



European Network of Councils
for the Judiciary (ENCJ)

Réseau européen des Conseils
de la Justice (RECJ)

ENCJ Working Group Mission and Vision III

If you can't recognize failure you can't correct it:

*Report on Managing and assessing the performance of
a Council or Judicial System*

1. Aim of the working group

During the annual conference of the ENCJ held in Wroclaw on 25-26 May 2006, the General Assembly decided to establish for the third successive time a working group on Mission and Vision. As was the case the preceding years, the Belgian High Council of Justice coordinated¹ this working group.

The working group, Mission and Vision III, received as task the development of a framework for the performance assessment of a council and/or judicial system. In addition, the working group was requested to pursue the following two objectives:

1. Discussion of the initiatives that members and observers have taken or plan to take with respect to the development of a mission, vision and strategy, and in so doing, how to pay attention to the later performance assessment;
2. Provide methodological support and advice at the request of a member or observer that wishes to take or has taken an initiative at the level of strategic management.

This report is the realization of the working group's main objective, the clarification of the process of assessing the performance of an organisation (i.e. a council or the judiciary) and throwing light upon its context.

What follows will provide councils and judiciaries with basic concepts and insights to become a performance driven organisation.

Section 2 explains that putting up activities to ensure that goals are consistently being met in an effective and efficient manner is a matter of performance management and its core component – performance assessment. It makes clear that performance management is generic for all kinds of management deployed by an organization to pursue results. It further describes the types of performance assessment and the role it plays in the different phases of strategic management. In section 3 the beneficial effects performance management brings along are expounded. Section 4 shows the components that must be filled in to set up an organization's concrete performance management system. It describes the activities that must be undertaken to install the performance management system as well as the assessment

¹ The first working group on Mission and Vision was coordinated together with Italy.

activities necessary to maintain or correct planned action. Section 5 shows that there are different things you must bare in mind when trying to aim to effective results and enumerates a number of organizational conditions that when being met facilitate good performing. In section 6 three countries summarize some initiatives they have taken with respect to the assessment of the performance of their council or judicial system or parts of it. The conclusion in section 7 sums up the main proposals developed in the previous sections.

The working group gives notice that especially the exchange of knowledge and information between countries, an opportunity created by ENCJ, has been very enlightening and motivating to reflect on and improve their practice.

2. Performance management: managing a council or judicial system for results

Goals and Focuses of Performance Management

Since a few decades the judiciary like any other public organization in society is faced with challenges like never before: problems with quality of products and services, timeliness and limited resources (personnel, budget) are key factors that deserve attention to maintain authority and legitimacy.

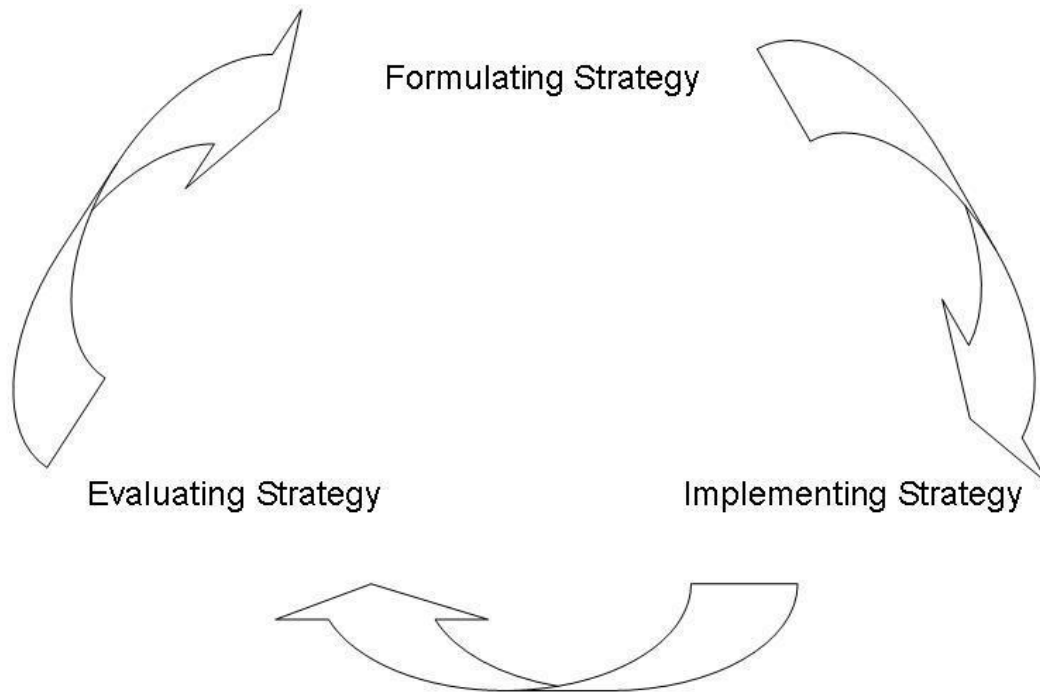
This situation has put more focus on effectiveness (that systems and processes in the organization be applied in the right way to the right things) and on efficiency (that an organization works better and costs less).

To address these problems and meet the challenges of the 21st century, councils and judiciaries should be:

- Accountable and accessible to the people;
- Strategically oriented and focused on performance and productivity;
- Reflective of the priorities and values of the citizens
- Efficient users of taxpayer's money.

Therefore, councils and judicial systems are invited to analyze carefully the choice of strategies to ensure good societal and citizen service.

With this perspective in mind, the working group Mission and Vision II defined an action framework for strategic management of councils and judiciaries². It consists of three basic phases in an ongoing process: (A) formulating, (B) implementing and (C) evaluating a



strategy.

During and after implementation, people who are responsible for an organisation are confronted to the results. They want to know the answer to four basic questions:

What has happened?

Why has it happened?

Is it going to continue?

What are we going to do about it?

To answer these questions management makes use of performance assessment. Management's job is to establish goals in measurable terms, develop appropriate measures, measuring performance, analyze performance (comparing performance with the goals), appraise and interpret the results, take appropriate action and communicate the meaning of measurements

² For detailed information, see the report "Mission and Vision – developing a strategy for the council", May 5, 2006.

and results to the organization's sections and personnel that need the information. This process is management control for continuous performance improvement.

Assessment and measurement also play a role in self control and improvement. This is especially relevant for judges, because of their independency. Self control provides strong motivation for people to do their best rather than just enough to get by. For self control managers and staff must know what their goals are and be able to measure their performance against those goals. Concerned personnel should receive the information soon enough to make any changes necessary for the desired results.

Also for budgeting measurement usually involves use of past and future workload trends, unit costs and productivity indices, and timeliness measures to determine financial resource needs.

Another use of performance management is accountability. To keep score on how well managers are meeting their responsibility for achieving operating performance and results. Also performance assessment provides a source of information for telling others outside the entity how well management is doing.

Globally speaking the usual performance aspects of importance are purpose achievement, customer satisfaction, quality, timeliness, costs, efficiency, economy and the organization's financial condition.

The overall goal of performance management is to ensure that the organization and all of its subsystems or domains (e.g. departments, processes, products or services to internal or external customers, projects, teams, personnel)³ are working together in an optimum fashion to achieve the results desired by the organization. All of the results across the organization must continue to be aligned to achieve the overall results desired by the organization for it to thrive. Only then can it be said that the organization and its various parts are really performing.

Performance assessment – a core component

³ Note that many books on performance management written by consultants cut down the subject to the personnel domain and merely deal with individual performance evaluation ("performance appraisal").

Performance assessment is intended to inject objective, results-oriented information into decision making processes. This is why performance assessment is a very critical component of performance management.

Two types of performance assessment can be distinguished: performance measurement and performance evaluation⁴.

Performance measurement

Performance measurement refers to the process of defining, observing and using measures. It describes the putting in place of measurement points that are important to the entire strategic management process. Measures of output, productivity, efficiency, effectiveness, service quality and customer satisfaction provide information that can be used by organizations to manage their plans and operations more effectively.

Performance measurement is the ongoing monitoring and reporting of strategy accomplishments, particularly progress toward pre-established goals. It is conducted by management. Performance measures are essential for letting managers know “how things stand” along the way so that they can act accordingly to maintain or improve performance.

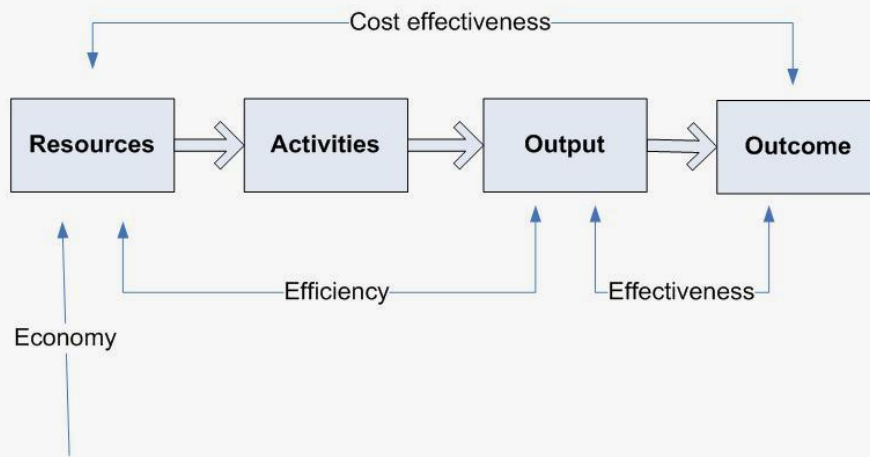
Performance measurement is also essential to support decision making processes, such as planning, budgeting, process change and comparative benchmarking.

The following scheme shows the elements and indicators⁵ in the performance process.

⁴ The distinction between these two concepts is based on the GAO paper “Performance measurement and evaluation. Definitions and relationships.” May 2005.

⁵ See section 4 for more information on the concept of indicator.

Performance indicators



1

Performance evaluation

Performance evaluation⁶ are individual systematic studies conducted periodically or on an ad hoc basis to assess how well a management plan (or particular program) is working. They are often conducted by experts external to the organization's departments and services responsible for the (execution of the) management plan or program, either inside or outside the organisation, as well as by managers.

A performance evaluation examines achievement of planned objectives. Four main types can be identified, all of which use measures of performance, along with other information to learn the benefits of a strategy and how to improve it.

Such evaluations typically examine a broader range of information on performance and its context than is feasible to monitor on an ongoing basis. Depending on their focus they may examine aspects of management plan operations or factors in the environment that may impede or contribute to its success, to help explain the linkages between plan (program) inputs, activities, outputs and outcomes.

Evaluations may assess the program's effects beyond its intended objectives, or estimate what would have occurred in the absence of the program, in order to assess the program's net impact.

⁶ It is also called "program evaluation", particularly when an organization aims to realize one or more programs.

Additionally, program evaluations may systematically compare the effectiveness of alternative programs aimed at the same objective.

Both forms of assessment aim to support resource allocation and other policy decisions to improve service delivery and program effectiveness. But performance measurement, because of its ongoing nature, can serve as an early warning system to management and as a vehicle for improving accountability to the public.

