electoral committees of each Land in regard to composition. They consist mainly of members of the respective Land parliament or persons commissioned by them; sometimes members of the judiciary and lawyers are included. The recruitment is only possible on the basis of concurring votes of the competent minister and the electoral committee.

Generally speaking, both in proceedings where only the Land’s Ministry of Justice or the higher regional court are involved as well as in those where electoral commissions have to decide together with the Ministry of Justice, some kind of evaluation of the credentials of candidates is taking place. Because of the different nature of these proceedings, the process of evaluation may vary. Invariably, the criteria listed above will have to be taken into account. These are:

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14 s. 10 paragraph 2 DRiG, cf. note 3, supra
15 Baden-Württemberg, Berlin, Brandenburg, Bremen, Hamburg, Hessen, Schleswig-Holstein, Thüringen
• General criteria (German citizen, health, moral standing)
• Professional qualification (state exams, Befähigung zum Richteramt)
• Social competence

3.2 Details of the Procedure of Recruitment and Selection
Recruitment proceedings invariably start with an application by the respective candidate. From then on, proceedings differ greatly in detail, and this irrespective of whether a judicial electoral committee is involved or not. In most of the Länder, candidates have to appear before a recruitment commission and present their application, and it is on the basis of the vote of this commission that the competent authority (the ministry or the president of the higher regional court) decides on recruitment where no judicial electoral committee is involved. Recruitment commissions are set up on the administrative level, usually by the Ministry of Justice; in general, they are composed of high-ranking civil servants of the Ministry of Justice and/or court presidents. Proceedings before these recruitment commissions vary greatly. In some of the Länder, such commissions have not been established and it is the respective authority itself that decides, mostly on the basis of the documents supplied and in the light of an interview with the candidate. In those cases where the Länder have electoral committees, recommendations as to which candidate should be selected are quite often given to the electoral committee. Such recommendations may be based on the vote of a recruitment commission; they may be given by the president of the higher regional court on his own account; or there may have been a formal process involving another commission, in some cases consisting of judges. In addition, details of the recruitment procedure may vary even within a Land - from judicial branch to judicial branch (i.e. ordinary courts, administrative courts etc.) and from district to district. There has so far been no evaluation of the value of these various procedures. The general impression of those involved in the process is that the grade in law exams is of high if not overriding importance. In addition, the overall impression of those responsible for judicial staff is that all the Länder have a judiciary of very high and very homogenous competence, which can be seen, e.g. when judges meet for professional exchange in seminars or professional meetings or where judges are being transferred on their own initiative to another judiciary.

3.3 Judicial Review
Regardless of these various systems of selection employed, all decisions by the competent authorities are - at least in theory - subject to judicial review. An unsuccessful applicant can challenge the decision to recruit somebody else on the basis that his/her right under article 33 of the constitution (Grundgesetz) has been violated. It is accepted that it follows from article 33 that authorities are under a duty to recruit the person who is best qualified for the vacant position. On the other hand, because strict criteria do not exist, it is equally accepted that there is a certain prerogative for the authorities to decide on which criteria they are going to place the most emphasis. Applicants have a right to be treated fairly and equally in the proceedings and also have a right to be informed of the intended decision on selection. This is to enable them to seek judicial review before the decision is implemented because, once another candidate is appointed and the vacant position has been filled, the recruitment procedure is closed.

3.4 Federal Judges
The judges of the highest federal courts (Bundesrichter) are elected jointly by the electoral committee of the Federation and the Federal Minister competent for the court concerned, in general the Federal Minister of Justice. The electoral committee of the Federation consists of the respective Länder ministers (16) and 16 members of the Federal Parliament (Bundestag) or persons commissioned by parliament (article 95, para 2, Grundgesetz). The Federal Minister competent for the type of court concerned chairs the sessions of the electoral committee but has no voting right. Each individual member of the electoral committee has a right to present candidates, and it follows from this that a strict recruitment procedure does not exist. There is, however, participation of the judiciary through a body representing the judges (presidential council or "Präsidiarlrat", i.e. a council for judicial appointments at the respective federal court which represents the judges of the court). This council gives an advisory opinion on the personality and the aptitude of the candidate and this opinion has to be presented to the electoral committee.

