The Court Administrator

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"THE COURT ADMINISTRATOR"

I am pleased to write this message to accompany the latest edition of The Court Administrator. First, many thanks to the editorial team: Ralph DeLoach, Eileen Levine, Susan Moxley, and Kersti Fjorstad. You have put together yet another outstanding edition with lots of excellent information. I also wish to extend my personal thanks to all the authors for taking the time to share their articles and their insights in court administration.

Sheryl Loesch, IACA President

I never in my life envisioned our world would be facing what we are now facing. Who could have predicted this! I had hoped my message for this edition of The Court Administrator would include informing our IACA membership and friends about the upcoming IACA conference. Plans were in the works to hold the conference in Helsinki in September. Even though life will be returning to some semblance of normalcy by September, the IACA Board and I felt it was necessary to postpone the conference until sometime in the first half of 2021. We felt nobody would be in the mindset of thinking about attending a conference. We still do not know how long this situation will last. I want to share the exciting news about our plans for the conference so you can look forward to attending the next conference in Helsinki.

I had the pleasure of traveling to Helsinki back in February and met with one of our IACA members, Director General, Senior Ministerial Adviser at the Ministry of Justice, Mr. Kari Kiesiläinen, along with Mr. Riku Jaakkola, Director General of the newly established National Courts Administration of Finland, and Ms. Noora Aarnio, Senior Specialist, International Affairs, Department of Development. Kari, Riku, and Noora could not be more excited about hosting our conference. Before I traveled, Kari had provided a list of possible conference venues, hotels, and sightseeing opportunities. There is a possibility of the Mayor of Helsinki hosting the President's Reception at City Hall – a beautiful building! Helsinki is a fantastic city. Although it is very "walkable" and easy to navigate, there is a user-friendly tram system. The train to the City Center can be reached from inside the Helsinki Airport. Upon arrival at the City Center train station, the trams are available right outside the front entrance. There is a lot to see and do in Helsinki – lots of culture, museums, restaurants, and shopping. My point in telling you about this now is to hopefully lift your spirits during this dismal time and give you something exciting to look forward to. Once we learn more about how long this pandemic will last, I will again start re-connecting with our Helsinki colleagues and initiate conference planning.

Meanwhile, I hope you, your families, and your colleagues all remain healthy and safe.

Sheryl

EDITOR'S MESSAGE

Ralph L. DeLoach
Clerk/Court Administrator
Kansas District Court (retired)

Welcome to the 7th edition of The Court Administrator. Your articles are appreciated, please keep them coming. We would all be happy to hear about the innovations in your court designed to improve court administration. This publication contains an array of informative articles from around the world addressing court administration best practices and procedures. For the first time we are publishing an article which will be presented in a three-part series. It is an excellent article about the history of the Indian judicial system entitled Rich Indian Judicial System--From Vedas to Present Day. Other articles include: A Review of Finland's New National Courts Administration, Tribunals Administration in Kenya, Managing Change for Court IT Administrators, Promoting a Balanced Approach to Data Protection for Judicial Publications and Automatic Case Assignment in Kosovo.

This forum gives the general IACA membership an opportunity to inform all of us about the latest best practices and new, innovative ways of accomplishing the work of the court.

I hope you will enjoy and be informed. I would ask those of you who have authored an article in the past to encourage your colleagues to do the same.

The Coronavirus

It is affecting all of us. Please stay safe by practicing recommended procedures such as washing hands frequently and maintaining a proper distance from one another. Our hearts go out to our colleagues all over the world and especially to our colleagues in the hardest hit countries including, the United States, Italy, Spain, the United Kingdom and Germany. We might consider publishing articles in the next edition recounting how the virus affected your court and what your court did to respond to the crises. I believe that it is generally acknowledged that Singapore has had one of the best responses to the crises. An article from Singapore would no doubt be helpful and interesting.

Promoting A Balanced Approach To Data Protection In Judicial Publications: The Example Of The Court Of Justice Of The European Union

By Alfredo Calot Escobar, Registrar of the Court of Justice
Caroline Pellerin-Rugliano, Attaché to the Registrar of the Court of Justice

Mr. Registrar Calot Escobar is a Member of the Court of Justice of the European Union (CJEU), assuming both the functions of Secretary General of the CJEU and of registrar of the Court of Justice itself.
Ms. Caroline Pellerin-Rugliano, is the Attaché to the Registrar of the Court of Justice. In this capacity, she assists the Registrar in all aspects of his duties, both as Secretary General of the CJEU and as registrar of the Court of Justice, in particular in the fields of compliance and ethics.
The Court of Justice of the European Union is in the City of Luxembourg, in the Great Duchy of Luxembourg, European Union. To follow up with the authors please contact Ms. Caroline Pellerin-Rugliano at caroline.pellerin@curia.europa.eu

The article intends to describe the sustainable approach followed by the Court of Justice of the European Union to reconcile the principles of personal data protection and open justice, especially as regards online publication in connection with preliminary reference proceedings.

In a digital world where personal data is sometimes referred to as "the new oil", data protection is the new unit of trust. Nonetheless, this paradigm, which is fully accepted in a business context, does not transpose easily in the judicial context, where trust is historically rooted in the open court principle.

How can these two key principles, enshrined in the Charter of Fundamental Rights, be reconciled under EU Law? This question is of particular interest to the Court of Justice of the European Union, especially when it comes to publishing judicial decisions and, in particular, preliminary rulings.

The CJEU is among the oldest of the seven institutions of the European Union. It is now composed of two courts, one being the "Court of Justice" with jurisdictions similar to that of a supreme court. More than 2/3 of the cases dealt with by the Court are references for preliminary rulings, an unprecedented mechanism of judicial cooperation enabling any court or tribunal from an EU Member State to stay proceedings and refer a question to the Court whenever it is uncertain as to the interpretation or validity of a provision of EU law.

This mechanism, designed in 1952 to ensure a consistent and uniform application of EU law, constitutes a form of extension of the dialogue between national judges and judges from the CJEU, based on the idea of mutual trust and consideration for national legal traditions.

The effectiveness of the preliminary reference proceedings is based on the erga omnes effect of the Court's rulings. Such rulings are binding not only on the referring court, but also on any entity governed by EU Law. As a result, preliminary rulings need to be widely disseminated in all 24 official languages of the EU. By ricochet, this information is extensively reviewed, reported, published and indexed by search engines.

Moreover, preliminary references might concern a broad range of subjects, from taxation to passenger's rights, but also asylum rights, child abduction, discrimination based on religious symbols and data protection itself.

With this background in mind, one can easily understand that references for preliminary ruling raise

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complex issues in terms of data protection, thus offering an interesting challenge for the administration of a transparent and open justice.

The balance struck by the Court has evolved, relying for that purpose on the plasticity of the provision governing anonymity in preliminary rulings. Reconciliation of those two principles is possible, provided that a balanced approach, based on sustainability, pragmatism and respect, is taken.

With the turn towards online accessibility of the Court reports and the risk of increasing data exposure on the Internet, the CJEU decided, in 2012, to take first steps towards data protection in connection to judicial publications.

It adopted new Rules of procedure, which state that where anonymity has been granted by the referring court or tribunal, the CJEU shall respect it in the preliminary ruling proceedings pending before it. Otherwise, the Court can grant anonymity at the request of the parties in the main proceedings, of the referring court or of its own motion.