A program evaluation's typically more in-depth examination of program performance and context allows for an overall assessment of whether the program works and identification of adjustments that may improve its results.

1. Process (or implementation) evaluation

This form of evaluation assesses the extent to which a strategic plan is operating as it was intended. It assesses program activities' conformance to statutory and regulatory requirements, program design, and professional standards or customer expectations.

2. Outcome evaluation⁷

This form of evaluation assesses the extent to which a program achieves its outcome-oriented objectives. It focuses on outputs and outcomes (including unintended effects) to judge program effectiveness but may also assess program process to understand how outcomes are produced.

3. Cost-benefit and Cost-effectiveness analyses

These analyses compare a program's outputs or outcomes with the costs (resources expended) to produce them. When applied to existing programs, they are considered a form of program evaluation. Cost-effectiveness analysis assesses the cost of meeting a single goal or objective

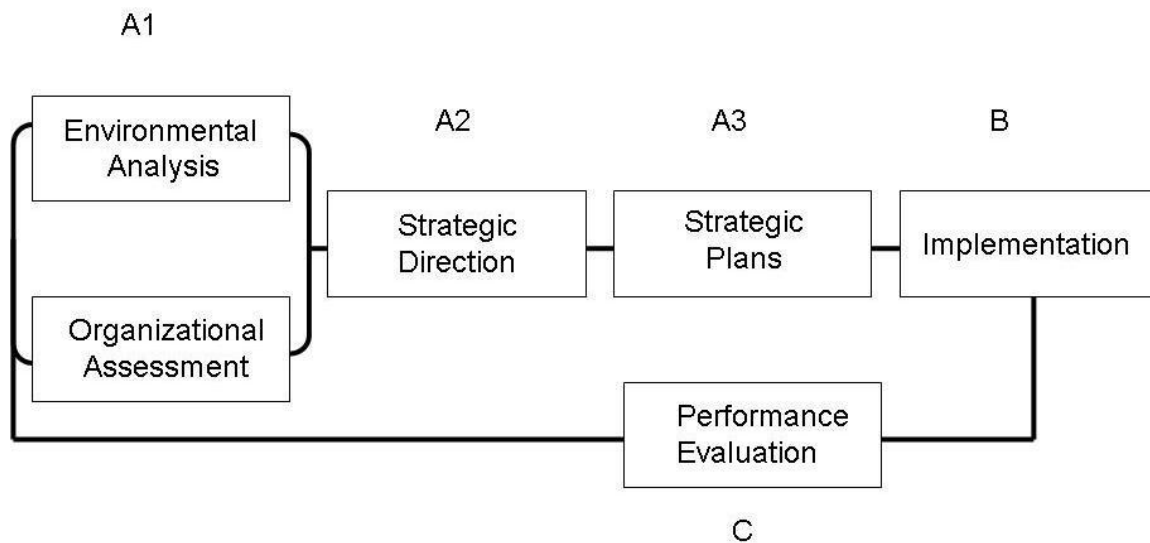
⁷ Impact evaluation is a special form of outcome evaluation that is hardly to use in a judicial context. It assesses the net effect of a program by comparing program outcomes with an estimate of what would have happened in the absence of the program. This form of evaluation is employed when external factors are known to influence the program's outcomes, in order to isolate the program's contribution to achievement of its objectives. It is difficult to use this kind of evaluation in a judicial context.

and can be used to identify the least costly alternative for meeting that goal. Cost-benefit analysis aims to identify all relevant costs and benefits, usually expressed in money terms.

Interaction of performance assessment with the phases of the strategic management process

Strategic performance management is a systematic approach to performance improvement through an ongoing process of establishing strategic performance objectives; measuring performance; collecting, analyzing, reviewing and reporting performance data and using that data to drive performance improvement.

Performance management is the continuous use of all these practices so that they are integrated into the organization's core operations.



In phase A - Formulating strategy: performance measurement is used for translating objectives into quantifiable measurement points and establishing targets.

What do we want to attain? (effects, results); What are we going to do to achieve this? (products, services); What initiatives must we take in order to achieve our objectives? Who is responsible for its realisation? How much may this cost?

In phase B - Implementing strategy: ongoing performance measurement is carried out during implementation, the present situation is evaluated for tracking and monitoring.

Are we realising that which we intended?

In phase C - Evaluating strategy: performance assessment (performance measurement and performance evaluation) are used during gap analysis. In the above figure that phase is called performance evaluation because it is done periodically, e.g. management reports quarterly on strategic performance and uses a combination of different assessment approaches.

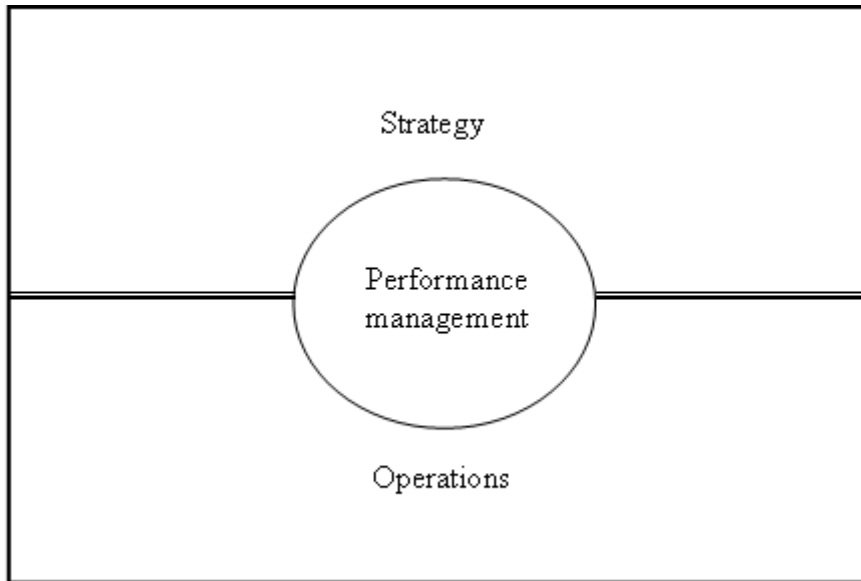
Performance evaluations can also be done on an ad hoc basis. They can be very time-consuming studies needing very special preparation and competencies (e.g. performance auditing of outcomes done by an independent auditor).

Beside performance measurement and performance evaluation, a third kind of performance assessment can be distinguished, namely organizational assessments intended to estimate the organization's performance capacity (it's used in step A1). Strategic plans must be based on accurate, timely and complete information. Current and future client requirements are the driving force behind the creation of strategic direction. As such, performance management begins by first identifying potential sources of data that can impact operations, both from outside and inside the organisation; gathering the data; and analyzing the data to provide insight into customers, society, the organisation, and its future. Gather external and internal data continuously and use that data as input to all facets of the planning process is important⁸.

Performance management and performance assessment are topics that are not limited to a single specific phase in strategic management⁹. Moreover, they are also relevant to other forms of management like operations management.

⁸ The "organizational assessment" concept is not further developed in this report. See the report on "Mission and vision – developing a strategy for a council" for more information on organizational assessment.

⁹ See the report on "Mission and vision – developing a strategy for a council" for more detailed information on strategic management.



3. Benefits of performance management

4 Key benefits

Performance management (PM):

1. Focuses on results, rather than behaviors and activities

PM cultivates a change in perspective from activities to results.

2. Aligns organizational activities and processes to the goals of the organization

PM identifies organizational goals, results needed to achieve those goals, measures of effectiveness or efficiency (outcomes) toward the goals, and means (drivers) to achieve the goals. This chain of measurements is examined to ensure alignment with overall results of the organization.

3. Cultivates a system-wide, long-term view of the organization.

An effective performance improvement process must follow a systems-based approach while looking at outcomes and drivers¹⁰. Otherwise, the effort produces a flawed picture.

4. Produces meaningful measurements

Agreed upon definitions and registration systems lead to accepted meaningful measurements.

¹⁰ Richard A. Swanson, The foundations of performance improvement and implications for practice, in Richard Torraco (Ed.), *Performance improvement theory and practice*. San Francisco: Berrett-Koehler. 1999.

These measurements have a wide variety of useful applications. They are useful in benchmarking, or setting standards for comparison with best practices in other organizations. They provide consistent basis for comparison during internal change efforts. They indicate results during improvement efforts, such as employee training, management development, quality programs, etc. They help ensure equitable and fair treatment to the personnel based on performance.

Additional benefits of performance management

Performance management (PM):

1. Helps you think about what results you really want. You're forced to be accountable.
2. Depersonalizes issues. Supervisors focus on behaviors and results, rather than personalities.
3. Validates expectations. Having measurable results can help verify whether grand visions are realistic or not.
4. Helps ensure equitable treatment of employees because appraisals are based on results.
5. Optimizes operations in the organization because goals and results are more closely aligned.
6. Performance reviews are focused on contributions to the organizational goals. ("What organizational goals were contributed to and how?")
7. Supports ongoing communication, feedback and dialogue about organizational goals. Also supports communication between personnel.
8. Performance is seen as an ongoing process, rather than a one-time event.
9. Provokes focus on the needs of customers, whether internal or external.
10. Cultivates a systems perspective, that is, focus on the relationships and exchanges between subsystems, e.g., departments, processes, teams and individuals. Accordingly, personnel focus on patterns and themes in the organization, rather than specific events.

11. Continuing focus and analysis on results helps to correct several myths, e.g., "learning means results", "job satisfaction produces productivity", etc.

12. Produces specificity in commitments and resources.

13. Provides specificity for comparisons, direction and planning.

14. Redirects attention from bottom-up approaches (e.g., doing job descriptions, performance appraisals, etc., first and then "rolling up" results to the top of the organization) to top-down approaches (e.g., ensuring all subsystem goals and results are aligned first with the organization's overall goals and results).

4. Performance management components

Four performance management components (performance standards, performance measures, assessing performance and reporting of progress, and performance improvement system) will form the organization's performance management system and forms the core part to be included in the performance plan.

The performance plan describes the domain's preferred results, how results tie back to the organization's results, weighting of results, how results will be measured and what standards are used to evaluate results. Developing the plan is often the responsibility of the head of the organization or domain. However, the plan should be developed as much as possible with participants in the domain. Further, does the domain have the necessary resources to achieve preferred results, e.g., necessary funding, training, input from other subsystems, etc? Are the standards realistic? Can the domain realistically achieve the results within the preferred time frame? Does everyone involved in the measures really understand how to recognize the measures? Do they know their role in the performance management process?

(1) Performance standards - establishment of organizational or system performance standards, targets and goals and relevant indicators to improve organizational practice. Organizational goals are established during strategic planning. Performance management

translates these goals to results¹¹. These are the final and specific outputs desired from the organization or domain. Examples are a percentage increase in cases done, extent of impact on society or a part of society, etc. For example, the judges' decisions are well considered and in time for citizens and enterprises.