4. Evaluations made in the Recruitment Process
Invariably, it is the aim of the various recruitment and selection proceedings to ensure that the most suitable applicants are selected. In trying to reach a broader basis for their selection decisions some of the Länder have attempted to define further criteria in addition to the general criteria and general professional qualifications as laid down by the law and explained above. Whereas in the past recruitment of judges has generally taken place on the basis of results of the final
state exams it is now increasingly accepted that further abilities and skills are necessary to make a good judge, and this has been underlined by inserting the requirement “social competence” in section 9 of the Judiciary Act.\textsuperscript{18} Some Länder administrations have drawn up lists of further criteria which have to, or should be, fulfilled by candidates. In some cases, these lists (employee profiles, competence profiles, „Anforderungsprofile“) have been established only for higher judicial office (their fulfilment being prerequisite for a chance of promotion) whereas in other cases they include initial appointment.

Very elaborate profiles do exist in most of the Länder.\textsuperscript{19} These profiles cannot be presented here in all their detail, but it may suffice to describe their basic structure. Requirements are listed in various classes, and it is invariably the classes “professional competence” and “personal competence or ability” that can be found; in some cases “social competence” is listed separately and also “competence to lead” may be found. Within these classes, rather long lists of detailed requirements have been put together. The list of North-Rhine/Westphalia, for instance, contains, \textit{inter alia}, the following elements many of which can also be found in the profiles of the other Länder:

\begin{itemize}
\item[I. Professional competence]
\begin{itemize}
\item \textbf{Professional qualification}
  \begin{itemize}
  \item Wide knowledge of the law
  \item Ability to apply the law in practice
  \item Ability to acquaint oneself with new legal fields
  \item Good judgement
  \item Ability to apply information technology
  \end{itemize}
\item \textbf{Understanding of judicial office}
  \begin{itemize}
  \item Impartiality
  \item Prepared to actively uphold the values of the constitution
  \item Prepared to defend against undue influence
  \item Prepared to take responsibility for judicial decisions
  \item Awareness of the influence of private conduct on judicial office
  \end{itemize}
\item \textbf{Ability to present arguments and to convince}
  \begin{itemize}
  \item Precise phrasing
  \item Ability to define issues in complex cases
  \item Giving reasons thoroughly, with respect to the individual case
  \item Openness
  \end{itemize}
\item \textbf{Ability to conduct hearings and interrogations}
  \begin{itemize}
  \item Being thoroughly prepared
  \item Knowledge of the court files and documents
  \item Planning and structuring of trials
  \item Respect for the interests of the parties
  \item Understanding, sensitiveness and patience with parties
  \item Clear view of chances for settlements
  \end{itemize}
\item \textbf{Competence in teaching}
  \begin{itemize}
  \item Prepared to instruct students in preparatory service
  \item Diligent correction of students’ papers
  \end{itemize}
\end{itemize}

\begin{itemize}
\item[II. Personal competence]
\begin{itemize}
\item \textbf{General elements of personality}
  \begin{itemize}
  \item Broad interests
  \item Natural authority
  \item Prepared to accept difficult duties
  \item Awareness of one’s strengths and weaknesses
  \item Control of one’s emotions
  \end{itemize}
\item \textbf{Sense of duty and responsibility}
  \begin{itemize}
  \item Awareness of social responsibility
  \item Prepared to accept responsibility for the judicial administration
  \item Able to assess consequences of decisions
  \item Responsible handling of a large workload
  \end{itemize}
\end{itemize}
\end{itemize}

\textsuperscript{18} cf. note 3 supra
\textsuperscript{19} Anforderungsprofil für Richter und Staatsanwälte, published as internal regulations by the respective Ministry of Justice, e.g. Bayern, Schleswig-Holstein, Nordrhein-Westfalen
Openness towards lay judges and court staff

**Ability to cope with the workload**
- Physical and psychological fitness
- Prepared to accept additional duties
- Able to work fast under pressure and with concentration
- Maintaining standards even with a larger workload

**Ability to manage and to organise work**
- Set priorities
- Optimise work flow
- Able to motivate oneself and others
- Delegate work reasonably
- Take available resources into account