The logic behind these provisions reflected the intention of the Court to give precedence to the referring courts. They are the most familiar with the case and should conserve control over the principle and the extent of anonymity, in accordance with their legal system. National rules may indeed differ significantly from those applicable to the CJEU: some prohibit, for privacy reasons, the judiciary from publishing the names of the parties, their lawyer and even the judges who handed down the decision; conversely, others are bound by rules requiring the publication of the full names and addresses of the parties for transparency reasons. Moreover, due regard was given to the choice expressed by data subjects, as some parties wish to see their names explicitly associated with the cause they have defended all the way to the Court. In this multi-layered context, attention must be given to the diversity of cultural backgrounds at stake.

The choice to play a subsidiary role explains why, for several years, the Court has made a parsimonious use of its faculty to grant anonymity ex officio. However, the Court took care to combine the adoption of these provisions with a reinforcement of its information policy.

Keeping in mind that referring courts are not necessarily aware of the potential exposure of the parties' data, the Court decided to adapt its "Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings". These recommendations clarify that proceedings before the Court entails, in principle, the online publication of documents likely to contain personal data of the parties in the main proceedings. In addition, the Court enhanced the parties' information by publishing a notice on its website explaining how and when to ask for the benefit of anonymity.

With the rise of web crawlers, the routinization of the "Googling" practice and the unparalleled searchability of data on the Internet, a shift in the public conception of privacy occurred in the late 2010s. The Court itself contributed to raise awareness to privacy by delivering landmark decisions, such as the Google Spain case in 2014 that established the "right to be de-referenced" on search engines. It finally led the EU legislator to open the "GDPR" era by adopting new regulations in 2016 and 2018 that require data processors to embed data protection by design in their organizations.

In that context, voices started to express concerns about the fact that benefits of online publications for the sake of open justice may not offset the privacy costs of the exposure of the parties' personal data and their potential misuse. Consequently, several EU Member States tightened their policies regarding case law publishing in favor of the privacy of individuals. These evolutions show a strong conceptual change in the balance to be struck between data protection and open justice, reflecting the idea that what needs to be visible for accountability purposes is the justice system, not the people caught in that system. In other words, transparency of justice should not come at a cost for those who have exercised their fundamental right of access to courts.

Supporting this tendency, the CJEU has decided, with effect from 1 July 2018, that requests for preliminary ruling involving natural persons will be anonymized ex officio. Since then, the Court replaces the name of natural persons (either parties in the main proceedings

continued

or persons mentioned in the case, such as family members) by random initials and removes any element likely to allow their re-identification from all documents published in connection with a preliminary reference.

Interestingly, this decision has led to greater transparency. With personal data removed from the requests for preliminary ruling, the Court now has the possibility to publish them on its website. Where beforehand only the legal questions were made available to the public, placing these requests on line allows national courts to have a better understanding of the factual and legal background underlying pending references and to assess more easily whether they should await the resolution of a pending case or refer their own case.

In addition, this approach does not affect the possibility for Member States to comply with their own legal tradition, as they remain free to publish the documents associated with the case (e.g. the final decision delivered after the preliminary ruling) in a nominative or anonymous way. This could of course reduce the impact of the Court's efforts and the protection of data subjects, but mutual respect of each other's tradition implies that each court should assume its own share of responsibility, in accordance with the legal framework applicable to it.

Adopting a sustainable approach nevertheless requires another step. To become a precedent and be reviewed, understood, hence properly disseminated, a leading judgment needs to be remembered and quoted effortlessly. Cases named after the initials used for anonymization purpose definitely fall out of this category.

The Court therefore introduced an additional measure to ensure that the use of initials in the case name would not compromise its distinctive character. The usual name of the case is set by the Judge-Rapporteur and the Advocate General, either by using the name of a legal person involved in the case (about 80% of the disputes) or, where it only involves natural persons, by adding a conventional name describing briefly the dispute or its subject matter.

The Court of Justice's doors are wide open while hearings take place or when judgments are delivered, and anyone is free to walk in and observe how European justice is rendered in the public interest. However, if you decide to stop by, whether as a simple visitor or as a party to a case, we have made sure that Internet search engines will not spread the news.

Managing Change for Court IT Administrators
Case Study: Rwanda Integrated Electronic Case Management System

by Ms. Niceson Karungi

Ms. Niceson Karungi is currently an IT Business analyst and software development specialist for the Judiciary of Rwanda. While analyzing the IT needs of the Judiciary, facilitating the IT project development, training, deployment, adoption and usage as well as change management, Ms. Karungi works closely with Court IT Administrators.

Ms. Karungi's article discusses Judiciary of Rwanda experience and approach to effective deployment of the Rwanda Integrated Electronic Case Management System (IECMS) across different justice sector institutions particularly with limited resources and staff with widely varying IT skills.

Located in Kigali, Rwanda, Ms. Karungi may be reached at niceson.karungi@judiciary.gov.rw

Summary

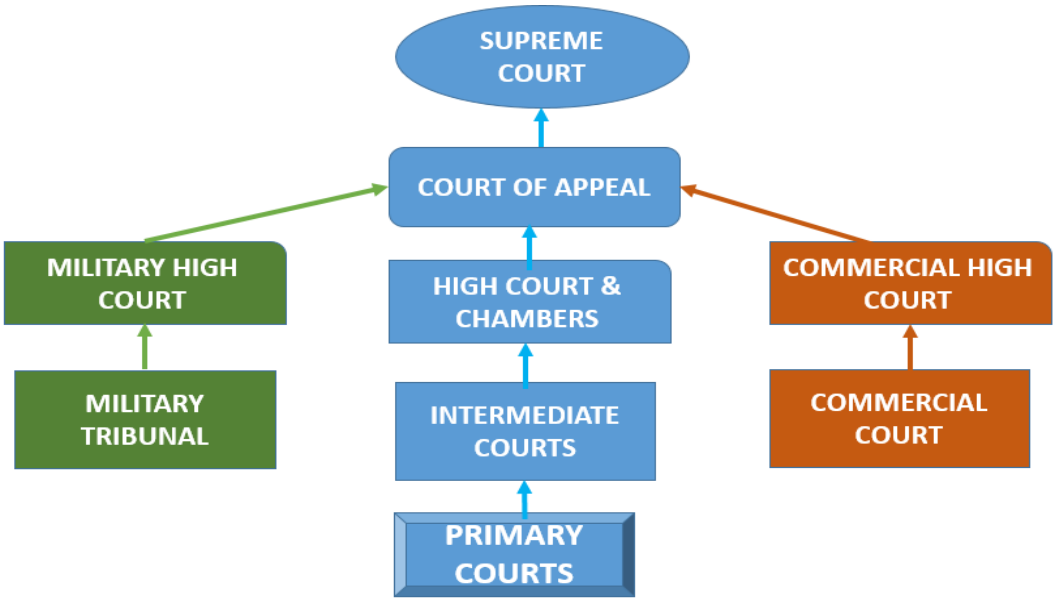
The Rwanda Integrated Electronic Case Management System (IECMS) is a robust case management system integrating the justice sector institutions of Rwanda, including the Rwanda Investigation Bureau (RIB), National Public Prosecution Authority (NPPA), the Judiciary, Correctional services, Civil Litigation Service (CLS), and Rwanda Bar Association. It is a single point of entry for all justice sector institutions, automating workflow and facilitating real time and seamless information sharing.[1]

The challenge that will be addressed in this paper is how such a system can be successfully deployed across all of these institutions, particularly with limited resources and staff with widely varying IT skills and capacity. Rwanda is a country that strives to achieve as much progress as possible given the limited resources available. With this mindset, the Judiciary has had to seek out creative solutions to effectively manage change for enterprise wide IT implementations. We hope that this paper will be helpful to other developing countries that seek to implement similar systems.

continued

1 Watson, Adam and Rukundakuvuga, Regis and Matevosyan, Khachatur, Integrated Justice: An Information Systems Approach to Justice Sector Case Management and Information Sharing - Case Study of the Integrated Electronic Case Management System for the Ministry of Justice in Rwanda (August 29, 2017). International Journal for Court Administration, Vol. 8, No. 3, 2017. Available at SSRN: https://ssrn.com/abstract=3028664

Structure of Courts in Rwanda



Introducing the IECMS

At the time of IECMS implementation, the Rwandan Judiciary had 83 courts operating from different parts of the country (including rural areas that had limited access to internet and electricity). Given this large scope, the Judiciary adopted a *phased approach* to system rollout.