The intended results are often expressed as products or services for an internal or external customer (e.g. impact on a community) and are expressed in terms of cost, quality, quantity and/or time. For example, a goal may be to increase the organization's judicial decisions by 10% by the end of the next year. A subgoal, may be to increase the output of a particular kind of civil cases of that jurisdiction by 30% over the next year. Aligning results with organizational results is another unique aspect of performance management process. Do the magistrates' results directly contribute to the results of the organization? Is there anything else the magistrate could be doing that would be more productive for this goal? Should a job analysis be done to verify efficiency?

A weight, or prioritization, is often in the form of percentage-time-spent, or a numeric ranking with "1" as the highest. For example, the magistrates' results might be weighted as follows:

- a) 85% of his time over an 8-hour period, Monday through Friday over the next year, to be spent on cases
- b) 10% of this time in training
- c) 5% of this time in a evaluation.

Standards specify how well a result should be achieved in time. They are used for evaluating how well the domain's desired results were achieved.

While working to improve the effectiveness of organizations, people often refer to various performance standards as conveyed in "best practices" and "standards of excellence." These performance standards correspond to the levels of quality in certain organizations that are viewed by them (or others) as being high performing organizations. Some people often use the standards to assess the quality of practices in an organization and then determine what must be done to improve that quality. Good use of those practices for an organization

¹¹ i.e. goals should be "SMART" (an acronym), that is, specific, measurable, acceptable, realistic to achieve and time-bound with a deadline.

depends on a variety of factors, including the culture of the organization, nature of the products and services that the organization provides, expectations of major stakeholders, and effects of change in the environments of the organization. There is no one best practice, for leading, managing or guiding organizations and change.

(2) Performance measures - application and use of performance measures and indicators. Measures provide specific information used to assess the extent of accomplishment of results. Measurements are typically expressed in terms of time, quantity, quality or cost. Results are a form of measure.

Identifying which measures to take is often the toughest part of the performance management process. Identify more specific measures for each measure if necessary.

Indicators render measures concrete values. They indicate progress (or lack of) toward a result. For example, some indicators of an employee's progress toward achieving preferred results might be some measure of an employee's learning (usually expressed in terms of areas of knowledge or specific skills) and productivity (usually measured in terms of some number of outputs per time interval). It is impossible to establish meaningful performance indicators without having a clear strategy.

In what follows performance measures and indicators are explained on the basis of the performance process elements.

4 performance process elements (see the illustration in section 2)

Resources (input)

All human, material and immaterial contributions (finances, personnel, materials,...) required for starting up and performing an activity

Activities (throughput)

Activities executed by an organization in order to measure certain performances

Output

Products or services provided that arise from the executed activities; outputs are delivered with the aim of realising certain effects.

Outcome (Effects)

Refer to situational changes in a policy field by certain target groups or with respect to a specific phenomenon (e.g. client satisfaction)

Examples of outputs and outcomes

Outputs represent what a program actually does, whereas outcomes are the results it produces.

* e.g. the outputs and outcomes of Crime control (police and prosecutors office chain).

- Outputs:

Hours of patrol

Responses to calls for service

Crimes investigated

Arrests made

Crimes solved

- Outcomes:

Reduction in crimes committed

Reduction in deaths and injuries resulting from crimes

Less property damaged or lost due to crime;

* e.g. the outputs (judicial decisions) and the outcomes (e.g. contribution to a growing economy) of the judiciary (judges).

Performance indicators defined for each of the elements separately:

The following performance indicators are defined for each of the elements separately:

Indicators targeted at resources

- are leading indicators for activity indicators
- describe the typical quantity and quality of the input

Indicators targeted at activities

Are typically efficiency and efficacy measurements (duration, expense, capacity utilisation, workload)

Indicators targeted at performance

Are lagging indicators for activity indicators (process performance)

Are leading indicators for the long-term performance of the organisation

(e.g. number of inspections performed)

Indicators targeted at effects

Is also made up of perception indicators and expectation indicators (establishing satisfaction)

Performance indicators defined for the relationship between the elements:

The following performance indicators are defined for each of the relationship between the elements:

Economy

Refers to resource usage or the minimisation of resources necessary for the realisation of an activity (is expressed by an economy indicator)

Efficiency

Relationship between the performance and the resources (expressed by an efficiency indicator)

Effectiveness

Relationship between the performance and the effects (expressed by an effectiveness indicator)

Resource effectiveness

Relationship between effects and the resources (resource effectiveness indicator)

Performance indicators can be conceived of broadly:

- direct measurement
- if not direct measurement, a measurement of elements that can approximate the performance indicator being sought

- not always tangible or elements that can be expressed in figures (selection from categories, checklists): questioning, interview, assessment in order to establish the value of the performance indicator being sought

Criteria for a good performance indicator

Measuring the realisation of the objective

Validity (performance indicator measures what it claims to measure)

Reliability (the measurement is repeatable)

Does not measure the performance of an individual, but rather of an organisation, a team

Is translatable into action (and therefore able to be influenced)

Unambiguous polarity

Mix of leading and lagging indicators

Ensures that perverse effects and manipulation are avoided

The effort to collect the measurement information is feasible (measurable, the cost of the measurement is justifiable).

When defining a performance indicator, one must examine:

The object of the measurement

The unit of measurement

The approach for determining the value (measurement, questioning,...)

The person or section responsible for determining the value

The frequency of the measurement or the moment the measurement is taken

Scorecards

A number of indicators together can constitute a scorecard:

For example, the BSC (Balanced Score Card, grouping of indicators in 4 perspectives)

Indicators are selected from strategic objectives

Indicators are selected with the support of management

In so doing, an attempt is made to indicate the cause-effect relationship

Hierarchy between perspectives (what perspective is at the top?)

(3) Assessing performance and reporting of progress (in meeting standards and targets and sharing of such information through feedback)

If performance does not meet desired performance standards, develop or update a performance development plan to address the performance gap.

The performance development plan conveys how the conclusion was made that there was inadequate performance, what actions are to be taken and by whom and when, when performance will be reviewed again and how. If a domain was not performing to standards, then some forms of help (or interventions) should be provided (reengineering the organization's processes; coaching, mentoring, training for magistrates; more resources, etc).

(4) Performance improvement system - establishment of a program or process to manage change and achieve quality improvement in judicial policies, programs or infrastructure based on performance standards, measurements and reports. Combinations are possible and most of the time necessary. Examples are:

Balanced Scorecard: Focuses on four indicators, including customer perspective, internal-business processes, learning and growth and financials, to monitor progress toward organization's strategic goals.

Benchmarking: Using standard measurements in a service or industry for comparison to other organizations in order to gain perspective on organizational performance. In and of itself, this is not an overall comprehensive process assured to improve performance, rather the results from benchmark comparisons can be used in more overall processes.

Total Quality Management (TQM): Set of management practices throughout the organization to ensure the organization consistently meets or exceeds customer requirements. Examples of TQM and continuous improvement are EFQM and the Baldrige Award.

5. Organizational capacities for performance

Here follows what some consultants are suggesting that it takes for organizations to be performant.

Capacities for organizational effectiveness

Letts, Ryan and Grossman¹² suggest the following key capacities for organizational effectiveness.

1. Adaptive capacity

is the ability of an organization to maintain focus on the external environment of the organization, particularly on “performing” (meeting the needs of customers), while continually adjusting and aligning itself to respond to those needs and influences. Adaptive capacity is cultivated through attention to collaborating and networking¹³, assessments and planning.

2. Leadership capacity

is the ability to set direction for the organization and its resources and also guide activities to follow that direction. Leadership capacity is cultivated through attention to visioning, establishing goals, directing, motivating, making decisions and solving problems.

3. Management capacity

is the ability to ensure effective and efficient use of the resources in the organization. Management capacity is accomplished through careful development and coordination of resources, including people (their time and expertise), money and facilities.

4. Technical capacity

is the ability to design and operate products and services to effectively and efficiently deliver services to customers. The nature of that technical capacity depends on the particular type of products and services provided by the organization.

5. Generative capacity

is the ability of the organization to positively change its external environment. This capacity is exercised by engaging in activities to inform, educate and persuade policy makers, community leaders and other stakeholders.

¹² Christine W. Letts, William P. Ryan, Allen Grossman, *High Performance Nonprofit Organizations: Managing Upstream for Greater Impact*. Jossey-Bas 1998.

¹³ For example the judicial chain. Organizations increasingly operate as part of networks of service delivery. Therefore, it can be necessary to assess network effectiveness. Robert D. Herman and David O. Renz, *Nonprofit organizational effectiveness: practical implications of research on an elusive concept*. Occasional paper. The Midwest Center for Nonprofit Leadership, UMKC, 2002.

Capacity components of effectiveness

Defining capacity building as “actions that improve effectiveness”, Barbara Blumenthal¹⁴ identifies four components of effectiveness:

1. Organizational stability

is in regard to whether services are consistently delivered.

2. Financial stability

is based especially on short-term survival, for example, the ability to pay its bills. Financial stability is often ignored as an area of importance during capacity building. It is linked to good budgeting.

3. Program quality (products and services)

is based on indicators of impact, including adequate research about effective programs and an outcomes management system.

4. Organizational growth

is based on attracting resources and providing more services. Blumenthal adds that growth alone is not an indicator of performance. For a public organization it could be interpreted as growing to the right scale to manage for performance.

Performance readiness

Improvement in each of the following conditions is a guarantee for increasing performance:

The competences of the organisation are clearly demarcated by the policy.

The formal responsibilities of the organisation reflect the present priorities contained in the policy.

The organisation has a strategic plan.

The organisation can deduce its operational planning from its strategic plan.

Personnel contributes to the strategic planning process.

Upper management uses the more strategic planning to delineate the future direction.

¹⁴ Barbara Blumenthal, *Investing in Capacity Building: A Guide to High-Impact Approaches*. New York, NY: Foundation Center, 2003.

Upper management promotes and supports performance measurements.

Upper management is trained in performance measurement techniques.

The organisation has assigned personnel to coordinate the introduction of performance measurement.

Personnel are trained in quality improvement techniques.

The organisation requests its clients to evaluate and guide its activities.

The organisation knows what level of service and level of efficiency its clients and the policy expect of it.

Personnel already monitors (its) performance via routine actions.

The organisation has insight into the way in which external circumstances influence the effects it wishes to achieve.

The organisation has basic measurements at its disposal with which it can measure its present level of performance.

The organisation has an accurate, reliable system for data collection, follow-up and evaluation.

6. Lessons learned

6.1. Finland: The Project of Judicial Policy's Societal Effectiveness and Cost-Effectiveness

1. Effectiveness as a benchmark of the public organisation's result

According to section 12 of the Budget Act, the Ministry of Justice (MOJ), as well as the other ministries in Finland, is obligated to plan the purview's long-term societal effectiveness and cost-efficiency. The matter is of the effectiveness of the policies of the Ministry, that is, the degree of success in the achievement of desired outcomes. The objective is to concretise and clarify the societal impact and effectiveness of Judicial Policy, the courts and the legal aid service, that is, the outcomes that the society and the taxpayers get in return for the money spent on the judicial system

At the level of the operating authorities the effectiveness reflects the added value that the public authority produces for the society and the taxpayers. The agencies and organisations should concentrate their efforts and resources to the effective work and cut down the

administrative duties that don't support it. According to the Budget Act the state agencies and organisations are obligated to plan their operations and finance for a long-term, too.

