IACA

The Court Administrator

OFFICIAL PUBLICATION OF THE INTERNATIONAL ASSOCIATION FOR COURT ADMINISTRATION

Court Administration: The Rule of Law in a Multicultural World

VOLUME 2; ISSUE 1 MAY 2018

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"THE COURT ADMINISTRATOR"

Dear Readers,

IACA offers to the Justice community, one more issue of "The Court Administrator."

Like the previous ones, this issue comes full of ideas and initiatives. The authors, experienced professionals in the area, analyze different aspects of the subject. This time, the option was to include various topics to reach the greatest possible number of readers.

Judge Vladimir Passos de Freitas, IACA President

Court administration is not the same as public administration or administrative law, but a special kind of administration, not much known or studied. Our "The Court Administrator" is a wonderful way to discuss these specific themes. Good reading.

Vladimir Passos de Freitas
President

EDITOR'S MESSAGE

Welcome. I want to thank those of you who have submitted articles for publication in *The Court Administrator*. Your participation is responsible for the success we have achieved so far. The theme for this edition is "The Rule of Law in a Multicultural World." I hope that you enjoy the articles.

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

The Rule of Law:

The exercise of state power using, and guided by, published written standards that embody widely-supported social values, avoid particularism, and enjoy broad-based public support.

Transparency:

Official business conducted in such a way that substantive and procedural information is available to, and broadly understandable by, people and groups in society, subject to reasonable limits protecting security and privacy. (1)

The Rule of Law is the backbone of all successful societies. Successful societies depend on independent and fair judiciaries to assist in the peaceful resolution of civil disputes and the fair adjudication and imposition of penalties for criminal conduct.

A predictable judiciary and Rule of Law is essential to foreign investment and a thriving domestic economy. Without the Rule of Law anarchy rules.

Court Administrators are part of a noble and critically important profession. The Court and Court Administrators can and do play a vital role in promoting public confidence in the Rule of Law. One of the most effective ways of promoting public confidence is to facilitate transparency. Openness dampens suspicion and distrust. How a court functions and makes decisions should not be a mystery.

Around the world we work in courts with varying degrees of transparency. None of us are perfect, but we can strive toward the goal of adhering to the Rule of Law, making our courts more transparent, less mysterious and generally more user friendly. After all, we are here to serve the public.

(1) UN Millennium Development Goals (MDG): Http://www.un.org/millenniumgoals

Roles and Actions of the Chief Judge and Court Administrator

By: Ms. Janet G. Cornell, Masters of Public Administration (MPA) and Fellow,
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Ms. Cornell currently serves as a consultant, speaker, and author in the United States and internationally. Her subject specialization includes operational and governance review and assessment, caseflow management, court reengineering, performance measures and access for self-represented litigants.

As a court consultant and experienced court administrator, Ms. Cornell's presentations include those via Court Consulting Services with the National Center for State Courts-Institute for Court Management, and the United States Courts 9th Circuit Office of the Circuit Executive.

She is located in Phoenix, Arizona, USA.

Ms. Cornell's article illustrates select roles and actions of the presiding or chief judge and court administrator. Competencies from the National Association for Court Management (NACM) are used as a starting point for framing the roles.

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Court leaders, whether leadership (presiding or chief) judges or court managers, need to obtain and master certain competencies to be effective and demonstrate operational professionalism. These competencies support the court and judicial branch in maintaining its independence and credibility.

NACM has published information about court leader knowledge skills and abilities. NACM publications have highlighted these court leader roles and competencies.[1]

Drawing from these NACM sources, and using direct personal experiences, four areas will be noted as examples of where leadership judges and court managers can perform important leadership actions. The four areas are:

- The role of the court
- Caseflow management
- Accountability of operational practices, and
- Strategic planning.

To orient the reader about the NACM Core competencies, the chart below depicts all of competency modules and competency areas. These competencies represent the knowledge, skills and abilities that court leaders need to be familiar with and be able to do.

continued

1 NACM publications include: the NACM Core (Competencies) – a listing of thirteen competencies that court leaders should master and demonstrate – available at http://nacmcore.org ;"The Core In Practice – a Guide to Strengthen Court Professionals through Application, Use and Implementation," NACM 2015 Guide, available at https://nacmnet.org/sites/default/files/Resources/TheCoreGuide_Final.pdf; and "The Court Administrator – Court Administration: A Guide to the Profession," NACM 2016 Guide, and available at https://nacmnet.org/sites/default/files/publications/Guides/The_Court_Manual_Colorization_2016.pdf.

National Association for Court Management - Court Leader Competencies[2]	
Modules	**Competencies**
Principle (Fundamental and Enduring Concepts)	
	Purposes and Responsibilities – Promoting and demonstrating why courts exist
	Public Trust and Confidence – Managing public perception
Practice (Day to Day Competencies)	
	Caseflow/Workflow – Ensuring processes and protocols for fair, timely case handling
	Operations Management – Leading related operational areas and support functions
	Public Relations – Informing and interacting with others
	Educational Development – Ensuring skilled staff
	Workforce Management - Attracting and engaging staff
	Ethics – Promoting ethical standards and codes of behavior
	Budget and Fiscal Management – Overseeing financial operations
	Accountability/Court Performance - Using performance measurement for operations
Vision (Competencies Supporting Strategic Vision and Leadership)	
	Leadership - Negotiating and setting vision and direction for organization
	Strategic Planning - Establishing goals and objectives
	Court Governance - Defining operational structures and standards

Suggested Competencies for Leaders to Act Upon

Four competencies will be used to illustrate the leadership roles and actions. They are:

Purposes of the Court
Caseflow Management
Strategic Planning
Accountability and Court Performance

[2] NACM Core Competencies from http://nacmcore.org/

Let me share examples of each.

Purposes of the Court

It is important that court leaders (judges and administrators) recognize that the functions of the court have specific and vital roles in society (e.g., resolution of disputes and access to fair and impartial justice). As such these leaders should strive to demonstrate professional management and operation of the court. Beyond that the leaders should seek opportunities to inform other entities (local, regional groups, funding authorities) about the role of the court.