IECMS was rolled out in three phases after a one-week training of end users in one location. Shortly after deployment, other trainings were rendered at court to handle specific challenges unique to that court or individual. The assignment of courts to each phase considered the court location and access to basic hardware and utilities. The first Phase, which consisted of 16 courts (6 of which are primary courts) in the capital Kigali, started using the system in January 2016. The aim was to deploy the system within all court levels from Primary Courts to Supreme Court to test all judicial workflows.

The second phase was launched in September 2016 with 29 courts, including all high courts in remote areas and 16 primary courts. Phase 3 was launched in June 2017 and consisted of the remaining 38 primary courts. After this rollout, all courts in the country were using IECMS.

For each court in which IECMS was rolled out, manual case management for new cases was immediately terminated and all new cases were filed through IECMS. The Chief Justice issued a statement before the beginning of each phase, that explained to the public which courts were rolling out IECMS, informing them that the system would completely replace paper format case filing and processing. However, cases submitted prior to the rollout continued to be managed manually outside of the IECMS, which proved effective by preventing the overwhelming burden of manual data entry for all ongoing cases.

In relation to other institutions, the decision to electronically file all cases in courts obliged the NPPA to start using their module of the system. In this way the Judiciary's use of the system placed a demand on the prosecutors to adapt their processes and adopt the system. In turn, the prosecutor's use of the system gradually obliged RIB to adopt their own module of the system. For example, when the first phase of rollout with 16 courts was launched, the downstream effect was that 15 Prosecution Branches, 10 Investigation Offices, 3 Correctional Service Branches and the CLS Office started using the system as well.

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The phased approach had a number of advantages:

- **Reduced pressure for resource mobilization:** The first phase of deployment covered courts in the city that already had basic resources and required less resource input for operationalization. This reduced pressure on the government to mobilize funding and resources for system usage and enabled the team to concentrate on planning for future deployments.
- **Easing Technical Staff into Operations to Ensure Scalability:** The Judiciary had a limited number of 8 IT technicians to support 710 staff during system deployment (1:89 ratio)[2] working from different locations throughout the country (and not considering litigants). With the phased approach, technicians operated under reduced pressure and were able to provide better services. In addition, by the time the second phase came, users from the first phase were already experienced and shared best practices with their counterparts, motivating early buy-in from users in the next phase. One mechanism that supported this was the use of a mailing group set up for IECMS Users. This mailing group was updated to incorporate judges and registrars in each court that adopted the IECMS. Thus, IT staff were able to concentrate their efforts on more technical issues.
- **Overcoming fear of change:** The phased approach helped to gradually overcome this fear since courts in remote areas adopted the system after hearing positive references from their colleagues who had succeeded in using the system. This reduced the fear that they may fail in implementing the system. In addition, court presidents and chief registrars were encouraged by the Chief Justice and were able to discuss best practices during their quarterly court leaders' meetings.
- **Learning from Usage:** The development of the system evolved after the first phase following issues encountered and feedback provided by users. This allowed technical personnel to think through creative solutions. For example, the team implemented an "AutoSave" functionality to help cope with power and internet outages so that users could continue working after the outage as if nothing happened. In addition, the team adapted the system into the judiciary VPN so that within the judiciary network, IECMS could still be well accessed irrespective of internet outages.

Process of Successful IECMS Adoption

The successful adoption of IECMS is largely attributed to the phased approach to deployment. However, there are other strategies and factors that facilitated the smooth and successful adoption of the system.

- **Committed and Supportive Leadership:** The leadership of Rwanda and of the Judiciary are keen on using IT as an enabling tool for sustainable development. This factor should not be taken for granted because without strongly supportive and committed leadership, successful IT system deployment cannot be achieved. Judiciary leadership encouraged the deployment of IECMS and motivated court leaders to adopt the system who in turn inspired system adoption among judges and registrars in their respective courts.
- **Adapting Procedural Law:** The IECMS streamlined business processes and so the procedural law had to be adapted accordingly. In Rwanda, some procedural laws had to be revised to align with the IECMS, since certain procedures were made obsolete by the system, and needed modification. For example, since most litigants could get summons directly from the system, it was no longer reasonable to oblige service of summons manually. As a result, there was a need for the procedural law to acknowledge online means of summoning.
- **Public Communication Strategy:** It was a big challenge to educate nearly 13 million inhabitants about the new IECMS. The Judiciary turned to local radio stations, national network televisions, and local newspapers to educate litigants about IECMS. Also, representatives of the judiciary participated in national talk shows both before and

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2 Judiciary Strategic Plan 2018-2014 pg 16 (https://www.judiciary.gov.rw/fileadmin/SC_Info/Basic_info/JUDICIAL_STRATEGIC_PLAN_2018_-_2024.pdf)

during the launch of IECMS to promote awareness to court users.

- **IECMS "Ambassadors" in each court:** The judiciary identified a small number of judges and registrars who were trained as trainers in the first phase of deployment. By the second deployment phase, they were conducting training sessions for their colleagues. Also, other judges and registrars who were early adopter were identified in each court to be IECMS "ambassadors" and offer firsthand help to simple issues within their respective courts.

Addressing Access to Justice Challenges

Although the rate of literacy of Rwanda's population has increased over the years, computer literacy rates are still very low. This is a challenge that we had to address in order for IECMS to be a catalyst for access to justice instead of a hindrance. Several strategies were adopted to enable the public to benefit from the numerous advantages of the IECMS to the citizenry.

The judiciary understood that no amount of training could be given to the illiterate or elderly citizens to make them computer literate. Therefore, we trained "Facilitators" - often young people who were unemployed but computer literate (and occasionally even law degree holders) to facilitate in case filing. These "facilitators" were deployed at the sector level, closer to the citizenry so that anyone who had issues filing a case could easily be supported for a small fee. This also partially solved the issue of youth unemployment.

Cyber café and tele-center owners were also trained to facilitate litigants. These were especially helpful in rural areas with limited internet access. In addition, formal trainings were provided to more than 1,000 BAR and 38 Legal aid providers, as well as lawyers working in the Maison d'Accès à la Justice (MAJ), who offer legal services to poor citizens free of charge.

Finally, efforts to localize the system were undertaken. Considering that most of Rwandan population speaks Kinyarwanda as their first language, the system was developed both in Kinyarwanda and English, we also created written user manuals and instructional YouTube Videos in both English and Kinyarwanda.[3]

Local events promote awareness and access, including an annual open house during Justice Week and Judicial Week, in which IECMS usage is demonstrated live in all courts in the country and citizens can receive answers to any queries on system use and court operations.