Effectiveness

”Achievement of effects that meet the needs of the society”:

- What is the value for the money that the taxpayers and the society get from the judicial system?
- Who needs the services of the judicial system?
- What would happen, if there were no judicial system?
- What is the value added by the judicial system to the customers and the society?

Effectiveness can be approached from at least three viewpoints:

1. The judicial system has an effect on the society through the *services* it provides. For the courts, the mechanism is the fair trial, where the effects of the service correspond to the law and the expectations of the society. The point here is *the supply of services in accordance with the demand*, constituting one major aspect of effectiveness, that of “direct outcomes”.
2. The judicial system is also a significant provider of welfare services. The judicial system safeguards the interests of the citizens, so that the *risk* of their rights being violated is low and their *welfare as rightsholders* remains high. Effectiveness of this kind can be assessed by asking what would happen if there were no judicial system and by comparing Finland to other countries where people’s welfare as rightsholders is not at the same high standard as it is in Finland. Effectiveness of this kind does not depend on the productivity numbers of the judicial system, but rather from it having a functioning network of services and a viable organisation.
3. In addition, there are certain “non-judicial” expectations of the judicial system. Trials are being followed and reported on, the courts are seen as providers of entertainment and thrills and as disclosers of social wrongs. Responding to these expectations is also a form of influence and may improve effectiveness. These latter two points are a special kind of effect on society, one that has so far been hardly discussed at all within the judicial system.

2. The Evaluation of the Judicial Policy's societal effectiveness

In the autumn 2006 the Finnish MOJ carried out a project for evaluating the societal effectiveness and the cost effectiveness of the Judicial Policy. The definition, measurement and evaluation of the societal effectiveness and cost effectiveness of the Judicial Policy based on the Public Value Model, created by the consultant Accenture.

Project objectives

- The objective has been to concretise and clarify the societal impact and effectiveness of Judicial Policy, the courts and the legal aid service, that is, the outcomes that the society and the taxpayers get in return for the money spent on the judicial system
- The objective has been to develop an effectiveness model for the long-term planning of Judicial Policy
- At the end of the Project, an evaluation will be made as to how and where the concept of effectiveness is being used in the planning of Judicial Policy, in the evaluation of whether the policy is successful, and in the reporting on the same
- To this end, the Project has
 - defined outcomes and sub-outcomes
 - defined benchmarks for these outcomes
 - collected benchmarking data
 - developed a cost-effectiveness model

The courts, the legal aid offices and the Consumer Complaint Board were involved in this project and the definition and description of the outcomes of their services was the main focus of the project.

The project began with the interviews. The chancellor of justice,

presidents of the supreme courts and some other chief judges, heads of the legal aid offices and experts were interviewed to chart and concretise the role and the function of the judiciary and judicial policy. The project continued in three workshops participated by the representatives of courts, legal aid offices and other branches of the MOJ's purview.

The most important societal outcomes of the judicial policy were defined as follows:

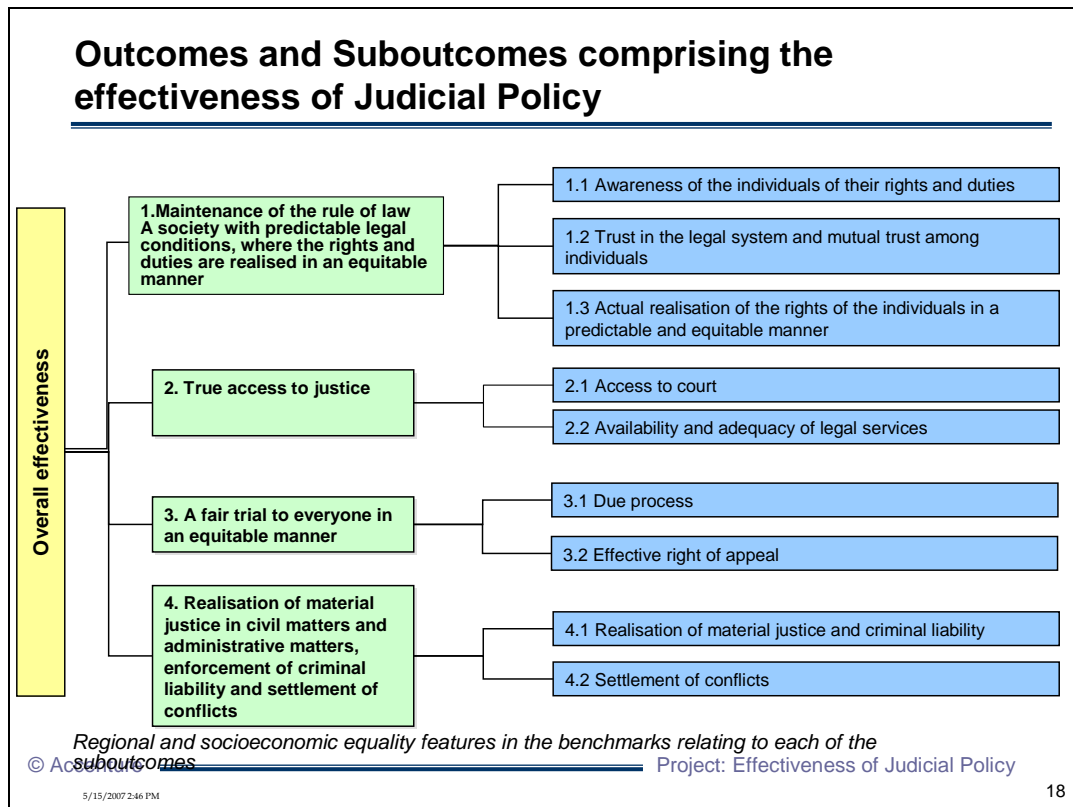
- Maintenance of public peace and the rule of law
- Reinforcement of the senses of justice and morality
- Realisation of regional and socioeconomic equality

These outcomes are not produced only by the judiciary, but they depend on many public and private authorities and organisations outside the Judicial Policy or MOJ's purview, too.

The direct outcomes (outcomes for the customers) were defined as follows:

- Equal access to justice
- Equal due process
- Equal material justice

During the workshops the outcomes of the judicial policy were defined in details:



3. The lack of information about the Judicial Policy's Societal Effectiveness

During the project appeared that there is not enough empirical data of Judicial Policy available to be able to evaluate the degree of success in achievement of the most important societal outcome, maintenance of public peace and rule of law (Outcome number 1). There is a lack of information about

- the awareness of the individuals of their rights and duties;
- the judicial information, advice and education, if it is sufficient or not;
- the trust in the legal system and mutual trust among individuals;
- the regional and socioeconomic differences in equity.

Judicial Policy makes its main impact on the rule of law. From the point of view of the individual, the rule of law means cognizance of the rights and duties in effect, trust in the realisation of the rights in a regionally and socioeconomically equitable manner and in a reasonable time (in relation to the other social actors, including the public authorities), as well as trust in the judicial system as a guarantor of these rights and in the enforcement of the rights and duties of the individuals. The reason for the lack of information is lack of resources in the scientific research concerning Judicial Policy. In this sector of administration, there is only one research institute in the MOJ's purview, namely the National Research Institute of Legal Policy. It makes a good job, but when consisting only about 22 researcher, it's resources are too narrow to cover the whole Judicial Policy. In the Finland's universities, there is no tradition of empirical Judicial research.

On the other hand, the statistical information about the caseloads, handling times and different steps of procedures of courts and other agencies is collected via the automated case handling programs of the different authorities, and this information is sufficient and in real time. The problem is that this information describes and measures more the efficiency of the organization than the societal effectiveness.

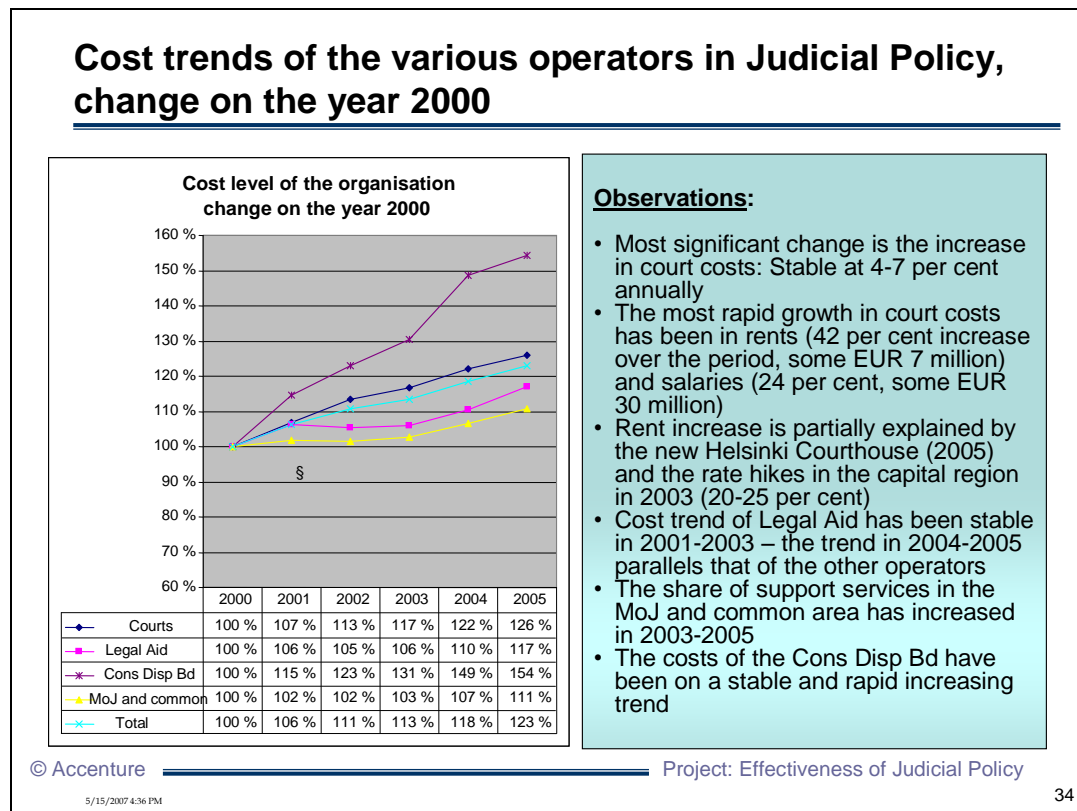
To develop the information about the societal effectiveness of the Judicial Policy a regular and repetitive survey or questionnaire study is needed. This a challenge for the development of the sector research of Judicial Policy, when taking into consideration the narrow resources of existing research and almost a total absence of this research in the universities.