**Ability to decide**
- Decide swiftly and responsibly
- Prepared to face necessary disputes

**Flexibility and preparedness for innovations**
- Openness towards new technologies
- Openness towards modernisation of courts
- Prepared to work in different court structures
- Ability to develop new solutions

### III. Social competence

**Ability to work in a team**

**Ability to communicate**

**Ability to deal with conflicts and to mediate**
- Prepared for compromises
- Fairness, positive approach in dealing with colleagues
- Constructive criticism
- Ability to mediate
- Being accepted as an authority

**Awareness of service aspects**
- Respect for interests and concerns of parties and witnesses
- Politeness
- Keeping to schedules
- Taking the necessary amount of time

### IV. Competence to lead

**Clear instructions**

**Trust in staff and colleagues**

**Openness for concerns of staff**

It is the aim of recruitment and selection proceedings described above to evaluate applicants with respect to elements like these and to reach a prognosis as precise as possible as to the performance of candidates in their future office. There are, however, no reliable data as to the weight that the Länder attach to all or any of these elements. But it is fair to say that the group of elements listed under “professional competence” is widely accounted for by referring to the results of the second and final state exams, sometimes including the result of the first exam and other professional qualifications. In fact, many of the Länder have set a mandatory limit for invitations to interviews or for other selection proceedings. With “above average” exams starting at 9.00 points at a scale reaching up to 18.00 points most of the Länder have set their limit at between 7.75 and 9.00 points to reach the assessment centre or other further stages of the selection process. Bearing in mind that only about 15% of successful examinees reach 9.00 points, this means that there is a very high barrier for prospective candidates.

It has to be noted, however, that these limits have been set in the light of a job market where Länder judicial administrations can recruit candidates for the judiciary from a large group of well-qualified applicants. Even where the limit is lower than 9.00 points (which is the equivalent of the mark “fully satisfactory” reached by only about 15% of the candidates) applicants with fewer than 9.00 points face a high number of competitors with much better marks. This means that to get selected these candidates would have to show a much better performance with respect to the other criteria of the “profiles”.

The reliability of the other criteria is subject to rather intensive discussion. Regardless of the list employed and the different selection procedures in the Länder, persons in charge of selection tend to maintain that their respective systems provide satisfactory results and that the number of (junior) judges who leave (or will have to leave) office before they are appointed for life is significantly low. This is hardly surprising when the group of applicants from which successful candidates are selected is itself recruited from the top 15% of those holding the professional qualification required by law.

5. Personal Experience
In addition to these rather general descriptions of different recruitment procedures in Germany, it might be of some interest to give a more detailed account of specific experiences. The author of this paper can look back to about 20 years involvement in recruiting young career judges in the Cologne district. The following observations concern the procedure in Cologne and are, of course, based on very personal experience.

In North-Rhine-Westphalia, first appointments are the responsibility of the presidents of the Courts of Appeal (higher regional courts). In Cologne, the president is advised by a commission consisting of one of the court presidents of the regional courts of the district, the gender representative, the judge who heads the judicial staff department and a member of the judicial staff council of the district. The commission is presided over by the president or the vice-president of the court of appeal. Usually a group of up to eight applicants is invited for one day of "assessment". At the end of the day the commission discusses the results, forms an opinion whom to appoint and advises the president accordingly. Usually, decisions are unanimous.

The day starts with a group discussion on a given theme, usually a controversial issue of legal politics or of court organization. The group has about half an hour to prepare and they then discuss in the presence of the appointment commission. They are encouraged to discuss among themselves, not towards the commission as spectators. The aim of this exercise is to see how applicants behave in an internal discussion; they are not expected to try to convince the commission. It is not the force of the argument that is regarded as relevant but the way the applicants behave, whether they show the ability for a structured discussion, for moderation, whether they are open for other arguments and for reconsidering their opinions, or whether they stubbornly hold on to their views.