We know from research that many individuals do not understand the roles of courts. Public perceptions of the courts are sometimes formed from the latest movies or television shows.[3] Those of us working in courts know that many functions are routine, not highly visible, yet very important to each court user or litigant, and important actions that can only be conducted in a court.

Court leaders should find any opportunity available to evaluate and assess operations and to state and explain the court role and business/outcomes of court daily work. Leaders can do this by: giving briefings and presentations, providing summary informational documents that orient and explain to others about the court and its functions, and by sharing details (to include statistics) about the work that occurs in the court each day.

Caseflow Management

Caseflow management has been referred to as one of the foundational purpose of courts – the purpose of handling disputes and cases that have been filed. The leadership judge and all judges should become familiar with proven caseflow management principles and should support the court in practicing those principles. This can be done by agreeing to published policies (e.g., caseflow policies, continuance policies) and sharing those expectations with attorneys and litigants.

Court administrators can support caseflow management by ensuring ongoing dialogue with the leadership judge and all judges about how court operations support effective caseflow. The administrator can also ensure that all staff members understand why the court takes actions in support of effective and efficient caseflow.

Strategic Planning

Court leadership should seek ways to establish annual or periodic plans for the court to seek and accomplish operational innovations and changes. If a full-blown and comprehensive strategic plan is too difficult, grand or ambitious to create, court leaders may consider creating a simplified process. It can be a listing of annual projects to work on. This listing can consist of simplified list of projects or areas to be acted upon and completed within a desired time frame (e.g., one-year), coupled with project goals, actions, tasks and responsible parties.

A sample format for this list is included below in which space for two projects is indicated.[4] This listing can be used to record and then track project progress and events. It can also be used as a map or outline to inform court management as to where time, energy and resources are to be dedicated.

3 Research from the National Center for State Courts indicates that Americans are not familiar with government funding and US voters have perceptions about courts that may not be accurate. See http://www.ncsc.org/2016survey.

4 A sample priority project template can be a simple listing of projects to undertake. Examples of list contents include the following elements: project name, goals and objectives, description of project actions, tasks to be completed, designated project leader, project and activity participants, and defined outcomes and results.

continued

"Sample" Court - Annual or Fiscal Year Priority Project List
Fiscal Year XXXX / XXXX

Project Elements	Project Name	Project Name
Description (Name) and Scope	1. 2. 3.	1. 2. 3.
Goals and Objectives	1. 2. 3.	1. 2. 3.
Actions	1. 2. 3.	1. 2. 3.
Tasks	List	List
Desired Outcomes	List	List
Budget/Fiscal Impact	Detail costs/savings	Detail: costs/savings
I.T. – Technology Involvement	Yes/No	Yes/No
Review/Approval by Judge(s)	Yes/No	Yes/No
Project Manager or Lead	Name	Name
Partners and Participants	Names	Name
Other Staff	Names	Name

Accountability and Court Performance

Being open and accountable about court operations has taken on greater importance in recent years. Government entities are increasingly expected to have statistics and performance metrics. Having and publishing measures allows court leaders to openly talk about work outcomes. Metrics also provide information for chief judges and court managers when deciding to make changes in practice, implement new programs, or address budget needs.

Chief judges should support the use of data and metrics. Court managers need to lead the work to record, tabulate, and report on the measures. Both judicial and administrative leaders should be conversant in what the data indicates. Both should not fear that the data may not be positive. Court leadership should be willing to use metrics to self-assess and to scrutinize operations. Data can also be used to rework and reengineer operations to make them more efficient, effective and provide improved access for court users, and justice partners. Data capturing techniques do not have to be high-tech. Low-tech methods may be useful, and can be migrated to an automated process where possible. Among performance metrics that have been useful are:

- Essential caseflow metrics such as age of open-active cases, length of time to conclude and adjudicate cases, case clearance rates, and trial date certainty,
- Measures that inform about the work and resources deployed by a court,
- A workload inventory to clearly identify tasks, volumes, work assignments and redundancies, and
- Simplified counts of task transactions and public interactions.[5]

In Summary

In summary, four leadership areas have been shared, based upon experience. The chart below provides the competency areas with summary descriptions of suggested leadership actions.

5 For a full description of these measures and how they were used, see Cornell, J. "Court Performance Measures - What You Count, Counts!" The Court Manager, National Association for Court Management, Vol. 29, No. 1, Winter 2014.

Court Leader Competencies with Judge and Administrator Actions			
Modules and Competencies		Chief Judge Actions	Court Administrator Actions
Principle (Fundamental and Enduring Principles)			
Purposes of the Court	Why courts exist	▪ Present briefings to local officials ▪ Explain the roles of a court ▪ Seek ways to tell the story about court processes ▪ Seek ways to explain how the court is providing access and fairness	▪ Present briefings to local officials ▪ Share reports with metrics and measures ▪ Ensure staff are fully conversant on court roles, and performance measures
Practice (Day to Day Competencies)			
Caseflow Management	Processes and protocols for fair, timely, efficient case handling	▪ Recognize the importance or processes for case handling ▪ Support practices for judges and staff ▪ Communicate clearly about practices and objectives of caseflow management	▪ Know proven caseflow best practices ▪ Fashion case handling on those practices ▪ Ensure judges and staff are provided with information about caseflow practices and results
Accountability and Court Performance	Performance measurement to manage operations	▪ Support leadership use of data and metrics to detail court work outcomes, and	▪ Find ways to count and measure work that the court performs
		being willing to disseminate information. ▪ Be conversant about data measures and what they signify	▪ Publish court metrics using different presentation styles ▪ Reengineer court practices
Vision (Competencies Supporting Strategic Vision and Leadership)			
Strategic Planning	Planning for goals and objectives	▪ Support the use of project plans ▪ Link overall operations to the written plan and goals	▪ Create listing of annual priority projects ▪ Discuss and share project goals and progress with administrative and support staff

Conclusion

Court leaders should continually be vigilant on ways they can share information about how and why courts operate, be able to effectively manage caseflow, and report using performance measures while planning and strategizing for the future. Four examples were shared here (purposes of the court, caseflow management, performance measurement and accountability, and strategic planning). If, as I did, you select an item from the example list and find ways to implement it, you may find that you are gaining ground in being able to talk about court functions and why the court is important. Best wishes!