4. The cost analysis

The costs of the administrative sector of the Judicial Policy were examined in order to specify the cost-effectiveness. The cost analysis covered the operating costs of the courts, the Legal Aid Offices and the Consumer Dispute Board, the payments made to private providers of legal aid and selected common costs of the MoJ and its purview. These selected common costs included the costs of the department of Judicial Administration, witness fees and the costs of common financial and human resources services, the costs of the Information Technology Centre of Judicial Administration and the IT costs of the courts proportionately to

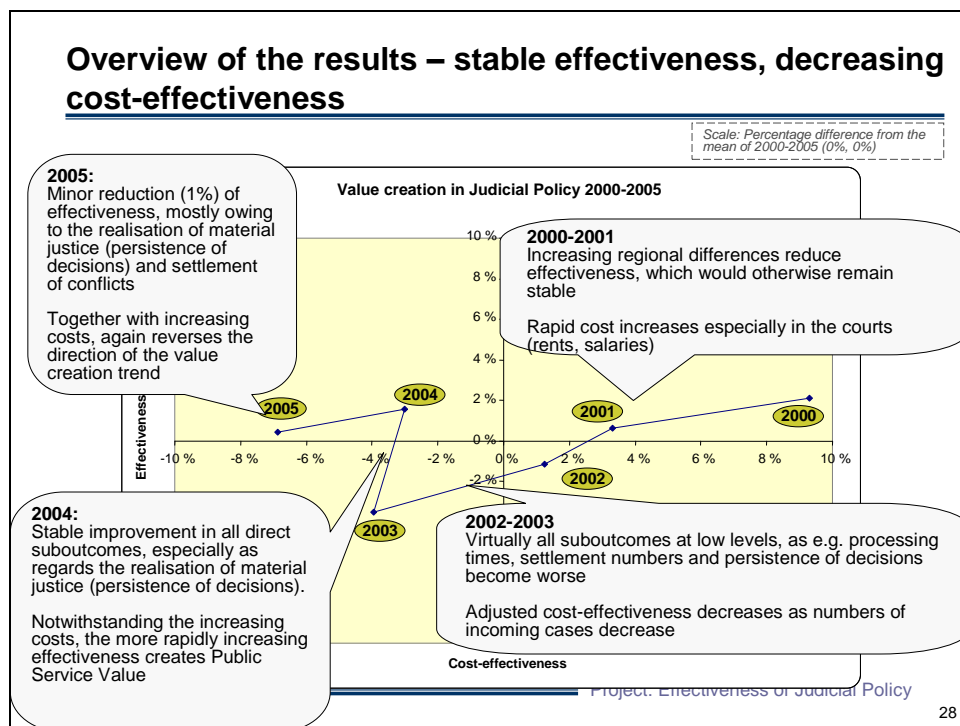
personnel numbers. All costs were normalised to the cost-of-living index and adjusted to population figures and to the number of incoming cases.

The cost analysis demonstrated that the costs of the Judicial Policy have increased an average of 25 per cent over the period from the year 2000 to the year 2005. Most significant change is the increase in court costs, which results from the most rapid growth in the costs of rents (42 per cent increase over the period, some EUR 7 million) and salaries (24 per cent, some EUR 30 million). Relatively the most extensive increase of the costs relates to the costs of the Consumer Dispute Board, but the absolute effectiveness of the increase is insignificant (about 500 000 eur).



5. Stable effectiveness, decreasing cost-effectiveness

Over the examination period there has not been significant variation concerning the outputs of the judiciary, therefore it may be assumed that both the efficiency and the effectiveness have remained stable. Instead the costs have increased an average of 25 per cent. Therefore the challenge to judicial policy is to reverse the cost-effectiveness to positive so that if the costs are increasing also the effectiveness should increase.



6.2. Romania: Evaluation in the Judicial System

A. SHORT PRESENTATION OF THE JUDICIAL SYSTEM IN ROMANIA

In Romania, Justice is carried out in the name of the law, is unique, impartial and equal for all.

Justice is carried out through the following courts:

- a) The High Court of Cassation and Justice;
- b) The courts of appeal;
- c) The tribunals;
- d) The specialized tribunals;
- e) The first instance courts.
- f) The military courts.

The courts of first instance are courts with no legal capacity, established in counties and in the sectors of the city of Bucharest. In Romania there are **178 first instance courts**. Within the first instance courts, there is a total number of 1866 judges, out of the total number of 2155 judges provided by law. In 2006, a workload of 1.346.829 files was registered at the level of first instance courts.

Tribunals are courts with legal capacity, organised at the level of each county and the city of Bucharest and as a rule have their premises in the city-residence of the county. In Romania there are **41 tribunals**. The tribunals are **tertiary credits accountant**. Within the tribunals there is a total number of 1244 judges, out of the number of 1416 judges provided by the law. In 2006, a workload of 584.428 files was registered at the level of tribunals.

The courts of appeal are courts with legal capacity. There are **16 courts of appeal**. The courts of appeal are **secondary chief accountants**. Within the courts of appeal there are 689 judges, out of the total number of 748 judges provided by the law. In 2006, the courts of appeal registered a number of **158.090 files**.

In Romania, there is only one Supreme Court, with legal capacity, the **High Court of Cassation and Justice**, with the headquarters in Bucharest. The High Court of Cassation and Justice ensures the **consistent interpretation and application of the law by the other law courts**, according to its competence. The High Court of Cassation and Justice has the quality of **main chief credit accountant**. It has a **civil and intellectual property section, a criminal section, a commercial section, an administrative and fiscal section and a criminal section**.

Military courts are the following:

- a) Military tribunals - 4 are operating at Bucharest, Cluj-Napoca, Timișoara, Iași
- b) The Military Territorial Tribunal of Bucharest;
- c) The Military Court of Appeal in Bucharest.

Each court is lead by a **president**, who can be assisted by **one up to four vice-presidents**, according to the level of jurisdiction. Presidents of first instance courts also exercise attributions of court administration.

The Public Ministry exercises its prerogatives according to the law and it is run by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice. Prosecutors carry out their activity according to the principles of legality, impartiality and hierarchic control, under the authority of the minister of justice, according to the law.

The prosecutor's offices operate attached to each court of appeal, tribunal, juvenile and family tribunal. The prosecutor's offices have the premises in the same towns where the courts they are attached operate and have the same jurisdiction as those courts.

The prosecutor's offices attached to the courts of appeal and those attached to tribunals have legal capacity. The prosecutor's offices attached to juvenile and family tribunals and prosecutor' offices attached to first instance courts have no legal capacity.

B. THE ROLE AND THE STRUCTURE OF THE SUPERIOR COUNCIL OF MAGISTRACY

The Superior Council of the Magistracy represents, according to the Romanian Constitution, the **guarantor of the independence of the judicial system**. In its current structure, the Council started to function on January 11th, 2005. The Superior Council of Magistracy is independent and is submitted in its activity only to the law. The members of the Council answers before judges and prosecutors for the activity they perform in the exercise of the term of office. On a yearly basis, the Council presents two reports before the Parliament, one for its own activity, the other for the state of justice.

In its quality of „government of justice”, the Council exerts mainly **administrative competences**. Amongst its prerogatives there is also a **legislative component** (drafts secondary legislation), as well as a **judicial component** (solves disciplinary actions exerted against judges and prosecutors).

The Council comprises **19 members**, out of which 14 are magistrates (judges and prosecutors, elected by the general assemblies of magistrates from each court or prosecutors office), 2 representatives of civil society, elected by the Senate and three members *de jure* (the minister of justice, the general prosecutor and the president of the High Court). The members of the Superior Council of Magistracy are elected for a non-renewable **term of office of 6 years**. They usually meet in sessions once a week, in Plenum sessions and in section sessions (one section for judges, the other for prosecutors). The works for sessions are prepared with the support of an administrative staff of 260 persons.

C. THE EVALUATION OF THE LEVEL OF PERFORMANCE OF THE JUDICIAL SYSTEM

The evaluation of the level of performance of the judicial system is not unknown to the courts and prosecutors offices in Romania, though is not stated by the law.

In Romania, in the past years, on the basis of the statistical data, a comparative analysis of courts and prosecutors offices was drafted, without its results be explicitly used in order to improve the performance of the judicial system.

At the present, along with the individual evaluation of the magistrates, the concept of evaluation of the juridical system is used, trying to provide for this method of evaluation explicitly in the law.

The proposals drafted by the working group constituted at the level of the SCM refer to the use of criteria and standard of performance for courts and prosecutors offices, which must be unitary and similar to the ones used for the individual evaluation.

The main objectives of the evaluation- both the individual evaluation and the evaluation of the system- consist of increasing the performance, reducing the duration for solving the cases, increasing the degree of public confidence regarding the efficiency and the fairness of the system, drafting a realistic plan concerning the human resources, increasing the need of the magistrates to acquire performances.

A possible problem identified in this stage of elaborating an evaluation plan for the judicial system is the method of collecting the statistical data, in order to provide for the necessary data for the quantification of performance criteria for courts and prosecutors offices – the efficiency, the quality of the activity, the integrity and the professional training.

Taking into consideration that at the present the ECRIS programme is used, the collecting of useful data will no longer represent a problem, if the statisticians from courts and prosecutors offices are well trained.

On the other hand, in order to evaluate it, the performance must be compared to a standard, which is being drafted by the SCM, taking into consideration the optimal duration for solving a case, optimal workload per judge and prosecutor, optimal workload per complexity degrees, the celerity and the quality of the activity (expressed in the number of solutions revised for each court and prosecutor office –global standard adopted in order not to affect the independence of magistrates).

Concerning the criterion of efficiency, the evaluation will focus on the following indicators- the number of delivered judgments (related to the workload of the court), the average duration for the solving of cases/ efficiency, the backlog, the number of files solved in first instance and in appeal, delivery of judgments in legal term, execution of judgments in legal term.

The quality of the activity will be appreciated taking into consideration the number of decisions revised, the perception of the public on the unfolding of procedures and their

duration, the organization method of courts and prosecutors offices, the cost of the procedures, the public character of debates and the transparency of the act of justice, the observance of the rights to defense, the convincing and accessible character of decisions rendered, the treatment of the public and of the parties.

The integrity (professional behavior) will be appreciated on the basis of questionnaires completed by the public, lawyers and other stakeholders.

The professional training of magistrates will be evaluated by the degree of involvement in continuous training activities in different fields of the law, as participants or experts.

The quality of the management of courts and prosecutors offices will be also evaluated on the basis of questionnaires.

At the present, after the completion of the procedure for individual evaluation of magistrates in order to acquire an objective data base for promoting magistrates in leading or executive positions, the working group constituted at the level of the SCM will elaborate the procedure for the evaluation of courts and prosecutors offices on the performance criteria and standards mentioned before.

The meetings of the working groups take place at least once a week, by inviting an important number of specialists in the field of judicial statistics, and by consulting the magistrates in order to successfully complete the project.

In the near future, a determined number of magistrates will be trained as evaluation trainers, who will disseminate the knowledge acquired to the members of the commission for individual evaluation of magistrates, as well as to the SCM staff who will draft the annual evaluation of the judicial system.

If the individual evaluation of magistrates is made in order to ensure their promotion on objective bases, the evaluation of the judicial system is made in order to create a fair imagine of the way to unfold the act of justice, by using the appropriate human and financial resources and by improving the quality of the activity.