All indications show that these initiatives have ensured that the IECMS rollout results in increased access to justice. Instead of declining case submission, the Judiciary actually experienced a steady rise in the number of cases reported since the system was deployed from 78,948 in 2018 to 102,718 in 2019.

Conclusion

When rolling out a nationwide information system, such as the IECMS, not all challenges can be addressed before system deployment. Many challenges will only be identified once the system is in use. However, a phased approach with strong leadership and a robust strategy for training, communications, and addressing Access to Justice issues, will allow management to identify and contain any challenges that may arise. This will ensure that each phase results in an improved version of the system, with a team that is better prepared for the next phase of deployment.

3 https://www.youtube.com/watch?v=zmNTeAMy1OI&t=143s https://www.youtube.com/watch?v=zmNTeAMy1OI

The National Courts Administration of Finland

By Riku Jaakkola

Mr. Riku Jaakkola is the first Director General of the newly established National Courts Administration of Finland. He transferred to this post from the Etelä-Pohjanmaa District Court where he has worked as a chief judge since 2015. Mr. Jaakkola has extensive 20 years of experience from the courts. Before being appointed to the chief judge position, he worked as a district court judge in several district courts and as a referendary at the court of appeal of Vaasa. In addition, he has experience of international judicial duties in EULEX-Kosovo -operation. The National Courts Administration of Finland is in Vantaa, a city and municipality in Finland and is part of the inner core of the Finnish Capital Region along with Helsinki, Espoo, and Kauniainen. Vantaa is the fourth most populated city of Finland. Vantaa has a rich history that dates back to the stone age. Mr. Jaakkola may be reached at riku.p.jaakkola@oikeus.fi

The newly established National Courts Administration of Finland began its operation on 1st of January 2020. It is an independent agency operating in the administrative branch of the Ministry of Justice. The establishment of the National Courts Administration has reorganized the central administration of the courts. Guaranteeing the structural independence of the courts and the impartiality of the judiciary are at the core of the reform. The objective of the reform is to make central administration of the courts more effective and help the courts to focus on their core task - exercising judicial powers. The reform reinforces the high quality of the administration of justice and improves legal certainty.

The highest decision-making body in the National Courts Administration is the Board of Directors. It has eight members, majority of whom are judges representing different courts: the Supreme Court, the Supreme Administrative Court, the courts of appeal, the district courts, the administrative courts and the special courts. Furthermore, the board includes a member representing other personnel of the courts and a member with special expertise in the management of public administration. Each member has a personal deputy member. The nominations for members and a deputy member are done by the courts themselves. The board is appointed for a term of five years at a time by the Government of Finland. The first Board of Directors was appointed in April 2019.

The Director General leads and oversees the day-to-day management of the National Courts Administration. The Board of Directors appoints the Director General for a term of five years at a time.

In June 2019 I was appointed to the Ministry of Justice with the task of preparing for the establishment of the new Agency. This included planning the organization of the agency and recruitment of its personnel. The main preconditions for planning were personnel of approximately 45 and estimated total expenditure of 3,5 – 4 million euro a year. After planning and careful consideration, the organizational structure of the National Courts Administration was decided to consist of three departments, responsible for the finances, development and administration.

The Finances Department is responsible for preparing decisions concerning the budgetary procedure of the courts as well as their performance management and development. The department also plans and reports of the activities and finances of the National Courts Administration. The department is also responsible for the financial administration of the accounting unit of the National Courts Administration and the courts and for the financial cooperation of the courts. In addition, the department is responsible for the premises management of the courts. The department is responsible for the procurement of the National Courts Administration and for the steering of the procurement of the courts.

The Development Department participates in the development of the courts. This includes promoting, supporting and coordinating development projects concerning the courts and participating in them. The department is responsible for organizing training to the judges and other court personnel in cooperation with

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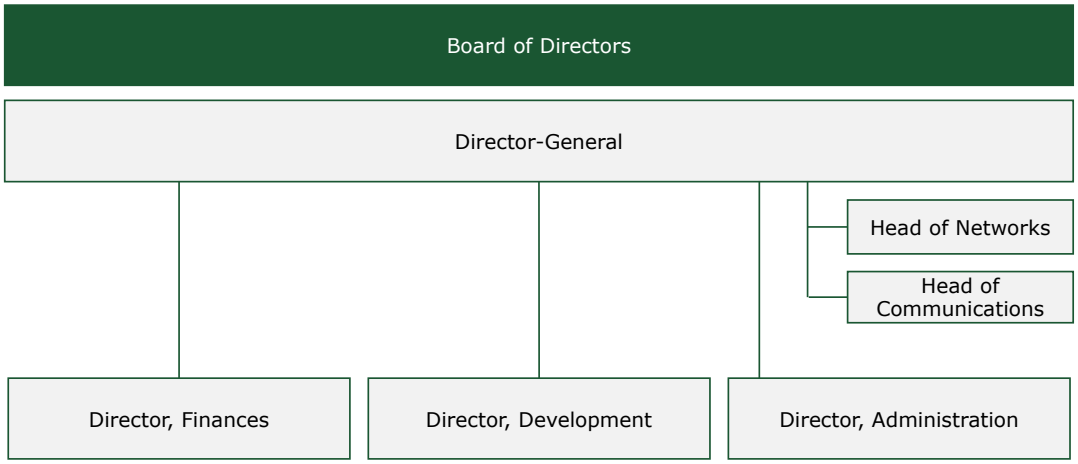
the Judicial Training Board, as well as to the National Courts Administration's personnel. The department is also responsible for the maintenance and development of the IT-systems of the courts. The department participates in the international cooperation and supports the courts with their international tasks.



The Administration Department handles the recruitment and other human resource processes of the National Courts Administration. In addition, the department supports the courts in their human resources processes, and is in charge of the cooperation of the human resources management of the courts. The department is also responsible for the assistant and support services of the National Courts Administration. As of beginning of 2021, the department will also be in charge of the establishment, termination and transfer of judge and other personnel positions and internal recruitment arrangements at the courts.

There are also two persons working outside these three departments, directly under the Director General. The Head of Court Support and Public Relations is responsible for coordinating the support for the courts within the National Courts Administration. He/she is also responsible for communications with the courts and the other stakeholders. The Head of Communications is responsible for the external and internal communications of the Agency. He/she is also involved in supporting and developing the communications of the courts.

To plan and establish a completely new agency in five months has been a huge challenge and it has required lots of work. We have had numerous discussions with the personnel of the Ministry of Justice, which has taken care many administrative tasks of the courts until now. Merely recruiting the personnel, altogether 45 persons, has taken plenty of effort. We have gone through almost 2,000 applications and conducted almost 200 interviews. Nevertheless, this has been an extremely interesting and worthwhile process.

The National Courts Administration has now operated for three months. We are still creating our procedures, but we are agile and learning more and more every day. We are facing huge expectations by the courts. Fulfilling our tasks won´t be easy and we will have our difficulties for sure, but because of our extremely competent and motivated personnel, I´m confident, we will succeed. Most importantly, everyone working here understands that the main purpose of the National Courts Administration is to assist and support the independent courts in their judicial activities and, to help the courts to develop their activities.