New challenges for judges to improve the access to justice: The case of the Judicial Power of the City of Buenos Aires.

By: Marcelo López Alfonsín

The Honorable Marcelo López Alfonsín has been a Judge of the City of Buenos Aires (Argentina) since 2013. He is the chief judge of a court of first appeal which deals with all the judicial cases in which the government of Buenos Aires is involved. The court is located in the City of Buenos Aires, Argentina. His Honor holds a PH. D. in Constitutional Law (University of Buenos Aires Law School, Argentina, 2012), as well as a Master´s Degree in Environmental Law (University of Lomas de Zamora Law School, Argentina, 2001). Judge Marcelo López Alfonsín is a Member of the Argentinean Academy of Comparative Law and he is a member of the Argentinean Academy of Constitutional Law.

This article will provide the main recommendations and conclusions drawn after the implementation of an innovative project in the Judicial Power of City of Buenos Aires, Argentina. This program, adopted as part of the modernization of the justice in 2014, has helped to understand the role played by the judicial servants and has shown the need of rethink the actual administration of justice in order to grant the access to justice for vulnerable people.

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The almost recent creation of the judicial power of the City of Buenos Aires[1] was a great opportunity to take on the challenge of building new institutions and to establish the principles for the administration of the local justice, different from the federal framework.

In this context, while the amount of judicial cases has increased and the powers of the city have been enlarged[2], it became indispensable to amplify the number of courts in order to satisfy a proper access to justice for individuals. As part of this process, in March of 2013, I had the immense honor of being selected as judge of the City of Buenos Aires and to start from the beginning the settlement of a new court.

Knowing in advance that the rule of law and the principles of fundamental justice[3] must guide the performance of the court and it's employees, I realized the importance of the role of the judge in the complex task of being in charge of a new teamwork in this foundation stage. As it was stated by Palma: "given the current structure of the judicial offices of many Latin American countries it is required that judges acquire managerial skills to lead working teams, training in techniques of management and administration of courts"[4].

In this context, I realized that the access to justice has gained prominence with respect of vulnerable people,

1 The System of Justice in Argentina is composed by the Judicial Power of the Nation, the Judicial Provincial Powers and the Judicial Power of the City of Buenos Aires. Since 1994, the amendment of the National Constitution granted the status of autonomous to the City of Buenos Aires, which was ratified in the local Constitution in article 6, resulting in the creation of the Judicial Power of the City of Buenos Aires in 1996.

2 It is established under the National Law 24.588 that the powers from the federal government will be transferred to the city of Buenos Aires. At present, the implementation of this law has became a controversial matter because the transference of mostly of the competences is pending nowadays.

3 Argentinean National framework grants the due process of law in article 18 of the National Constitution and it incorporates international human rights treaties in which it is also possible to find legal provisions that protect the access to justice (Universal Declaration of Human Rights, Article 10; International Covenant on Civil and Political Rights, Article 14; American Convention on Human Rights, Articles 8&25).

4 Palma, Luis María, "Judicial Management Training in Latin America: A Personal Experience", Vol. 6 No. 2, December 2014, IACA, URN: NBN: NL: UI:10-1-115628.

continued

especially since the implementation of the "Brasilia Regulations Regarding Access to Justice for Vulnerable People"[5]. These recommendations refer not only to the promotion of public policies that guarantee the access to justice of these people, but also to the daily work of all the servants of the judicial system[6].

In the light of the foregoing, I decided to be involved in an innovative project created by the Council of the Magistracy of the City of Buenos Aires[7], which is part of the program for the modernization of the Judicial Power of the City of Buenos Aires and whose general aim is to achieve the highest institutional quality in the development of the local justice, driven by the updating and permanent improvement of its employees.

This program, denominated "Strategic Plan"[8], took place in 2014 and tried to reflect a vision of the administration of justice through the "SWOT" method (strengths, weaknesses, opportunities and threats), involving all the employees of the court and the judge, under the supervision of specialists in management[9]. As a result of each of the stages of this program[10], the conclusions and recommendations provided interesting proposals regarding the improvement of the court`s quality.

On the one hand, this method helped to recognize some aspects to prioritize in everyday work. According to the abovementioned "Brasilia Rules", the way in which the justice system is organized facilitates in itself the access to justice for vulnerable people[11]. Therefore, the project showed the importance of strengthening the teamwork and encourages the permanently updating and training of the personnel. In fact, this step resulted in the elaboration of rules of procedure for the internal organization of tasks, and some specific training activities for the employees were also organized.

On the other hand, during the implementation of the "Strategic Plan", statistics became a relevant aspect of the court´s job in accordance with the duty of transparency and taking into account that the access to public information is a fundamental character for the proper functioning and strengthening of the democratic system.

Finally, the program was helpful to realize that a basic notion of the access to justice imply the participation of the citizens in the judicial proceedings that could affect their rights. This was the case of the public hearings, whose rules of procedure was a pending subject and, thanks to this project, it was possible to elaborate and present a proposal in order to

5 The High Court of Justice of the City of Buenos Aires has expressed by Resolution No. 30/2010 its coincidence with the objectives established by the "Brasilia Rules" and has encouraged lower courts to implement them.

6 According to the "Brasilia Regulations Regarding Access To Justice For Vulnerable People": "judges, prosecutors, public defenders, attorneys and other civil servants who work in the Justice Administration system are specially addressed to guarantee the conditions of effective access to justice for vulnerable people, without discrimination, encompassing the group of policies, measures, assistance and support that allow these people to fully enjoy the services of the judicial system" (Principle 24, Section 3).

7 The Council of the Magistracy of the City of Buenos Aires is a permanent body created by the local Constitution in charge of the selection of the magistrates, the exercise of disciplinary powers and the programming and the administration of the budget of justice (article 116 of de Local Constitution).