D. EVALUATION OF ROMANIAN JUDGES AND PROSECUTORS' PROFESSIONAL PERFORMANCE

The Romanian judicial system is facing a process of reform. An important part of the reform process concerns the individual evaluation of judges and prosecutors and the evaluation of performance at the level of the judicial system.

Law no. 303/2004 on the statute of judges and prosecutors provides in art. 39-42 the basic principles for evaluation process, as follows: the organization and the appointment of the evaluation commissions, marks, the consequences of the evaluation, the appeal procedures against the marks granted at the evaluation, etc. The criteria stated by Law no. 303/2004 for measuring judges and prosecutors' competences and performance are the following:

- Efficiency
- Integrity
- Continuous professional training
- Quality of the activity

Judges and prosecutors shall be evaluated every 3 years (the first evaluation shall be made after 2 years from their appointment in the position of judge or prosecutor), with the following grades: *Very good*, *Good*, *Satisfactory* and *Unsatisfactory*.

The periodical evaluation has consequences as follows:

- Only the magistrates who obtained the grade "very good" can be admitted to the contest for promotion in executive positions at higher courts and prosecutors' offices;
- The magistrates who obtained the grade "unsatisfactory" at one evaluation or the grade "satisfactory" after two consecutive evaluations have to follow 3 to 6 months of special courses held by the National Institute of Magistracy;
- The magistrates who obtained the grade "unsatisfactory" after two consecutive evaluations or who have not passed the exam organized at the graduation of NIM courses shall be dismissed from office for professional incapacity.

The aim of the periodical evaluation refers to:

- increasing the efficiency of the judiciary and the level of the public confidence in the judicial system
- continuous development of the evaluated competences
- sustaining judge's legitimacy

In order to implement the legal provisions, the Superior Council of the Magistracy adopted by Decision no. 342/2005, the Regulation on the Evaluation of judges and prosecutors, normative act which details the objectives and the evaluation procedure. Also, the Decision provides for the SCM to draft the *Evaluation Guide*, describing the criteria and the evaluation indicators of the professional performance.

In April 2005, a **working group** was constituted at the level of the SCM on the drafting of a socio-professional profile of the magistrate, in order to establish the admittance conditions to the magistracy. Within the working group, it was established the necessity to draft a profile of the magistrate, containing the competences and the basic requirements of this position, professional competence criteria and performance criteria which must be assessed through the evaluation procedure provided for by the law.

Following the adoption of the *Profile of the magistrate in the Romanian judicial system*, in order to establish a unitary, coherent and objective evaluation system, **the Superior Council of the Magistracy implemented the following programmes:**

- During October 2005 - February 2006, **a World Bank programme was implemented, analyzing the present system of measuring and monitoring of the judicial performance.** The final report comprised of a comparative analysis on the evaluation of performance in Romania and in other EU countries and recommendations for improving the present system. The report is available on the SCM website www.csm1909.ro.
- During February - June 2006 the *Guide for the evaluation of the quality of judicial decision* was finalized. For the drafting the Guide, judges from all over the country were consulted.
- During October - December 2006, **two working groups were constituted at the level of the SCM**, one for judges and one for prosecutors, with the objective of determining the evaluation indicators to measure the professional performance of judges and prosecutors, according to the criteria provided for by the law.
- During August 2006 - February 2007, the SCM implemented, in cooperation with the World Bank and the National Institute of Magistracy, the project “**Creating a network of trainers for the training of members of the evaluation committees**”. The training network comprises of 18 judges and 14 prosecutors, selected out of 100 judges and prosecutors involved in the project.

- The SCM sections adopted the **criteria and indicators for the performance evaluation of judges and prosecutors**, by Decision no. 446/13.12.2006 of the Section for judges and by Decision 19/21.02.2007 of the Section for prosecutors.

According to the above mentioned decisions, an indicator must fulfill the following requirements:

- Not to affect the independence of the magistrate,
- To have an educative role (to stimulate the development and the self professional development)
- To differentiate the magistrates' performances
- To be measurable (to be defined through specific indicators, that can be controlled)

As stated above, the **criteria** stated by Law no. 303/2004 for measuring judges and prosecutors' competences and performance are the following:

- Efficiency
- Integrity
- Continuous professional training
- Quality of the activity

Specific indicators have been developed for each criteria established by the law, as follows.

For *the criterion of efficiency*, specific indicators refer to:

- **Promptness in solving cases**, which is defined as: the number of the solved cases divided to the number of the cases distributed to the judge (through direct distribution or indirect distribution after procedural incidents). The result is to be compared to the medium efficiency per section/court and then to the medium national efficiency of the court/section at the corresponding level of jurisdiction.

- **Optimum timeframe for solving cases**. The number of solved cases and of the pending cases are compared to the total of the cases distributed to the judge and the optimum timeframe for solving cases that is to be established by the SCM.

For *the criterion of integrity*, specific indicators¹⁵ refer to:

- Compliance with the norms of the Deontological Code;
- Disciplinary sanctions suffered by the judge;
- Conduct during courtroom sessions in relation to the plaintiffs, the lawyers and other participants to the courtroom proceedings judicial process, as well as in relation to his colleagues (judges and prosecutors) and the auxiliary personnel (neutrality, impartiality).

For *the criterion of continuous professional development*, specific indicators¹⁶ refer to:

- Participation at seminars, conferences and continuous training courses;
- Postgraduate courses (this indicator is taken into consideration for the complete evaluation of the judge, without constituting a disadvantage for those who did not pursue post graduate education);

¹⁵ **Examples of specific indicators:**

1. Observing the provisions of the Code of Ethics
 - 1.1. Evident adhesion to standards of ethics (doesn't tolerate lie, avoids conflict of interest, reacts publicly to the unfair treatment of a colleague).
2. Disciplinary sanctions applied to the judge
3. The conduct during the trial session and in court in relation to the parties, advocates, other persons involved in the process, as well as in relation to the auxiliary personnel and the judges and prosecutors.
 - 3.1. Shows perseverance in finding the information for the grounds of his/her juridical opinion.
 - 3.2. Registers carefully the claims of the parties for ensuring an equal treatment during the trial.
 - 3.3. Manifests evident inconsistency in expressing his/her juridical opinion.
 - 3.4. Maintains an equidistant attitude towards all the parties involved in the trial during the trial session.
 - 3.5. The reasoning of the decisions show concern for a reasonable equivalent argumentation between the two parties.
 - 3.6. Has personal initiative for improving the quality of his/her performance within the court.
 - 3.7. Discusses with the persons responsible for perpetuating incorrect procedures, without being intimidated by possible consequences and unwanted implications.
 - 3.8. Doesn't react to issues said by the collective with the evident purpose to hide the truth.
 - 3.9. Objects to the existence of deficient procedures of managing the judicial service in court.
 - 3.10. Gives his/her opinion in cases when a magistrates has a conflict of interests.
4. Respectable conduct in society
 - 4.1. Moral reflection and self-reflection (fulfills honorably his/her moral and material obligations, closely analyses the consequences of the magistrate's participation at various public events, doesn't avail oneself in the society of his/her professional position a.o.)
5. Challenge claims admitted

¹⁶ **Examples of specific indicators:**

- Availability for professional continuous training,
- Concentrating attention and effort resourced for professional activities; inner satisfaction of professional activities.
 - a. Is able to demonstrate personal contributions to clarifying and developing juridical institutions, as a result of thorough study of cases.
 - b. Is able to describe the complex cases who's solution was mainly the attribute of his/her competences of finding and synthesizing the information.
 - c. Doesn't rely on the management of the impression of his/her superiors, on manipulating other in order to create oneself a positive image.
- Abilities for and appraisal of the teamwork.

- Published articles in law periodicals or journals, published law papers, contribution to publishing law brochures or jurisprudence materials (this indicator is taken into consideration for the complete evaluation of the judge, without constituting a disadvantage for those who did not undertake such activities).

- Literacy in foreign languages(attended courses);

- Literacy in IT (attended courses);

- Training activities (this indicator is taken into consideration for the complete evaluation of the judge, without constituting a disadvantage for those who did not undertake such activities).

For *the criterion of the quality of the activity*, specific indicators¹⁷ refer to:

¹⁷ **Examples of specific indicators:**

II.1 The activity as a judge:

1. The quality of the decisions drafted –it can be substantiated by the following specific indicators:

1.1. Independent/critical thinking-has an independent/critic thinking over the professional, juridical aspects:

1.1.1. Approves or overrules with arguments the requests of parties referring to evidence, principles and the rule of law.

1.1.2. The reasoning doesn't contain both relevant and irrelevant aspects.

1.1.3. Is able to offer details concerning the evolution of the way he/she understood certain juridical institutions, law, procedure.

1.1.4. Gives coherent and correct arguments from the juridical logic point of view when making decisions during the session.

1.1.5. Has the ability to demonstrate that he/she contributed to the modification of the court's jurisprudence.

1.1.6. Drafts the judgment in a clear, concise manner, able to be applied.

1.1.7. Gives juridical arguments, according to the state of affairs of the case.

1.1.8. The reasoning contains relevant fragments of the depositions of witnesses, analyzed and synthesized.

1.1.9. Has the ability to give examples of the manner in which he/she applied the jurisprudence of ECHR and ECJ.

1.1.10. Analyses and interprets the evidence given.

1.1.11. Gives logical and coherent argument when motivating the decision.

2. The conduct during the trial session- it can be substantiated by the following indicators:

2.1. Clear and logical communication, negotiation skills and self-control – clear and correct message:

2.1.1. Registers clearly and exactly the depositions of witnesses and the of the parties.

2.1.2. Communicates clearly and logical during the trial session and is receptive to the request which completes or changes the claims of the parties.

2.1.3. Has the ability to listen the parties.

2.1.4. Interrupts the speech of the parties in cases which are evidently inadequate or doesn't interrupts it in the same cases.

2.1.5. Manifests arrogance, disrespectful attitude.

2.1.6. Has the ability to manage crisis situations in the court room.

2.1.7. Creates a favorable environment for the litigating parties.

2.1.8. Perceives advocates as partners in delivering the act of justice.

2.2. Self-control-the professionalism of the social interaction of the magistrate („judicial temperament”)

2.2.1. Rises his/her voice frequently.

2.2.2. Has a polite attitude when addressing the parties.

2.2.3. Restores the calm of a person who's emotionally troubled, ensuring a proper treatment in the court room.

2.2.4. Respects the dignity of all persons.

2.3. Social awareness as a person who has the power to decide the faith of his/her kind: empathy towards the beneficiaries of the act of justice.

2.3.1. Plays an active role in cases which require juridical assistance.

- Courtroom abilities: quality of pronounced judgments (decisions), conduct during court sessions
- Leadership abilities: organizational and managerial abilities, control abilities, decisional capacity, objectivity and impartiality, communication abilities, fulfillment of special attributions as established by laws and regulations.

For the implementation of the new system of evaluation of the individual performances, the following instruments are used:

- a. **The Regulation concerning the evaluation of the professional activity of judges and prosecutors**, pending for adoption. The draft Regulation was sent to courts and prosecutors offices for debate, and provides for the following: the method of functioning for the commissions, the procedure for solving disputes, the method to unfold the courses/examinations for the magistrates who have received the “satisfactory” or “unsatisfactory”.
- b. **The Profile of the magistrate in the Romanian judicial system**, adopted by the SCM .