To further the purpose of ensuring that the administration of the courts is organized in an efficient and appropriate manner, National Court Administration has agreed to facilitate the next meeting of IACA in Helsinki, Finland in 2021. We are extremely excited and looking forward to continuing and deepening our engagement with colleagues from around the world. For us as a newly established institution, this a precious opportunity to network, to share experiences and exchange ideas. And of course, to showcase Helsinki.

TRIBUNALS ADMINISTRATION IN KENYA; SHARED SUPPORT SERVICES

By Hon. Ann Asugah, Ag. Registrar, Tribunals

Hon. Ann Asugah, working for the Kenyan Judiciary, oversees the coordination and management of 20 tribunals which have transited to the Judiciary from the Executive to allow for full administrative support services to enable them deliver on their mandate.

In her article, the author illustrates how shared support services can benefit tribunals in the administration of services to allow for maximum productivity.

Located in Nairobi Kenya, Hon. Ann Asugah may be reached at asugaha@gmail.com.

The system of courts in Kenya is stipulated in Chapter 10 of the Constitution of Kenya 2010. There is the Supreme Court, Court of Appeal, High Court and Courts of equal status (Employment and Labor, Environment and Land Court) and the Subordinate Courts. Tribunals are classified as subordinate courts in our Constitution. The differentiating characteristics of tribunals are that they are specialized, deemed to be quicker and affordable as a complement mechanism for adjudication of administrative disputes.

Kenya promulgated a new Constitution 2010. At the time of promulgation, tribunals were run from the executive branch of government. The new Constitution in its design and architecture envisaged a cheaper, affordable and speedier resolution of disputes for Kenyans. The Constitution therefore designated Tribunals as subordinate courts under Article 169(2) (c) under the **Judiciary**. Tribunals primarily adjudicate disputes between administrative government bodies and citizens. Their placement in the executive does not augur well for independent in decision-making and accountability.

The Judiciary is run by an independent commission called the Judicial Service Commission (JSC), which has oversight on justice administration in Kenya including appointment of judges and some tribunal members. With the placing of tribunals under the Judiciary, transition of tribunals from the Executive to the Judiciary became an imperative. This is particularly important to enhance decisional independence and accountability.

Kenya has over 50 tribunals scattered over 50 statutes. Each tribunal has different rules, mandates, qualifications of members, appointing authority and different terms and conditions of service. The tribunals are located in different buildings all over the Headquarters of Nairobi. To alleviate the suffering of litigants and ensure a coordinated approach in justice administration by tribunals, the JSC established a tribunal's secretariat to coordinate the affairs of tribunals. The Tribunal Secretariat is run by a registrar and provides all support services to tribunals; financial, physical facilities, human resources etc.

continued

SHARED SERVICES

a) Case Management

The current caseload for the 20 tribunals, which have transited to the Judiciary, is about 25,000. Each tribunal has a specific statute/legal framework that guides its jurisdiction and case management. Some tribunals however have no specific guidelines on how they should handle their cases. The Kenyan Judiciary has a Training Institute that builds capacity of judicial officers and tribunal members to ensure that there is active case management. The Tribunals' Secretariat organizes tailor made courses on case management generally for all members of tribunals to share knowledge and experiences on how to conduct cases in tribunals. This pooling on training has yielded tangible results on backlog reduction. It has also enhanced capacity of non-legal tribunal members in actively managing cases.

b) Court Facilities

Sharing of courtroom facilities for tribunals is the hallmark of shared facilities. The distribution of courts across the country is such that almost every county has a court building. To leverage on court facilities in the country, the Secretariat partners with court administrators in those stations to provide space for tribunals traveling for circuit hearings.

For tribunals that are in the headquarters in the city of Nairobi, the Secretariat runs a schedule where all scheduled sittings/hearings are submitted for allocation of empty courts or available boardrooms for use by the tribunals. This has reduced leasing costs since space is shared. The staff running sitting schedules are shared and therefore optimally utilized. The level of scheduling requires consultation, effective communication and use of basic ICT tools.

Financial Services

The budget for tribunals is appropriated as part of the larger budget for Judiciary. Each tribunal develops a work plan for activities it wishes to undertake in that year. These budgets are consolidated, and money appropriated through the Tribunal's Secretariat to each tribunal for its needs. All financial arrangements and requests are made to the Secretariat for processing. This has enhanced prudent spending on priority activities and also streamlined expenditure to avoid spending without budgeting.

Remuneration for members who sit in tribunals is also done centrally at the Secretariat. This ensures uniformity in standard operating procedures in all aspects of administration e.g. requirements for payment, case management etc.

ICT and Procurement Services

The Secretariat also has a fully-fledged finance, ICT and procurement department to offer support services centrally to all tribunals. In case of ICT, tribunals are undergoing automation by entering cases into a case tracking system (CTS), which keeps track of the age and status of each case. This helps create a lifecycle of each case. One is able to see the gaps in finalization of the case and take swift action.

With regards to procurement of materials and resources to run tribunals, it's centralized at the Secretariat. Each tribunal submits requests for purchases based on their quarterly needs. These requests are consolidated, and materials purchased in bulk. This cuts costs due to economies of scale. It also ensures that bulk purchases can be shared with busy tribunals from the less busy ones.

Currently the Judiciary has transited 20 of tribunals of the 50 from the executive to the Judiciary. To ensure high quality standards, the Secretariat has established service charters and simple guidelines to enhance efficiency and accountability in tribunal administrations. The use of shared services has greatly enhanced the streamlining of tribunal operations, which ensures greater access to justice.

Automatic Case Assignment through the Case Management Information System in the Judiciary of Kosovo

by Fatmir Rexhepi[1]

Currently the Head of the Information and Communication Technology (ICT) Department, CMIS PM, Kosovo Judicial Council (KJC), Mr. Rexhepi is also the Project Manager of the Case Management Information System (CMIS) Project. Since 2013, Mr. Rexhepi has been engaged in activities regarding the implementation of the CMIS Project on the Judiciary of Kosovo for the all courts and for all case types, in addition to his responsibilities as the Head of the ICT department. The scope of the work of the CMIS Project includes activities for building the necessary HW/SW infrastructure, development of the CMIS, adoption of the regulatory framework for the use of the ICT in the courts and training and rollout of the CMIS.

In his article, the author discusses automatic case assignment as one of the main functions in the processing of the cases in the court. For this purpose, the Kosovo Judicial Council has developed the CMIS function for the automatic case assignment to judges, which enables the case assignment based on the same and equal criteria for all judges.

The automatic case assignment method through the CMIS system, consistently serves as an effective tool in ensuring judicial independence, impartiality, higher accountability, transparency and time management.

The first months of automatic case assignment used by Kosovo courts proved to be very efficient, while eliminating delays in the assigning judges to the case.

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Abstract:

Kosovo Judicial Council, through the introduction of the case management and information system in the Kosovo courts, addressed and made an adequate solution for case assignment to judges. Prior to the implementation of the Case Management and Information System (CMIS), the case assignment process in the courts had become very challenging in several aspects. The process itself was inefficient as it was time-consuming and very often transparency was at stake. During the last decade in particular, the Kosovo Judicial System has been under pressure to modernize Kosovo Courts by introduction of ICT systems, aiming to resolve backlog, to reduce the time taken to process cases and also to ensure transparency of the courts' performance.