8 The Council of the Magistracy of the City of Buenos Aires considered that "strategic planning" is a valuable tool and able to build a change in the culture of the judicial power to contribute to the formulation of permanent public policies with the objective of ensuring the commitment of all judicial operators. More information about the implementation of the program is available at: https://consejo.jusbaires.gob.ar/institucional/centro-de-planificacion-estrategica/introduccion

9 The "Strategic Plan" implemented in the court was published and exposed at a public event with the participation of personalities s of the Judicial Power of the City of de Buenos Aires. The press release is available at: http://www.ijudicial.gob.ar/2015/el-juez-debe-atender-bien-al-justiciable-para-hacer-un-buen-servicio-de-justicia/

10 The project was divided in three steps. Firstly, it consisted of a "Diagnostic" stage, where strengths and weaknesses were analyzed in four axes: human factor, management, infrastructure and equipment, and institutional setting. In addition, another part of the work placed emphasis on values, objectives, proposals and suggestions. Finally, suggestions and recommendations were provided.

11 "Brasilia Regulations Regarding Access To Justice For Vulnerable People", Section 4, "Organizational measures and judicial management".

continued

allow citizens the access to the court rooms according with the constitutional provisions[12].

Finally, the program was helpful to realize that a basic notion of the access to justice imply the participation of the citizens in the judicial proceedings that could affect their rights. This was the case of the public hearings, whose rules of procedure was a pending subject and, thanks to this project, it was possible to elaborate and present a proposal in order to allow citizens the access to the court rooms according with the constitutional provisions[13].

Conclusion: New challenges for judges in order to guarantee the access to justice.

It is undeniable that the rule of law depends upon the effective administration of justice by the courts created for granting the access to justice, and accordingly the almost recent creation of the Judicial Power of the City of Buenos Aires has brought with it new challenges[14].

Knowing that the access to justice and the due process of law cannot be fully satisfied without a good service of justice, the "Strategic Plan" has revealed that nowadays the judiciary needs to take in consideration many different aspects as part of the process of permanent modernization of the justice.

It has to be highlighted that transparency must take part as a prior objective as justice must be considered as a public service for all the society. In this regard, the hearings seem to be also a relevant tool in order to promote the participation of citizens, mostly in issues of general interest.

In conclusion, it is necessary to rethink the actual administration of justice. The access to justice must be taken as a seriously state policy because the judicial power must be ready to deal with the changing society demands, especially with regard to vulnerable people.

12 The local Constitution in article 63 establishes the general obligation of public hearings with regard to issues of general interest of the citizens and specifically in cases of environmental matters (article 30) or in subjects in which the modification of a law requires a special legislative proceeding (articles 89 & 90).

13 The local Constitution in article 63 establishes the general obligation of public hearings with regard to issues of general interest of the citizens and specifically in cases of environmental matters (article 30) or in subjects in which the modification of a law requires a special legislative proceeding (articles 89 & 90).

14 Organization of United Nations, United Nations Development Program, "Manual of Public Policies for Access to Justice. Latin America and the Caribbean", October 2005, page 8.

WHY REWARDING COURTS MATTERS: USING REWARDS PROGRAMS TO RECOGNIZE AND INCENTIVIZE COURT PERFORMANCE

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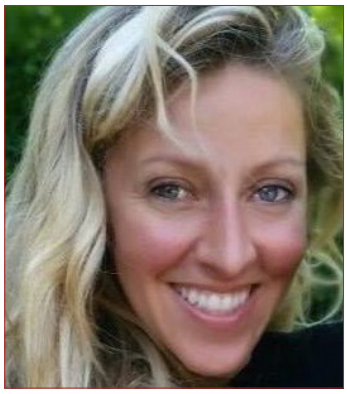

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At the time Court Rewards Program was introduced, Judge Prostran was a Monitoring and Evaluation Specialist with the World Bank's Multi-Donor Trust Fund for Justice Sector Support. She currently serves as Senior Rule of Law Specialist at USAID-funded Rule of Law Project in Serbia, implemented by Development Professionals Inc. Within the Project, Judge Prostran is tasked with support to the State Attorney's Office in its organizational and professional development and capacity building.

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In an effort to boost court performance, the Serbian Judiciary and the World Bank have designed a rewards program that taps into positive competition to increase judicial efficiency and promote justice for citizens and businesses. Drawing from the experience of performance-based accountability systems in other public sectors, in September 2016 the Serbian Court of Cassation launched a Rewards Program for all first instance courts. The transparency of the selection methodology and the commitment of the Court ensured the success of the project. Interestingly, the winning courts were a mix of large courts in big cities and small courts in rural towns, in both the north and south of the country and led by Court Presidents of mixed genders and varying ages. This suggests that, at least in Serbia, improvement of court performance is not dependent on location, size or resources and that the most likely determinant of a higher performing court is the managerial skills of the court president and his/her core team of senior administrators.

Why Rewards Matter

The effective functioning of government is an important determinant of poverty, inequality and economic growth, as stressed by the emerging literature

continued

on state capacity.[1] Effective public service delivery also matters because program evaluations of small scale interventions often assume that successful interventions can be effectively scaled up by governments.[2] Citizens are demanding that governments be made more accountable for what they achieve with taxpayers' money.[3] The productivity of the public sector has become a major issue and many governments have now an explicit agenda to improve efficiency in the delivery of all kinds of public services.[4]

One method to improve public sector performance that has received considerable attention is the use of incentives, including the use of rewards to boost performance of personnel.[5] Performance-based accountability systems link incentives to measured performance as a means of improving services to the public. A 2010 RAND study on the impact of various performance-based accountability systems in five public sectors concluded that, in the right circumstances, these systems can be an effective strategy for improving service delivery.[6] What are the right circumstances depends on context and each performance-based accountability system must be tailored to the specific characteristics of the sector it relates to. However, some general lessons can be drawn from the literature.