In March 2006, the SCM Plenum adopted the *Profile of the magistrate in the Romanian judicial system*. The profile represents the following: a mechanism meant to ensure an unitary vision upon the role of justice, which must be shared by all the ones involved; a control mechanism that monitor the implementation and the sustainability of such a vision until other competences are needed; and a mechanism of professional and moral education of magistrates, as from the correct application of the profile benefits the ones that correspond the provided competencies, and consequently the vision upon the role and the functions of justice.

According to the Profile, the magistrate must to:

- be able to think independently in juridical matters
- recognize the inner factors that might cloud its judgment

II.3. Other activities undergone by judges based on the provisions of laws and regulations (judges seconded to the Chamber of Commerce, at the offices for enforcing criminal decisions etc.)

The quality of the procedural acts drafted by judges (coherent structure, clear reasoning, juridical logic, precise style of communication, capacity of synthesis, clear and concise style);

The number of controls made at the respective department/institution;

The proper manner of solving the underlined deficiencies;

- understand the society
- manifest moral integrity; to have the capacity and the courage to improve his working environment
- communicate clearly and logically and to be receptive to the information that might improve his message
- be credible and worth trusty
- be efficient in the management of his own duties and to contribute to the improvement of the court's administration.

The personality profile connects to: independent/ critical thought; moral- cognitive integrity/consistency, Social awareness and commitments, Being inclined for hard work and continuous professional training; authenticity; clear and logical communication, receptivity toward any information that might improve his message; self control; conscientiousness, diligence, collegial respect.

- c. **The Evaluation Guide**, pending for adoption. The Guide comprises of indicators for the practical application of the legal provisions. It represents a reference framework which defines the specific indicators, relevant for the evaluation criteria provided by the law, describing the *good practices* in the evaluation procedure.

Its main purposes are as follows:

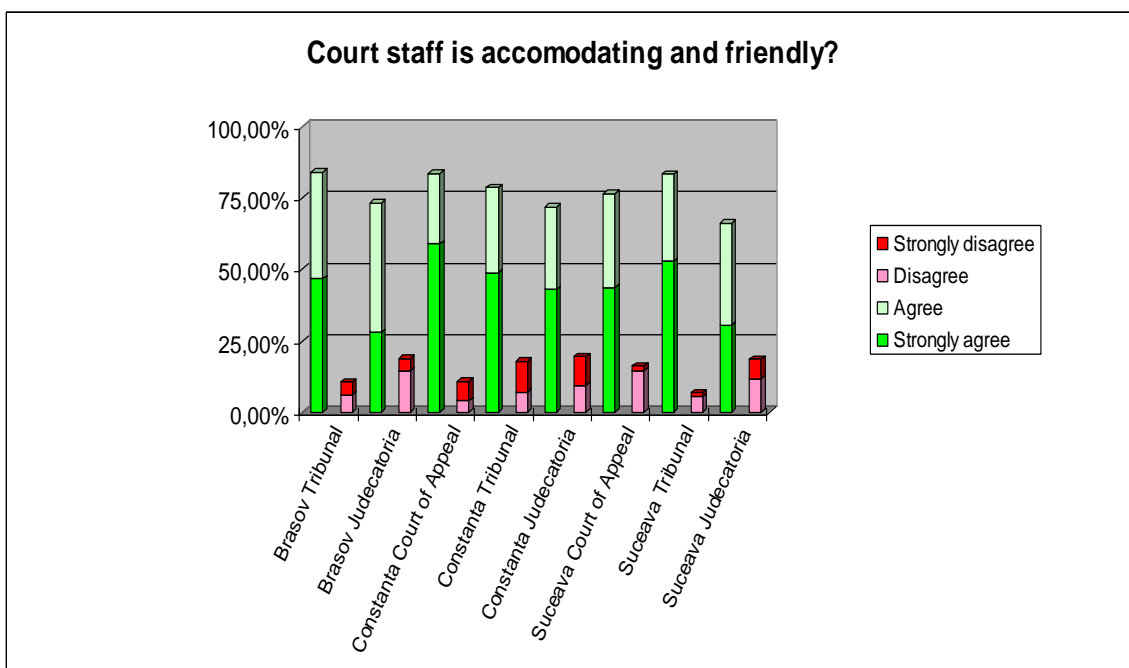
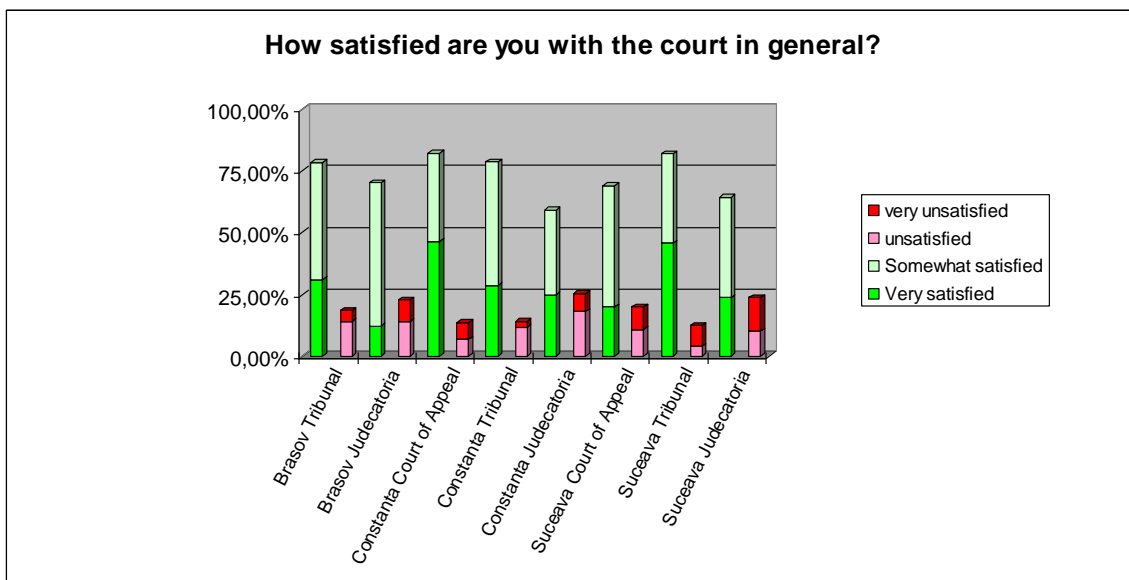
- Increasing the relevance of the indicators for the measurement of each criteria of professional performance
- Increasing the transparency of the evaluation process and improving all forms of communication
- Standardizing the procedures/methods used in the evaluation process

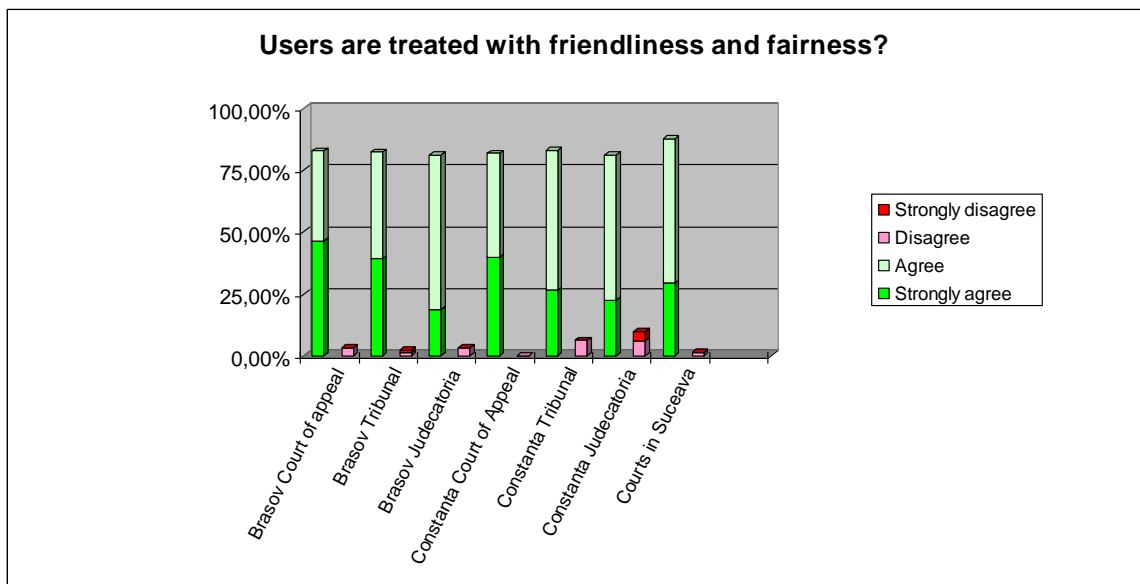
The SCM's objectives regarding the measuring and monitoring of the performance of the judiciary in Romania comprise of the following:

- Revision of the statistical system
- Reducing the number of basic statistical categories for different types of cases
- Improvement of the ECRIS system in order to allow introduction of detailed information regarding important aspects of certain cases
- Creation and development of a statistical module of the ECRIS to include all the standards of statistical reporting in order for the courts to use and transmit

- Specific guidelines elaboration in order to emphasize the distinction between the different types and categories of cases, at the moment of recording statistical data

In order to collect the opinions of the persons using justice as a public service from outside the judiciary system regarding performance, opinion surveys and questionnaires were used in 3 courts. The following charts resulted.





The conclusions of the surveys on the evaluation of the performance were as follows:

- At individual level:
 - Problems arise regarding the respect of the independence and data difficult to interpret may appear
- At the level of the entire system
 - Often times the measurement means are not very useful for specific actions
- At the level of the court (or prosecutor's office)
 - This is the ideal measurement unit
 - They can be easily compared
 - A balance can be established between the quantitative/ objective indicators and the qualitative ones

As a result of their work, **the working groups** constituted at the level of the SCM determined that **it is necessary to make proposals for the amending of the legislative framework on the evaluation and promoting procedures.**

The members of the working groups have determined that within the present legislative framework and bearing in mind the problem of vacant positions within the judicial system, the evaluation system provided for by Law no. 303/2004 on the statute of judges and prosecutors is not feasible.

The reasons for the amending of the law are the following:

- the evaluation procedure as stated by the law could heavily infringe on the activity of courts and prosecutors offices, due to the fact that the law provides for a large number of evaluators (half of the number of magistrates at the national level),

- the workload required by the evaluation procedure is extremely high, not taking into consideration realities of Romanian courts and prosecutors offices as the vacant positions, the workload, etc,
- the lack of unitary application of evaluation criteria and indicators, due to the large number of evaluation commissions,
- internal conflicts within courts and prosecutors offices due to the fact that the evaluation could be made by magistrate colleagues with no proper training,
- the appeals on the evaluation marks could heavily infringe on the activity of the SCM
- the promotion procedure could be blocked, due to the fact that only magistrates marked “very well” can be promoted.