The expectations were very high. Therefore, it was necessary a special attention to be paid to particular system functions in order to achieve the objectives. Among other important functions identified, the automatic case assignment of judges was seen as a vital function of the system. Adequate resources have been engaged in order to develop the automatic case assignment function, and it was managed to successfully develop and introduce this important function in Kosovo courts'. Since the beginning of the automatic case assignment was launched, it was very well received by the court staff, and the results were positive and tangible in regard of time saving in case registration all the way to the case assignment.

continued

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Keywords: automatic case assignment, case assignment system, case assignment to the judges electronically, case assignment in court.

Introduction

The Kosovo Judicial Council[3] (KJC), similarly as judiciaries in other countries, is making efforts to develop and introduce ICT in the courts. This is due to new possibilities that are provided by the ICT systems such as the increase of the work efficiency and quality, as well as providing better services and a high level of transparency for Kosovo citizens. In this regard, KJC is doing its best that through the implementation of the Case Management and Information System (CMIS) to digitalize the courts work processes. KJC, for a relatively very short time had managed to successfully develop and roll out the CMIS system on a large scale in all Kosovo courts through implementation of the ICT/CMIS Project.[4] The success achieved, it is attributed to the applied methodology as well as the engagement of end users during the implementation of the project's important phases; in analyzing business processes, in designing important functionalities of the system, and their engagement during the project's implementation phase in the courts.

The success of a system depends very strongly on how its core functions are designed, developed individually, as well as its impact on improving the work efficiency and quality, for which it is funded. However, the purpose of this article is not to provide overall information about the CMIS Project but intends to present the automatic case assignment function through the CMIS system, as a *unique and advanced* function for its possibilities that it can provide.

Purpose, importance and main features of automatic case assignment

Large and complex systems such as the Court Case Management System consist of many important functions, which constitute the core of business processes. In reaching its objectives and providing high results, these systems depend directly on how individual key functions are designed, developed, received and used in practice by the end users.

Through CMIS automatic case assignment, it is intended to remove the old manual method of case assignment, (i.e. random draw). The previous method of case assignment by draw, proved to be inefficient, due to the delays of collecting and grouping cases at first which would have lasted for weeks, and then assigning those cases to judges through a lottery method. Whereas, through automatic case assignment, the parties will be notified without any delay about the judge during the first phase of case admission and registration in the court.

During the design of automatic case assignment function of the Kosovo Judicial system, a special attention was paid to the design phase, in order to develop the solution which will serve the purposes and meet the requirements set. Therefore, at the very beginning of the function's design phase, there were determined some basic principles which were taken into consideration during the entire process of the automatic case assignment function design and development, such as:

- Case assignment to judges should be based on the same and equal criteria for all judges.
- The Judge to be assigned automatically and without delays in the CMIS, during the initial phase of case registration in the court.
- Impossibility of the CMIS users to predict case assignment and the assigned judge in a case, during the case registration in the system.
- Imply transparency in the case assignment process in order to avoid human interference.
- Enable high level of monitoring and reporting.

continued

3 KJC as per the Constitution of the Republic of Kosovo, Article (108), is responsibility to ensure the independence and impartiality of the judicial system, judicial inspection, court administration, employment, budget of the courts etc.

4 The judicial system in Kosovo consists of the first instance with seven basic courts, the second instance with one Court of Appeal, and the Supreme Courts as the third and last instance.

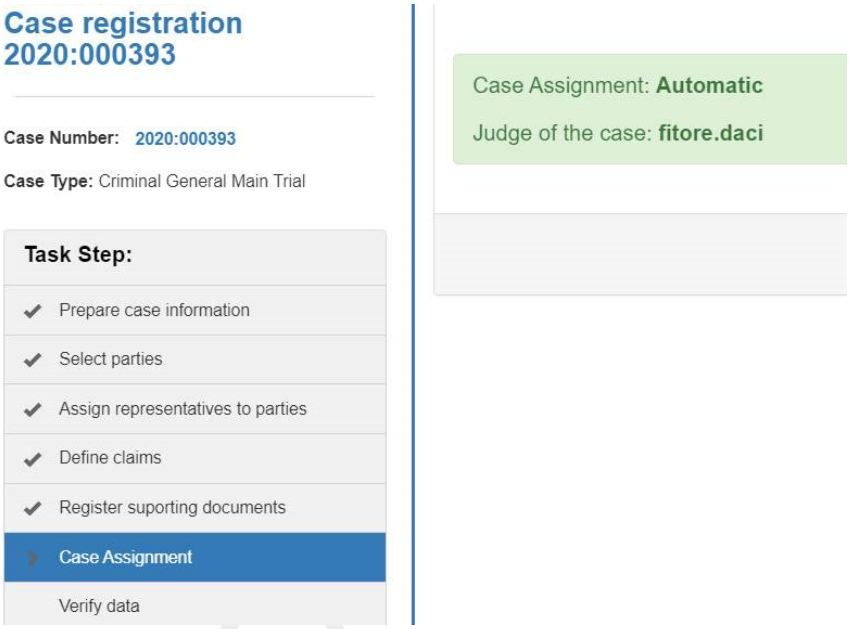

Fig. 1. CMIS user interface for case assignment

Steps and criteria of the CMIS automatic case assignment

Automatic assignment of a judge through CMIS is accomplished by the execution of three main steps. The execution of each step is done through certain and specific criteria for each step.

1. Organization of the court
2. Exclusion criteria and
3. Automatic assignment

Besides case assignment of a judge, the system, will automatically assign members of the various panels depending on which phase is the case.

1. The organization structure of the court

The first step in assigning the judge is automatically executed in the system during the initial phase of the case registration. When the registration clerk selects the type of the case, CMIS system will generate a list of potential judges to whom the case can be assigned through the organizational structure criteria. Only judges of the department to which the case belongs are included in the automatic assignment by the system.

2. Exclusion criteria

The second step, is the execution of exclusion criteria. These are the criteria determined by law to the exclusion of the judge in criminal cases, civil cases etc. In the basic court, from the list of potential judges to be assigned for the main trial it is excluded the judge who has been engaged in the same case during the preliminary procedure. An exception to this rule applies to juvenile criminal cases when the preliminary procedure judge must be the same during the main trial also. In these situations, the case will remain and continue to be handled by the same judge in the main trial.

In the Court of Appeal and the Supreme Court, the system itself excludes from the list of potential judges to assign the case, or to be part of panel members (presiding judge, judge rapporteur or as a member), a judge who participated as a member of one of aforementioned roles or participated in the decision making which is challenged by a legal remedy in the lower court or the same instance court.

Automatic assignment of the judge

Third step is the automatic judge assignment. After the registration of necessary data of the case and after the execution of the aforementioned criteria, CMIS will automatically assign the case to a judge from the disposal list of judges. Criteria of the third step for the automatic judge assignment are as follow:

- Instant assignment without any delays,
- Random assignment of judges,
- Balanced number of cases assigned to judges with the respective department.

Balanced number of cases assigned to judges refers to the approximate equal number of cases assigned to judges at all times and this number never exceeds a certain maximal number of cases. This maximal number is variable, and it changes depending on the number of judges available at in the respective department. The departments with lower number of judges, the maximal number set is higher, while with the increase of the number of the judges in the department, this

continued

maximal number decreases. The balanced method of the judges' workload will result in varying but which will be balanced over the time and will never exceed a certain maximum number of cases.

Example: in the simplest case, the department has only two judges (judge A and judge B).