The first lesson is that non-financial rewards can be more powerful than cash.[7] It is well known that economic incentives can influence behavior.[8] What is less commonly recognized is that social incentives can also exert a powerful effect on behavior. In fact, social rewards, such as status and recognition, can motivate people to exert effort and can substitute for monetary rewards in some situations. In Switzerland, for example, researchers disentangled the economically relevant ("instrumental") and economically irrelevant ("non-instrumental") aspects of social rewards by showing that individuals' performance improved on a one-time data entry task when they were told that the two people who put in the most effort would be rewarded with a congratulatory card and a personal thank-you from the managing director. These non-economic rewards increased performance by 12 percent, the equivalent of a hypothetical wage increase of 35–72 percent, according to previous studies of output elasticity in gift-exchange experiments.[9] Furthermore, non-financial incentives are particularly effective to incentivize performance in more complex tasks, such as those that require advanced skills and knowledge.

The second lesson is that group rewards encourage team player behaviors, especially among smaller teams. For example, in a study conducted in the UK in the late 1990s, the government piloted the use of team-

continued

1 See Acemoglu, Daron. 2005. "Politics and economics in weak and strong states." Journal of Monetary Economics 52, no. 7: 1199-226. doi:10.1016/j.jmoneco.2005.05.001.; see also Besley, Timothy , and Torsten Persson. 2010. "State Capacity, Conflict, and Development." Econometrica 78, no. 1: 1-34. doi:10.3982/ecta8073.

2 Rasul, Imran, and Daniel Rogger. 2017. "Management of Bureaucrats and Public Service Delivery: Evidence from the Nigerian Civil Service." The Economic Journal. doi:10.1111/ecoj.12418.

3 Curristine, Teresa, Isabelle Joumard, and Zsuzsanna Lonti. 2007. "Improving Public Sector Efficiency." OECD Journal on Budgeting 7, no. 1: 1-41. doi:10.1787/budget-v7-art6-en.

4 Shalizi, Zmarek, and Bruce Ross-Larson. 2003. World development report 2003: sustainable development in a dynamic world: transforming institutions, growth and quality of life. New York: Oxford University Press.

5 Miller, Grant, and Kimberly Singer. Babiarz. 2013. Pay-for-Performance Incentives in Low- and Middle-Income Country Health Programs. Cambridge, MA: National Bureau of Economic Research.

6 Stecher, Brian M. 2010. Toward a culture of consequences: performance-based accountability systems for public services. Santa Monica, CA: RAND.

7 World Bank. 2015. World Development Report 2015: Mind, Society, and Behavior. Washington, DC: World Bank. doi: 10.1596/978-1-4648-0342-0.

8 Kamenica, Emir. 2012. "Behavioral Economics and Psychology of Incentives." Annual Review of Economics 4, no. 1 (2012): 427-52. doi:10.1146/annurev-economics-080511-110909.; see also Madrian, Brigitte C. 2014. Applying insights from behavioral economics to policy design. Cambridge, MA: National Bureau of Economic Research.

9 Kosfeld, Michael, and Susanne Neckermann. 2011. "Getting More Work for Nothing? Symbolic Awards and Worker Performance." American Economic Journal: Microeconomics 3, no. 3: 86-99. doi:10.1257/mic.3.3.86.

based financial incentives for lower-level bureaucrats. Economists have long been skeptical of team incentives for obvious free-rider problems. However, the study found that, although the incentives had little effect on teams made up of many people or dispersed across many offices, they had a substantial positive effect on small offices and in offices in smaller districts. The authors of the study concluded that peer monitoring and better information flows can overcome free-rider problems in small teams.[10]

A third lesson from the literature on performance-based accountability systems is that rewards seem to provide extra motivation to undertake socially desirable acts and other 'good' behavior'. For example, a field experiment in Zambia aimed at providing evidence on the effectiveness of financial and non-financial rewards within health services delivery (provision of information on HIV and sale of condoms by trained hairdressers and barbers) showed that agents who were offered non-financial rewards exerted more effort than either those offered financial margins or those offered volunteer contracts and generated higher sales. Interestingly, the study found that non-financial rewards elicit effort by leveraging the agents' pro-social motivation and by facilitating social comparisons among agents.[11]

Fourth, rewards for 'most improved players' tend to motivate lower and middling performers, whose contribution is critical to lifting sector-wide performance. For example, in another field experiment in Zambia the introduction of a competition element into training backfired among trainees preparing to work as community health workers; when they learned that their relative rankings from exam scores would be revealed, their exam performance dropped by more than a third of a standard deviation, an effect that was more pronounced among trainees with previously low-test scores. This finding was consistent with previous studies suggesting that 'highest performer' awards do little to motivate lower and middling performers. This is in part because individuals value the belief that they have high relative ability, and the anticipatory utility this provides.[12] Decreasing effort allows them to maintain their self-image and tell themselves that the reason for their relatively poor performance was that they were not really trying. However, the study also discovered that adding awards to rank information significantly improved performance of the weakest trainees. The study showed that the positive effects of recognition and visibility was due to the fact that, since awards are given to trainees with the highest value added (the "most improved"), those who start at the bottom have a better chance to win.[13]

Finally, rewards seem to provide extra motivation when combined with recognition from senior figures and visibility among peers and the public. Status awards may be especially useful when the quality of individual outputs is difficult to measure precisely and when financial resources are scarce. Non-economic organizations like political parties and religious groups use employee-of-the-month clubs alongside traditional salaries to recognize and incentivize contributions to organizational goals that are advantageous and exemplary but often difficult to quantify. In fact, humans may have an innate, unconscious tendency to reward strong contributors to group goals with esteem, which helps groups overcome barriers to collective action.[14]

To summarize, there is a wealth of research on the role of incentives in public sector performance, including

continued

10 Burgess, Simon. 2012. Incentives in the public sector: evidence from a government agency. London: Centre for Economic Policy Research.

11 Ashraf, Nava, Oriana Bandiera, and B. Kelsey Jack. 2014. "No margin, no mission? A field experiment on incentives for public service delivery." Journal of Public Economics 120: 1-17. doi:10.1016/j.jpubeco.2014.06.014.

12 Benabou, R., and J. Tirole. 2002. "Self-Confidence and Personal Motivation." The Quarterly Journal of Economics 117, no. 3: 871-915. doi:10.1162/003355302760193913; see also Koszegi, Botond. 2006. "Emotional Agency*." Quarterly Journal of Economics 121, no. 1: 121-55. doi:10.1162/qjec.2006.121.1.121.