Conclusions:

The evaluation of magistrates will be made according to the present law, starting with September 2007. If the legislation will not be amended in due time, the evaluation will be made with the instruments and procedures.

6.3. The Netherlands: The experiences in the Netherlands with performance measurement as part of strategic management¹⁸

Introduction

In studying the potential benefits of applying strategic management within the judicial system, the mission/vision working group applies a simple schedule that is known in the literature in several variants. Strategic management is defined here in three steps: formulate policy, implement policy, and evaluate policy in order to (re)formulate new policy.

Within the judicial system, strategic management can be given shape from various perspectives or at different levels. An individual court is the smallest scale on which structured strategic management can take place. But strategic management can also be applied to the entire judicial system, namely all courts jointly, and either with or without the Council for the Judiciary. The domain can be extended even further to view the system from the

¹⁸ This paper is based on two presentations given during the meetings of the working group on 27 October 2006 in Brussels (Belgium) and on 30 March 2007 in Rovaniemi (Finland).

perspective of the Minister for Justice where the judiciary is only part of a wider system that also includes the Public Prosecutor, Legal Aid and the prison system.

One central question in evaluating policy is: how can we measure the effects of policy in order to adjust that policy on the basis of the outcomes of these measurements? Regarding the measurements, a distinction is made between the internal process and the actual results. As for the results, a further distinction can be made between the concrete results and the effects in the longer term¹⁹. A simple example will illustrate the differences. Suppose the objective (the policy) is to accelerate the handling of court cases. The evaluation of the internal process may indicate that more judges were used in a given year, leading to a faster handling of cases (the actual result). The longer-term effect, presumably, is more satisfaction with and trust in the justice system among litigants and professional partners.

In the Dutch situation the Council for the Judiciary, together with the courts, pursues strategic management in the following manner. The basis is formed by a multi-annual strategic agenda, three of which have appeared since the Council for the Judiciary was launched on 1 January 2002²⁰. The strategic agenda states the most important objectives for the coming years in abstract terms. This multi-annual strategic agenda is concretized in successive year plans by the Council for the Judiciary as well as the separate courts. The results are published annually in annual reports. The Council for the Judiciary and the courts have developed a planning and accountability system for the implementation of the plans. Process-based project management is an important instrument for translating policy proposals into concrete activities at both national and local level²¹.

Forms of policy evaluation and performance measurement

Policy evaluation and performance measurement are an essential part of strategic management. They provide a solid basis for formulating and adjusting policy. Ideally, methods for measuring the realization of an objective are already devised during the formulation of the objective. In the real world, however, this usually does not happen. Consequently, a form of

¹⁹ Often referred to in the literature as: throughput, output and outcome.

²⁰ Agenda voor de rechtspraak 2002-2005, Continuïteit en vernieuwing; Agenda van de Rechtspraak 2005-2008; Agenda van de Rechtspraak 2008-2011, Onafhankelijk en betrokken.

²¹ There are many methods for structuring process-based project management to make projects a success. In the Netherlands the Council for the Judiciary used Prince-2 that was developed within the government of the United Kingdom.

measurement (and hence substantiation) must be constructed retrospectively, preferably based on ‘hard’ quantifiable data and research results to achieve maximum credibility. Lots of existing information can be used for this part of strategic management.

In the Dutch situation the following types of information are relevant:

- Existing management information (available via national standardized instruments and reports).
- The extensive benchmark surveys that are presented three times a year and that enable performance comparisons between the various courts.
- Audits by independent auditors as part of the annual reporting process.
- The judicial performance measurement system (part of the Rechtspraak quality system²²)
- The customer satisfaction surveys and employee satisfaction surveys that all courts carry out as part of the Rechtspraak quality system. The surveys are carried out per individual court. The available studies have been analysed and translated into national patterns and trends in preparation for the strategic agenda for the period 2008-2011.
- The court visits for the purposes of the Rechtspraak quality system. In 2006 all 26 courts were visited for the first time by an independent committee that included non-judiciary experts.
- The results of ad hoc evaluations (e.g. after completion of large projects). At the end of 2006 the final report of a substantial evaluation programme appeared where the introduction of integrated management at the courts and the establishment of the Council for the Judiciary was evaluated by an independent committee on behalf of the Minister for Justice²³. This evaluation report was an important building block for the Agenda of the Judiciary 2008 – 2011 and actually constituted the reason for publishing this strategic agenda a year earlier than originally intended.
- Scientific research forming part of the scientific research programme of the Council for the Judiciary. In the past years, for instance, research was carried out on behalf of the Council for the Judiciary into the trust in the judicial system, the productivity and forms of civic participation.

Key indicators

²² Extensive information about the Rechtspraak quality system is available at the Council for the Judiciary.

²³ The Committee for the Evaluation of the Modernization of the Judicial Organization. The final report “Rechtspraak is kwaliteit” appeared in December 2006 and has meanwhile been translated into English.

One important new development in policy evaluation and performance measurement is the use of key indicators. Key indicators are designed to provide reliable insight into the performance of an organization with the aid of a limited set of data. The Dutch Parliament requested the development of such key indicators to improve the accountability of the judicial system. The judiciary made the further demand that these key indicators needed to be suitable for strategic management as well as for accountability purposes, which meant that the key indicators had to meet additional requirements. The development of key indicators is basically an attempt to arrange the huge amount of available information in an orderly manner and to make it accessible for users.

To formulate key indicators, two crucial questions need to be answered:

- 1) What do I want/need to know to obtain an accurate picture of the organization?
- 2) How can I select a limited number of key indicators and still obtain a complete picture?

At the start of the process in 2005 the following additional demands were made in 2005:

- The key indicators must be usable at all levels (individual courts, Council for the Judiciary and Minister for Justice).
- The key indicators must be recognizable and usable for the users inside and outside the judicial system (which necessitates extensive consultations).
- Each key indicator must have significance for a longer period of time.
- The key indicator system must be low-maintenance in terms of costs and staffing (which implies the use of ICT).
- The development of key indicators is a growth model, starting with the limited input available at the outset and only gradually developing into a fully-fledged set of usable key indicators after a number of years.

After selecting the key indicators, several further steps must be made, each of which demands special attention. First of all, the key indicator must be clearly and accurately defined; next standards must be set in line with the level of ambition. To be able to measure the key indicator, it is necessary to develop a measurement instrument (this is mostly derived from existing measurement systems, but sometimes an entirely new instrument needs to be developed, in which case a separate cost-benefit analysis is required). This development phase

(selection, definition, standard setting and development of measurement instrument) is followed by the actual measurement and the presentation of the results.

The current set of key indicators in the Netherlands breaks down into five focal areas²⁴:

- Quality
- Production and finance
- People and organization
- Development
- General

Key indicators per court were presented for the first time in the annual report for 2006.

Additional remarks

Theory and practice are worlds apart. If strategic management and policy evaluations or performance measurements were expected to live up to ideal theory, nobody would even give it a try.

Because practice happens to be a lot more complex than theory and is hard to capture in models and paradigms. Fortunately, what matters here is not so much the system but the way of thinking. The formulation of objectives provides direction and a handle for dealing with reality. Attention for implementation ensures that the impressive-sounding words can actually lead to concrete results and hard figures legitimize important administrative decisions which, as a result, will also be more easily accepted. Strategic management offers the opportunity to transcend momentary fads and trends, but should naturally not result in rigid plan-based thinking. It is an instrument for administrators and managers. Even if the theory is not followed to the letter, strategic management has the tendency to generate growing piles of paper, eventually resulting in a paper world that is completely divorced from both actual reality in the courtroom and the needs of administrators and managers. Practical application and hands-on engagement are more important than bureaucratic perfection.

²⁴ The key indicators for each focal area are given in the appendix. Some key indicators speak for themselves, others are specifically related to the Netherlands and therefore probably less evident for other countries.

Over the past years a lot of time and energy has been invested in the Netherlands in obtaining, analysing and understanding hard information on all facets of the judicial system. This has given an enormous impulse to a more strategic way of administrative thinking and decision-making. For it permits an approach which is more objective and distanced from the ever-present conflicts of interest (let the facts speak for themselves), whilst also sometimes leading to surprising insights!

7. Conclusions

Central to performance management is the practice of actively using performance data to improve the results for the client or user of the service (improve justice in society, satisfaction for the justice customer). This practice involves strategic use of performance measures and standards to establish performance targets and goals, to prioritize and allocate resources, to inform managers about needed adjustments or changes in policy or program directions to meet goals, to frame reports on the success in meeting performance goals, and to improve the quality of justice.

The major contribution of performance management is its focus on achieving results. Results are defined as useful products and services for clients inside and outside the organization. Everyone (and everything) in the organization must be doing what they're supposed to be doing to ensure strategies are implemented effectively.

Performance management essentially uses performance measurement information to manage and improve performance and to demonstrate what has been accomplished.

Excellence depends on delivering quality services; building organizational capacity is the key to consistent success.

If you can't recognize failure you can't correct it²⁵

²⁵ Osborne, David, and Ted Gaebler. *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector*. Reading, MA: Addison-Wesley, 1992.

APPENDIX : Working group participants

- *High Council for Justice Belgium*

Chair

Mr Geert Vervaeke

Coordination

Mr Jean-Marie Siscot

- *State Judicial Council of Croatia*

Mr Djuro Sessa

- *Ministry of Justice Finland*

Mr Sakari Laukkanen

- *Council for the Judiciary Hungary*

Mr Arpad Orosz

- *National Court Administration Lithuania*

Mr Raimondas Baksys

Mr Romas Laurinavicius Ms Ernesta Gruseckaite

- *Romania*

Ms Florica Bejinaru

Ms Calina Irimiea

- *Council for the Judiciary- the Netherlands*

Ms Marja van Kuijk

Mr Maurice van de Mortel

Appendix: summary of key indicators

Quality:

Substance

- 1) Percentage of litigants and professional clients satisfied with expertise, consistency of justice and motivation
- 2) Single Judge/Full Court ratio

Impartiality and integrity

- 3) Percentage of individuals and professional clients satisfied with impartiality and integrity

Treatment

- 4) Percentage of individuals and professional clients satisfied with treatment
- 5) Waiting times

Throughput time

- 6) Percentage of individuals and professional clients satisfied with throughput times
- 7) Actual throughput times

Production and finances

- 8) Actual production versus plan
- 9) Actual production versus new cases
- 10) Labour productivity per court
- 11) Productivity per product group
- 12) Actual product group price
- 13) Actual weighted production
- 14) Own funds (long-term)

People and organization

- 15) Percentage of satisfied employees
- 16) Perceived workload
- 17) Absenteeism percentage
- 18) Demographic ratios
 - Judicial officials/court officials ratio
 - Male/female ratio
 - Staff age structure
 - Use of deputy judges

Trainee Court Officers/Trainee Judges ratio

19) Satisfaction of chain partners with policy arrangements

Development

20) Percentage of referrals to mediation

21) Percentage of electronically received cases

22) Number of court decisions supplied to the judiciary website: rechtspraak.nl

General

23) Percentage of appeals and further appeals

24) Number of upheld objections

25) Number of complaints and percentage of well-founded complaints