For every new case that may come, because of the application of the balanced method and the random allocation, chances are always 50% - 50% for both judges to receive the case. Therefore, at one point, Judge A, may have two more cases than Judge B. After a while, Judge A may have one less case than Judge B. At another point, Judge A may still have two more cases more than Judge B. Therefore, the caseload may vary, but the difference never exceeds the maximum number set and thus ensures a balanced case load for judges. In addition, this method omits the register clerks' possibility to predict the judge who would handle the case that is being registered.

Random assignment of judge

The last criterion applicable to the case assignment of a judge is the random assignment. CMIS will execute criteria right after the completion of the second step, which is the exclusion criteria.

The system itself assigns a Globally Unique Identifier (GUID) for all judges that are on the list. Once the GUIDs have been assigned, the case is assigned to the judge through GUID according to the lower right character criteria. GUIDs are assigned to each judge for each case to be assigned and are unique, and it is used only for that certain case assignment, providing full randomness in assigning the judge.

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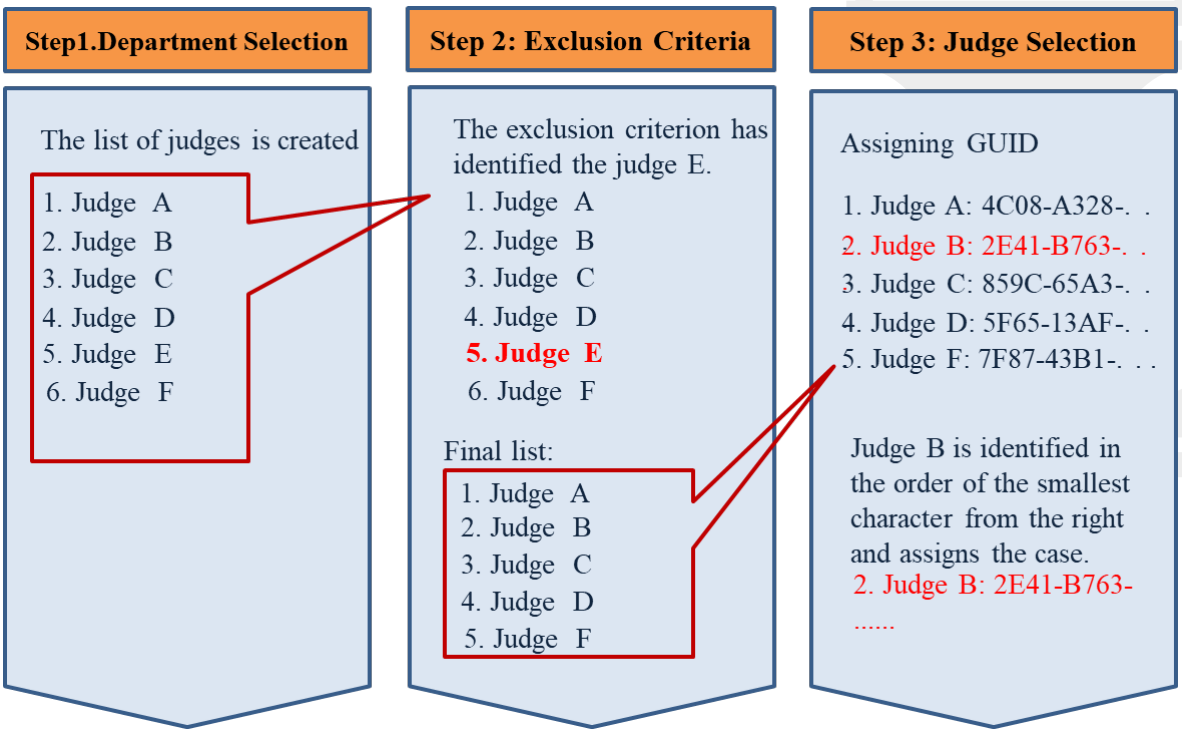

Fig. 2. Steps and main criteria for the automatic distribution of cases

The CMIS automatic case assignment function is designed and developed to support special situations, also. In cases where there is no judge available to assign the case, it is possible to appoint a judge from another department or another court. Cases of reassignment of a judge due to the exclusion from the case, the new judge for these cases is automatically assigned, subject to the same criteria as the first judge. Also, judges who are not in office for long periods for various reasons are excluded from the case assignment process through the exclusion criteria.

Monitoring and reporting

To follow up and monitor closely the automatic case assignment in the court, CMIS provides specific reports with detailed information regarding the number of cases assigned, and the execution of the all steps and criteria for every case and how they are assigned to judges. These reports provide necessary data for the court, case assignment process, as well as reports for judges individually on their assignment as judges to different panels.

Furthermore, CMIS through data collection from the process of judge assignment log, provides detailed information systematically on how these criteria are executed in the process of case assignment, until when the judge is assigned.

Conclusions

Automatic case assignment through CMIS is thought of ensuring fair and equal assignment of the cases to judges. It also ensures the full transparency of this process, as well as avoids the possibilities of misuses or conflicts of interest during the case assignment process in the courts. As mentioned, the first months of automatic case assignment used by Kosovo courts, proved to be very efficient, while eliminating delays in the assigning judges to the case. It is agreed that through the CMIS, the judges are assigned to the case through a well-defined process, and this is done immediately when the clerk, registers the case in the system. Therefore, the case assignment is completed in time and it is highly monitored. Hence, judges and administrative staff of the court appreciated the case assignment through CMIS system, as it eliminates the unnecessary responsibilities and time-consumption.

In our opinion, an automatic case assignment method through CMIS system, which consistently enforces the principal of predetermination, serves as an effective tool to ensure judicial independence, impartiality, higher accountability, transparency and time management.

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Part I of Series: Rich Indian Judicial System-from Vedas to Present Day

By Panchaksharayya C Mathapati

Panchaksharayya C Mathapati (Panch) currently works as a Court Manager, with High Court Mumbai, Maharashtra, India. He has been posted at the Family Court, Mumbai, since 2013.

Panch shares with our readers the history of the Indian judicial system, the oldest in the world. Rich in principles derived from sages through Shruti, Smriti (remember and pass on to the next generation), commentaries, customs and refining of basic laws to tune to the requirements of the generations, Panch takes us through the Indian Judicial System and the Rule of Law as it continues to evolve and upgrade throughout the times.

In Part 1 of this series of articles, we learn about the sources of law and the origins of the judiciary in ancient India to the role and manners of ancient kings.

Part II will appear in our next edition of The Court Administrator.

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Nyaya (न्याय) is a Sanskrit word which means method, rule, specially a collection of general or universal rules. In some contexts, it means model, axiom, plan, legal proceeding, judicial sentence, or judgment.

"यतो धर्मस्ततो जयः[1]" The motto of Supreme Court of India is "Yato Dharma tato Jaya", which means Where there is righteousness (dharma), there is victory (jayah). The source of this phrase (shloka) is taken from Mahabharat, is one of the two epics of ancient India, the other being Ramayana. National Motto of India is सत्यमेव जयते satyam-eva jayate; "Truth alone triumphs" adopted on 26 January 1950 is a part of a mantra from the ancient Indian scripture from Mundaka Upanishad.

Vedas are the sources of all Hindu laws in India. Source means "basis from which law is evolved". Source of law is a basis, which enables the Court to interpret the law. Source of law is a method by which the rules have been discovered or created. Source of law may be literary or Material. Veda means knowledge (from the root vid = to know). There are four Vedas. Rig Veda, Yajur Ved, Sama Ved and Atharva Ved.