13 Ashraf, Nava, Oriana Bandiera, and Scott S. Lee. 2014. "Awards unbundled: Evidence from a natural field experiment." Journal of Economic Behavior & Organization 100: 44-63. doi:10.1016/j.jebo.2014.01.001.

14 Willer, Robb. 2009. "Groups Reward Individual Sacrifice: The Status Solution to the Collective Action Problem." American Sociological Review 74, no. 1: 23-43. doi:10.1177/000312240907400102.

how institutions can boost performance by rewarding their staff.[15] Much depends on context, but there are some key lessons from the literature:

1. ***Non-financial rewards*** can be more powerful than cash;[16]
2. Group rewards encourage ***team player behaviors***, especially among smaller teams;
3. Rewards provide extra motivation to undertake socially desirable acts and other ***'good' behavior;***
4. Rewards for ***'most improved players'*** motivate lower and middling performers; whose contribution is critical to lifting sector-wide performance;
5. Rewards provide extra motivation when ***combined with recognition*** from senior figures and ***visibility*** among peers and the public.

Performance-based accountability systems have received much attention in recent years and various public institutions around the world, including doctors, teachers and tax collectors are each responding to incentives offered through carefully-designed rewards programs. One sector that has been noticeably absent from the discussion is the judiciary. Nonetheless, leaders of some court systems have taken note and are beginning to introduce programs to incentivize their personnel to boost court performance.

Courts and Rewards

Courts have generally been slow to adopt lessons on incentivizing public-sector performance. Traditionally, ***leaders have relied predominantly on compliance with rules*** to motivate their judges and staff. *(Submit this report! Deliver this judgment! Meet this deadline!)* Judiciaries also draw on altruism or legal concepts to motivate their ranks *(Serve our citizens! Uphold the rule of law!)*. Leaders in judiciaries have tended to shy away from rewards programs on the basis that judges, and staff should not be offered inducements to do what is required of them by law.

Some progress has been made over the last decade as many judiciaries have developed ***performance frameworks with targets and monitoring tools.*** Often though, the implementation of these frameworks focuses on compliance *(Submit more reports! Meet these targets!)* rather than on encouragement, competition, positive reinforcement or linked to rewards programs for those courts that meet or exceed their desired targets. To develop a system that rewards people for their efforts, it may be necessary to move beyond targets and monitoring tools and integrate positive reinforcement mechanisms. Here, ***Serbia is at the forefront of innovation among judiciaries worldwide.*** With the support of a multi-donor trust fund for justice sector support in Serbia administered by the World Bank,[17] the Supreme Court of Cassation of Serbia launched its inaugural Court Rewards Program in September 2016.

The need for a rewards program in Serbia

The Serbian Court Rewards Program was designed to motivate ***first instance courts to improve their efficiency and productivity in processing cases.*** Several reasons motivated the Court to adopt this reform. Firstly, the **high number of backlogged cases in first instance courts (basic, higher and commercial courts) is a key performance challenge.**

Data collected at the end of 2015 showed that there were as many as 4,973,951 pending cases before all Serbian courts, including basic, higher and appellate courts. Of these, 112,510 were backlog cases

continued

15 See for example: No margin, no mission? A field experiment on incentives for public service delivery, Journal of Public Economics, Volume 120, December 2014, pp1-17. Awards unbundled: Evidence from a natural field experiment, Journal of Economic Behavior and Organization, Volume 100, April 2014, pp44-63. Pay for Performance Incentives in Low and Middle Income Country Health Programs, National Bureau of Economic Research Working Paper 18932, April 2013; Incentives in the Public Sector: Evidence from a Government Agency, Institute for the Study of Labor Discussion Paper No. 6738, July 2012.

16 See also, The World Development Report 2015: Mind, Society and Behavior, World Bank, 2015.

17 The MDTF-JSS is a sector-wide program that aims to strengthen justice sector capacity and improves aid effectiveness and donor coordination across the sector through the implementation of a coordinated work program, administered by the World Bank and financed by pooled contributions from Serbia's development partners, namely the Swedish International Development Agency, the Swiss Agency for Development and Cooperation, the Kingdom of Denmark, the Kingdom of the Netherlands, the Kingdom of Spain and the Republic of Slovenia. See www.mdtfjss.org.rs.

according to Serbian legislation of the time. Of these 4,973,951 pending cases, there were also 2,173,815 court enforcement cases before basic and commercial courts; in basic courts there were 1,740,023 unresolved enforcement cases, out of which 1,574,855 were backlog cases. Commercial courts ended 2015 with 53,164 unresolved enforcement cases, out of which 32,180 were considered backlog cases.

Using the Reward Program to restore public trust

Although since then Serbian courts have managed to reduce the number of backlog cases thanks to a series of reforms implemented between 2010 and 2015 including the adoption of a Law on Enforcement in 2011 and the introduction of bailiffs,[18] the public image of the judiciary in Serbia remains gloomy. The last public perception survey on the judiciary's performance in Serbia shows that only one in four citizens trusts the justice system.[19] The vast majority of citizens feel that trust in the judiciary is undermined by delays in court proceedings, corruption, political influence on the judiciary, and by lack of transparency in the recruitment process. According to the survey, the efficiency – reflected in the length of the court proceedings – was, and still remains, the biggest problem of the justice system.

The Serbian Court Rewards Program

To reduce the number of backlogged cases and restore the confidence of the public in the judiciary, the Supreme Court of Cassation launched the Courts Rewards Program in September 2016, after the adoption of the Rules of Courts' Rewarding Program,[20] prescribing awarding categories and the awarding procedure. A Rewards' Committee of five Supreme Court justices was established, with a two-year mandate.

The Rules established two categories of awards:

1. The largest improvement in backlog reduction per judge; and
2. The largest improvement in the number of resolved cases per judge.

The Rules also prescribe that only first instance courts could be rewarded, although courts with no backlogs, regardless of instance, could receive mention rewards. By focusing on first instance courts, the program aimed at ***improving the court experience for citizens and businesses on the front line*** of justice service delivery. By targeting 'most improved' courts, the program also aimed at lifting average court performance across the country and improve consistency of justice overall. By measuring performance on a 'per judge' basis, the program controlled for variation in court size, so smaller courts with fewer judges have an equal chance of success.