The next step is a small working exercise with about 10 different tasks from the point of view of a local court judge. The problems are usually a mix of civil and criminal procedural situations, some quite simple, some more complicated, some urgent, some not. The idea of this test is to determine whether the applicant has an ability to decide swiftly about the next move, whether he or she can prioritize work according to urgency (e.g. an application for an arrest warrant or an interlocutory application would have to be treated first) or whether the applicant is a hesitant person. The test is usually evaluated by a judge who assists the commission or by the commission itself.

Next the applicants are asked to fill in a form which is called "Visitenkarte", which in this context is probably best described as some kind of self-reference. Questions to be answered are, e.g. “what are my greatest achievements”, “what do I strive for in the next years”, “three items I would take to a lonely island”, “things I am good at”, “things I am not good at”, “what should be changed in the world”, “things that make me angry”, “things that make me happy”, “something else worth knowing about me”. Here, the aim is not so much to ask the applicant to do some sort of coming-out but rather to supplement the curriculum vitae which may become subject of the following interview. It is clear that some applicants use this tool to try to steer the interview in certain directions.

The final and important step is the interview of each individual applicant by the commission. It is usually begun by the president of the court of appeal. When the author sits in the commission, he would normally reference the curriculum vitae and ask the applicant to explain, e.g., why he or she has read law in the first place, what his or her experiences were at university, what impressed him or her in the various stages of practical training, etcetera. As many applicants have spent some time abroad, we would normally touch on these experiences and on the relevant other legal systems or systems of legal education. We are also searching for information regarding the wide field of social skills, depending on where the applicant has engaged him- or herself, e.g. in the school or students’ representation, in social work, in the (until a few years ago) compulsory service in lieu of armed service, in programs in developing countries, etcetera. In a second part, the interview would then turn to why the applicant wants to become a judge and not a practicing lawyer. We would discuss the great variety of judicial work, interesting and not so interesting work. Great emphasis will be put on the fact that even highly qualified applicants might have to adjudicate traffic accident or even traffic violation cases for some years. Boring aspects of judicial work will be discussed in order to find out whether there is sufficient motivation for all judicial duties. We

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20 E.g. introduction of electronic filing systems; circumcision and criminal law; judicial appointments by parliament, by government or by judicial councils etcetera.
would also try to discuss how the candidate sees his or her abilities to direct court trials, to discuss matters with lawyers and with ordinary litigants, to seek settlements of controversial issues.

After the president, the head of the judicial staff department would continue. He would, as a rule, discuss questions of which court the applicant would aim to be assigned to, of part time work, of career aspects etcetera. The gender representative would then normally touch on similar issues, quite often also on general motivation for the profession. The president of the regional court might then discuss results of the 10 test cases or present the applicant with a procedural problem. Quite often the relations between judge and court president and the limitations of hierarchy due to judicial independence are also discussed. The last person to discuss with the applicant is the representative of the judicial staff council. He or she would normally also touch questions of judicial work, self-understanding, the role of the judge etcetera.

At the end of the day, the commission determines which of the applicants should be appointed. Positive and critical aspects and observations are discussed, and usually there is a unanimous decision, although, theoretically, the president, because of his sole responsibility, could overrule the opinion of the commission. In most cases, little discussion is necessary because all the members of the commission have the same (positive or negative) view, so the discussion is limited to listing the main reasons for or against appointment. Whenever a member of the commission dissents or where the observations of the members differ in substance, the discussion of the merits is more intensive. There is no clear ranking of the criteria, let alone a point system. The author, however, tries to control his overall opinion by awarding points; in this process, double points are awarded for the impression in the interview and for the overall documentary profile of the candidate (exam marks, doctorate, LL.M., other merits as documented in the c.v.) whereas only single point value is given for the group discussion and the working test. The final and overall test, in view of the commissions, is whether the members of the commission can envisage the applicant working as a judge in all his/her capacities — i.e. whether he/she can handle the caseload, whether he/she can strike a good and conscientious balance between thorough and swift work, whether he/she can communicate with professionals and litigants, whether he/she is well balanced for work as a single judge, whether he/she can also work as a team player without causing endless discussions in the panel but also without sheepishly following senior judges’ views. He/she should be a good and conscientious worker but the judiciary should not be solely on his/her mind. We do not want people who are preoccupied with making a career in the judiciary. These are quite a lot of requirements, and the question quite often is whether certain reservations in one or more aspects can be overruled.