Sources of laws in India is

1. **Shruti** (Shruti means what is heard by the Sages (Rishis), 2. **Smriti** (Smritis literary means what has been remembered. Shruti represents direct words of God as heard by sages (Rishis), while Smritis represent what was remembered from the word of God heard by Sages, 3. **Manusmriti, Yajnavalkya-smriti** - Digests and commentaries during the period Between 700 A.D. to 1700 A.D, 4. **Custom** - Custom is the oldest form of lawmaking. Custom means "Achara or Usage", a Traditionally followed long practice. Dharma mean 'principle of righteousness' or 'duty', principle of holiness and also the principle of unity.

Judiciary in Ancient India

There are four legs of Law[2], of these four in order, Sacred law (Dharma), evidence (Vyavahára), history (Charitra), and edicts of kings (Rájasásana). Dharma is eternal truth holding its sway over the world, Vyavahára, evidence, is in witnesses, Charitra, history,

continued

1 https://main.sci.gov.in/
2 https://www.academia.edu/32138487/Judicial_System_in_Ancient_India.pdf

is to be found in the tradition (sangraha), of the people, and the order of kings is what is called shasana (legislations). These principles of were administered by Court, in 'Sangrahana', ' Karvatik', 'Dronamukha', and 'Sthániya', and at places where districts meet, three members acquainted with Sacred Law (dharmasthas) and three ministers of the King (amatyas) shall carry on the administration of Justice. 'Sangrahana' is centre for 10 villages, 'Karyatik' for 200 Villages, 'Dronamukha' for 400 villages and 'Sthaniya' for 800 villages. This arrangement of judiciary suggests that there were sufficient number of Courts at different levels of administration, and for district (Janapadasandhishu) there were Circuit Courts in villages, the local village councils or Kulani, similar to modern panchayat, consisted of a board of five or more members to dispense justice to villagers. It was concerned with all matters relating to endowments, irrigations, cultivable land, punishment of crime, etc. village councils dealt with simple civil and criminal cases. At higher level in towns and districts the Courts were presided over by the government officer under the authority of King to administer the Justice. The link between the village assembly in the local and the official administration was the head man of the village. In each village, local head man was holding hereditary office and was required to maintain order and administer justice, he was also a member of village council he acted both as the leader of the village and mediator with the government. In order to deal with the disputes amongst member of various guild or association of trader or artisans, (sreni), various corporations, trade bills, guilds were authorized to exercise an effective jurisdiction over their member. These tribunals consisting of a president and three or five adjudicators were allowed to decide their civil cases regularly just like other Courts. No doubt, it was possible to go in appeal from the tribunal of the guild to local Court, then to Royal judges and from this finally to the King but such situation rarely arises. Due to the prevailing institution of joint Family system, Family Courts were also established, 'puga assemblies' is made up of groups of families in the same village decide civil disputes amongst the family members. Minor criminal cases were dealt with by judicial assemblies in villages.

1.2 Grounds of Litigation:

Manu (The Manusmṛiti in Sanskrit: "Laws of Manu [Sanskrit: मनुस्मृति])mentions following grounds on which litigation may be instituted, (1) Non-payments of debts; (2) deposits; (3) sale without ownership; (4) partnership; (5) non-delivery of gifts; (6) non-payment of wages; (7) Breach of Contract; (8) cancellation of a sale or purchase; (9) disputes between owners and herdsmen; (10) the law on boundary disputes; (11) verbal assault; (12) physical assault; (13) theft; (14) violence; (15) sexual crimes against women; (16) law concerning husband and wife; (17) partition of inheritance; and (18) gambling and betting.

According to Bṛhaspati (Sanskrit: बृहस्पति, often written as Brihaspati appears in the Rigveda [pre-1000 BCE]), there was a hierarchy of Courts in Ancient India beginning with the family Courts and ending with the King. The lowest was the Family Arbitrator. The next higher Court was that of the Judge, the next of the Chief Justice who was called Pradvivaka (प्राड्विवाक), or adhyaksha; and at the top was the King's Court. The jurisdiction of each was determined by the importance of the dispute, the minor disputes being decided by the lowest Court and the most important by the king. The decision of each higher Court superseded that of the Court below. According to Vachaspati Misra (was a 9th- or 10th-century CE Indian Philosopher) "The binding effect of the decisions of these tribunals, ending with that of the king, is in the ascending order, and each following decision shall prevail against the preceding one because of the higher degree of learning and knowledge".

1.3 Duties and manners:

To be observed by the King in administration of justice were very clearly laid down in Sacred Texts, Manu's [Manusmṛiti in Sanskrit] code says, a king, desirous of investigating law cases, must enter his Court of justice, preserving a dignified demeanor, together with Brahmans and with experienced councilors. There, either seated or standing, raising his right arm, without ostentation in his dress and ornaments, let him examine the business of suitors. Manu cautions King by saying,

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"Justice, being violated, destroys justice, being preserved, preserves therefore, justice must not be violated, least violated justice destroys us". Further he opines 'the only friend of men even after death is justice; for everything else is lost at the same time when the body (perishes)'. If judicial system fails to dispense justice Manu says that, one quarter of (the guilt of) an unjust (decision) falls on him who committed (the crime), one quarter on the (false) witness, and one quarter on all the judges, one quarter on the king. Manu says A king who thus brings to a conclusion. all the legal business enumerated above, and removes all sin, reaches the highest state (of bliss). As the duty of a king consists in protecting his subjects by dispensing justice its observance leads him to heaven. He who does not protect his people or upsets the social order wields his royal scepter (Danda) in vain. It is power and power (Danda) alone which, only when exercised by the king with impartiality and in proportion to guilt either over his son or his enemy, maintains both this world and the next. The king who administers justice in accordance with sacred law (Dharma), evidence (vyavahára), history (samsthá) and edicts of kings (Nyáya) which is the fourth will be able to conquer the whole world bounded by the four quarters (Chaturantám mahím). A king who properly inflicts punishment prospers with respect to those three means of happiness; but if he is voluptuous, partial, and deceitful he will be destroyed, even though the unjust punishment, which he inflicts. Manu felt that the judicial administration should not rest in the hands of a feeble-minded king. If judicial administration were given to such a king, he would destroy the whole country. Punishment cannot be inflicted justly by one who has no assistant, (nor) by a fool, (nor) by a covetous man, (nor) by one whose mind is unimproved, (nor) by one addicted to sensual pleasures.

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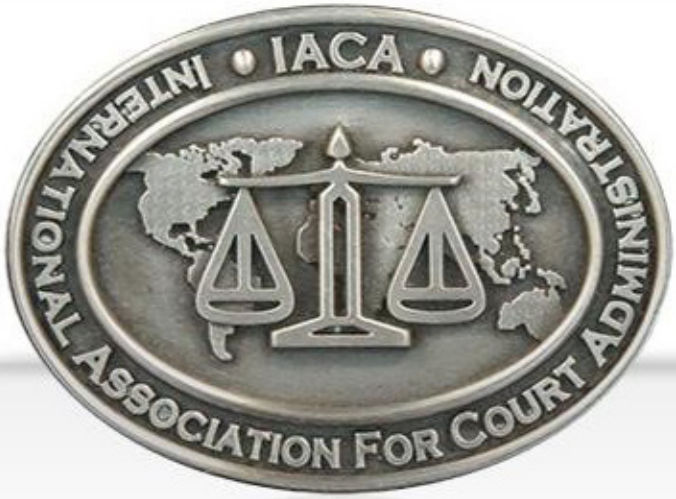

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