The integrity of the process was critical to its success. Winning courts were decided based on ***objective data from case management systems*** and tested and verified by the Supreme Court and the World Bank. To guarantee the transparency of the process, the scores and results were published online.[21] The SCC also published on its website the Rules and the methodology used by the Committee in selecting the courts.

To assess the performance of the courts, the Committee compared semi-annual court performance data[22] (i.e. data from June 2016 was compared to data from June 2015), and measured progress against sixteen indicators.: Among these were:

- Degree of increase in number of "total resolved" cases per judge;
- Increase of the average number of "total resolved" cases per judge;

continued

18 For more details see the 2016 Annual Report on the Work of All Serbian Courts, which contains 2012-2016 data: http://www.vk.sud.rs/sites/default/files/attachments/ANNUAL%20REPORT%20ON%20THE%20WORK%20OF%20THE%20COURTS%20IN%20THE%20REPUBLIC%20OF%20SERBIA%20FOR%202016%20V3%20%28CMYK%2B1%20SPOT%29_0.pdf.

19See http://www.mdtfjss.org.rs/archive//file/Serbia%20Perceptions%20of%20the%20Judiciarys%20Performance%20FINAL%20EN.pdf.

20 See http://www.vk.sud.rs/sites/default/files/attachments/Pravilnik%20o%20dodeli%20nagrada%20i%20priznanja_14092016_final.pdf.

21 See http://www.vk.sud.rs/sites/default/files/attachments/KriterijumizaNagradjivanjeSudova_ResenoStarih.pdf and http://www.vk.sud.rs/sites/default/files/attachments/KriterijumizaNagradjivanjeSudova_UkupnoReseni.pdf.

22 Art. 44 of the Court Rules of Procedure prescribes that all courts must submit performance reports semi-annually and annually.

- Increase in percentage of "total resolved" cases;
- Increase in percentage of the number of solved backlog cases;
- Increase of the average number of resolved backlog cases per judge;
- Disposition rate increase per judge;
- Decrease in percentage of cases pending at the end of the reporting period;
- Reduction of the ratio between "cases pending at the end" and "total pending cases";
- Decrease of the average number of "cases pending at the end" per judge.[23]

In addition, the Rules established that, if a court had seen an increase in the number of cases closed as a consequence of statues of limitations, the court wouldn't qualify for the reward.

The choice of prizes was also designed to incentivize court performance. In each category, the 1st prize was 5,000 EUR, the 2nd prize was 3,000 EUR, and the 3rd prize was 2,000 EUR. The prize amounts were determined based on Serbian purchasing power and the MDTF-JSS's procurement history and experience in the local market. The amounts were deemed to be ***sufficiently attractive to motivate behavioral change***, but not so lucrative as to generate perverse incentives. Winning courts could choose to spend their prize money on either: ICT hardware (computers, monitors, printers, scanners, servers etc.); office equipment (desks, chairs, shelves, clocks, legal texts etc.); or court beautification (paint, plants, signage, repairs etc.).

The prize-winning process also aimed at ***fostering teamwork*** and continual improvement. Presidents of the winning courts were required to confer with their team when choosing how to spend their reward. They were also asked to explain in a short questionnaire how their choice of prize improved the performance of their court. Guidelines were put in place to ensure that prizes were used for the benefit of the court as a whole. In particular, certain items were prohibited, such as laptops, tablets and mobile phones for fiduciary concerns, and consumables for sustainability concerns. The project's implementing unit was responsible for procuring the prizes centrally. However, in other contexts, this could be done through the relevant procuring authority, such as the Ministry of Justice or Council.

The ***ceremonial aspect of bestowing an award*** was another aspect of the program that contributed to its success. Prizes were awarded during Serbia's Annual Conference of Judges at a gala ceremony. Representatives of the Supreme Court and the World Bank spoke of the importance of improved court performance, and the President of the Supreme Court took the opportunity to address the winners – and their peer judges – on the Supreme Court's expectations for the coming year. Awards were issued by President Milojevic, together with commemorative plaques that were personally designed by him. The ceremony emphasized the seriousness of the Rewards Program and reinforced its key message. The ceremony was attended by all Serbian judges, as well as dignitaries, international partners and the media. The message from the Supreme Court President was clear: teams who strive to improve will be rewarded for their efforts.

The Results

In 2016, the six winners of the Court Rewards Program were the basic courts in Niš, Lebane, Leskovac, and Novi Sad, and the first, second and third basic courts in Belgrade.

This list of winners is interesting in itself. The winning courts represent a mix of large courts in big cities and small courts in rural towns, in both the north and south of the country. These courts are led by Court Presidents of mixed genders and varying ages. This suggests that, at least in Serbia, ***improvement of court performance is not dependent on location, size or resources.*** According to the Serbia Judicial Functional Review 2014, the most likely determinant of a higher performing court is the managerial skills of the court president and his/her core team of senior administrators.[24] These findings can further inform programing in the justice sector.

continued

23 See http://www.vk.sud.rs/sites/default/files/attachments/KriterijumizaNagradjivanjeSudova_UkupnoReseni.pdf and http://www.vk.sud.rs/sites/default/files/attachments/KriterijumizaNagradjivanjeSudova_ResenoStarih.pdf.

24 See http://mdtfjss.org.rs/en/serbia-judical-functional-review#.WCXI-kIrLX4, Governance and Management Chapter.

In 2016, basic and higher courts in Serbia resolved 162,328 cases, including 35,130 backlogged cases that were older than two years. That's 21,109 cases more than in 2015. Many thousands of citizens and businesses had their disputes adjudicated in the winning courts. With the Rewards Program, the Supreme Court hopes that these numbers will increase.

Leveraging rewards through peer learning

To leverage the impact of these rewards on judges across the Serbian judiciary, the Supreme Court is now hosting meetings in each of the four appellate regions of Serbia to bring together judges in each region to discuss court performance, efficiency and productivity, rewards and next steps. These meetings provide an ***opportunity for others to learn from the winning courts*** and to promote further improvements across the country. It also provides the opportunity for the Supreme Court to boost morale and remind winning courts not to become complacent in their performance.