The author’s personal observation is that our commissions tend to give too much weight to the impression given in the interview. Shy and more thoughtful candidates may have a hard time whereas bright, open-minded and eloquent applicants have better chances. Occasionally, it appears necessary to ask the members of the commission to also have a close look at all the other merits of candidates as documented by exam papers, exam marks, evaluations during practical training, evaluations of former professional work, etcetera, so as to mirror the impression of the moment against the merits of months or years of professional training and work.

6. Initial Training
As has been pointed out above, it is the aim of general legal education in Germany to qualify for judicial office. General legal education, therefore, to a large extent deals with specific skills deemed necessary for judges and prosecutors, especially the drafting of judgements and of indictments which are part of the second state exam. Unlike in most other countries, in Germany young lawyers can be appointed to the bench without additional (initial) training, and it is quite common that they sit and work as judges with almost no or only a short introduction in their field of work.

Despite this, it has been accepted for decades that there is a certain need for additional training at an early phase after appointment in order to acquire a certain amount of expertise and know-how concerning day-to-day business in court. Various methods have been used in this respect in the Länder.

First of all, for some period of time it was rather common to assign only a certain portion of the average workload (usually between 50 and 70 percent) to junior judges, the idea being that at the beginning of their career it would take them more time to deal with a given case. In addition, in some judicial administrations experienced judges have been asked to act as advisors or tutors for junior judges and prosecutors. In the case of prosecutors, it is still the rule that beginners are not entitled to sign indictments, but that their drafts have to be counter-signed by a superior. In the courts, however, this is not possible, because even a junior judge is accorded full judicial independence to perform his or her duties. This does not preclude, however, voluntarily asking more senior judges for their opinion and advice.

21 Questions e.g., are whether a presiding judge of a panel is allowed to make changes in a draft judgment prepared by a junior judge, whether the court president can demand that the judge sits during specific hours and so on.
In the so-called ordinary courts, junior judges would, as a rule, be assigned to a panel of three judges at a regional court (Landgericht); this enables them to share the responsibility of decision-making with senior colleagues of the panel and, at the same time, gain experience by observing their work. This is not possible in courts like labour or social courts where even a newly appointed judge, as the sole professional judge, presides over a panel that includes two lay judges. In these jurisdictions, some courts have introduced a somewhat informal period of initial instruction, between two and eight weeks, where newly appointed junior judges do not have cases assigned to them but during which time they can accompany and watch a senior judge in his or her work. This may increasingly become necessary in ordinary courts because, due to an amendment to the procedural codes, more civil law suits will have to be decided at first instance by single judges which may result in a substantial reduction of panels comprising three professional judges.

In addition, some of the Länder have introduced compulsory seminars for junior judges and prosecutors. Strictly speaking, these seminars are part of continuing education (Fortbildung, formation continue). It is, however, justified to discuss them here because they are limited to the time served prior to lifetime appointment, because participation is compulsory,22 and because their aim is not so much to maintain and widen professional knowledge and expertise as to enable participants to acquire the standard skills necessary for working as a judge. In North-Rhine/Westphalia, e.g., several sets of seminars are offered for junior judges, comprising three seminars of three days. According to the syllabus of these seminars, the following subjects are covered:

- Organization of the courts, co-operation within the courts and their panels, dealing with litigants, work techniques, planning of trials, understanding of the role and the office of a judge;
- psychological aspects of communicating with litigants and lawyers, ascertaining the facts, examining witnesses, weighing the evidence; and
- discovering and handling conflicts, handling of a trial, time management, management of work flow, techniques of speech

Currently, individual performance in these seminars is not being evaluated. The decision on lifetime appointment is made on the basis of professional evaluations taken throughout the period of three to five years after initial appointment with a view of whether the junior judge is, in the eyes of those responsible, sufficiently qualified for permanent appointment.

22 In theory, this would mean that a person who is not taking part may not be appointed for life but would be dismissed; in practice, to the knowledge of the author of this study, no such case has occurred.
Appendix 1

Court System in Germany

Constitutional Court (Bundesverfassungsgericht)*

Federal Court of Justice
(augment on point of law only)
Criminal section  Civil section  Family section

Federal Administrative Court
(augment on point of law)
Criminal section  Civil section  Family section

Federal Finance Court
(augment)
Criminal section  Civil section  Family section

Federal Labour Court
(augment on point of law)
Criminal section  Civil section  Family section

Federal Social Court
(augment on point of law)
Criminal section  Civil section  Family section

Higher Regional Courts
(augment)
Criminal section  Civil section  Family section

Higher Administrative Court
(augment)
Criminal section  Civil section  Family section

Finance Court
Criminal section  Civil section  Family section

Higher Labour Court
(augment)
Criminal section  Civil section  Family section

Higher Social Court
(augment)
Criminal section  Civil section  Family section

Administrative Court
Criminal section  Civil section  Family section

Labour Court
Criminal section  Civil section  Family section

Social Court
Criminal section  Civil section  Family section

Regional Courts
(trial and augment)
Criminal section  Civil section

Local Courts
(trial)
Criminal section  Civil section  Family section

The jurisdiction of the Federal Constitutional Court can be divided into:
- a) norm control proceedings (concerning compatibility of laws with the constitution)
- b) disputes between organs of the constitution, the Federation and the Länder
- c) individual complaints of unconstitutionality of court decisions and statutes

The appeal system in criminal, civil and family cases is complicated:

**Criminal cases:** Appeals from local courts to regional courts, further appeal to higher regional courts
Appeals from regional courts (trials, first instance) only to federal court of justice

**Civil cases:** Appeals from local courts to regional courts, no further appeal
Appeals from regional courts (first instance) to higher regional courts, further appeal to federal court of justice

**Family cases:** Appeals from local courts to higher regional courts, further appeal to federal court of justice

(Appeals to federal court of justice are subject to further conditions)
Appendix 2

Judges in "ordinary" courts (civil, criminal, family courts) of the Länder and prosecutors of the Länder in 2010

<table>
<thead>
<tr>
<th>Land</th>
<th>Judges</th>
<th>Female Judges %</th>
<th>Male Judges %</th>
<th>Procurators</th>
<th>Female Prosecutors %</th>
<th>Male Prosecutors %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baden-Württemberg</td>
<td>1656</td>
<td>673</td>
<td>983</td>
<td>507</td>
<td>184</td>
<td>323</td>
</tr>
<tr>
<td>Bayern</td>
<td>2143</td>
<td>850</td>
<td>1293</td>
<td>694</td>
<td>320</td>
<td>374</td>
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<tr>
<td>Berlin</td>
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<td>545</td>
<td>511</td>
<td>366</td>
<td>182</td>
<td>184</td>
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<td>Brandenburg</td>
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<td>246</td>
<td>252</td>
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<td>146</td>
</tr>
<tr>
<td>Bremen</td>
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<td>66</td>
<td>86</td>
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<tr>
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<td>92</td>
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<tr>
<td>Hessen</td>
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<td>732</td>
<td>395</td>
<td>105</td>
<td>290</td>
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<tr>
<td>Mecklenburg-Vorpommern</td>
<td>339</td>
<td>139</td>
<td>200</td>
<td>156</td>
<td>65</td>
<td>91</td>
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<tr>
<td>Niedersachsen</td>
<td>1455</td>
<td>591</td>
<td>864</td>
<td>534</td>
<td>246</td>
<td>288</td>
</tr>
<tr>
<td>Nordrhein-Westfalen</td>
<td>3777</td>
<td>1605</td>
<td>2172</td>
<td>1056</td>
<td>425</td>
<td>631</td>
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<tr>
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<td>454</td>
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<tr>
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<td>445</td>
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<tr>
<td>Sachsen-Anhalt</td>
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<td>196</td>
<td>215</td>
<td>170</td>
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<tr>
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<tr>
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<tr>
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<td>6827</td>
<td>9183</td>
<td>5393</td>
<td>2270</td>
<td>3123</td>
</tr>
</tbody>
</table>

These numbers include judges and prosecutors working part-time (overall actual working force: about 15000)

To be added for: Administrative Courts Tax Courts Social Sec. Courts Labour Courts