In addition, the Court Presidents of the winning courts have been interviewed about their 'recipe for success' on national TV.[25] Their awards were also highlighted in local media, on social media networks and via blogs.[26] By showcasing good practices, the winners ***signal to the general public*** that court performance is improving, while also signaling to peer judges what it takes to win a much-coveted award.

Judiciaries across Europe are interested in learning about Serbia's experience. As an initial step in regional peer learning, the Supreme Court and the High Judicial Council of Serbia have presented their Court Rewards Program to the Western Balkans Regional Network of Judicial Councils in November 2016. The work has been presented to the Annual Conference of the International Association of Court Administrators, in July 2017. Lessons have also been shared informally with international peers in a range of forums.

Conclusion

Though traditionally not used in the judiciary, rewards programs can be an effective tool in incentivizing court performance. ***Creating such a program is relatively easy.*** Drawing from the Serbian experience, what this initiative seems to need the most is a judicial leadership committed to improving performance in a fair and transparent manner. With a small and sustainable budget, thoughtful logistical planning and some brainstorming among professionals about what best motivates performance it is possible to significantly improve court performance. Such an initiative would rarely require legislative changes in any jurisdiction.

These courts are not the only winners. The ultimate winners of improved court performance are Serbian ***citizens and businesses who want – and deserve – fast and fair justice*** when they come to court to resolve their disputes or enforce their rights.

The design and rollout of the Serbian Court Rewards Program was made possible through collaboration between the Supreme Court of Cassation of Serbia, the High Judicial Council of Serbia, and internal collaboration between the Governance Global Practice and the Development Economics and Research Group of the World Bank, with the support of the World Bank Serbia country team.

Thanks to its success, the rewards program has been extended. In June 2017, the Supreme Court invited all courts in Serbia to apply for the innovation award. The courts are entitled to submit either case management or court management innovations which have contributed to the improvement of court performance. As in 2016, this is an evidence-based reward but, differently from 2016, it is a mention award of no monetary value, introduced to promote best practices and share them with other courts. The deadline for application expired on September 1, 2017, with an impressive number of submissions. This is another proof that rewards matter to courts and that the Supreme Court of Cassation is committed to improving court performance and, ultimately, the life of Serbian court users.

25 See http://www.worldbank.org/en/news/video/2016/10/21/serbia-launches-court-rewards-program.
26 See http://www.worldbank.org/en/news/opinion/2016/10/17/and-winner-is-serbia.

The Migration Crisis In The Mediterranean And The Impact On Italian Judicial System: The Case Of A Sicilian Court

By: Dr. Arianna Toniolo

(C.O. Gruppo)

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In her article, Dr. Toniolo shows that how, in the center of the Mediterranean, the most massive human flow in the last decade has affected -among many other things- the judicial system: how the court of Catania has tried to face up to this crisis, setting up an institutional network using ICT and improving multidisciplinary training. An excellent example on how an organizational answer may be an adequate response to humanitarian crisis.

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In the centre of the Mediterranean, the most massive human flow in the last decade has affected -among many other things- the judicial system. The court of Catania tried to face up to this crisis, setting up an institutional network using information and communication technologies (ICT) and improving multidisciplinary training. An excellent example of how an organizational answer may be an adequate response to humanitarian crisis.

The Migration Crisis Of The Mediterranean

The infographics on the United Nations High Commissioner for Refugees (UNHCR) website give the extent of the migratory phenomenon triggered on Southern European shores by the "Arab springs". The Mediterranean Sea has always been a route for migration but, in the last decade, the problem has reached massive proportions on a systemic level. Since 2014, Italy has had to face the emergency of over 100,000 migrants reaching its costs every year, often in high need of rescue and protection.

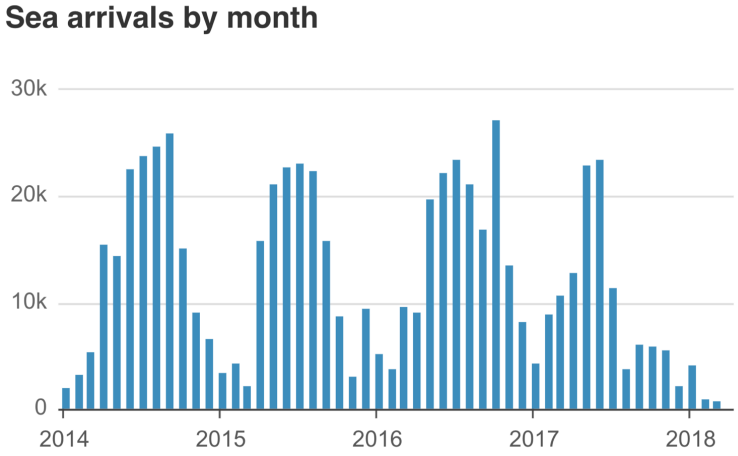

Figure 1 - sea arrivals by month on Italian shores

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Regulatory framework on international asylum and the impact on Italian judicial system

At the beginning of the Mediterranean crisis (2012), the asylum legal framework in Europe and in Italy was described by:

- The Geneva Conventions and their additional Protocols: "international treaties contain the most important rules limiting the barbarity of war. They protect people who do not take part in the fighting (civilians, medics, aid workers) and those who can no longer fight (wounded, sick and shipwrecked troops, prisoners of war)"[1];
- The Dublin Regulation: four European agreements establish the Member State responsible for the examination of the asylum application. The Dublin III, which entered force into July 2013, contains sound procedures for the protection of asylum applicants;
- Italian Law n. 189/2002, "Modification of immigration and asylum law"; Italian Legislative Decree n. 25/2008, art 35 about administrative procedure to use in the examination of asylum applications;
- Italian Legislative Decree n. 150/2001, art 19 about judicial procedure to use in the examination of asylum applications.

The next schema explains the asylum procedures (management, administrative and judicial) until 2017 and the constellation of players involved.

continued

2017 and the constellation of players involved.

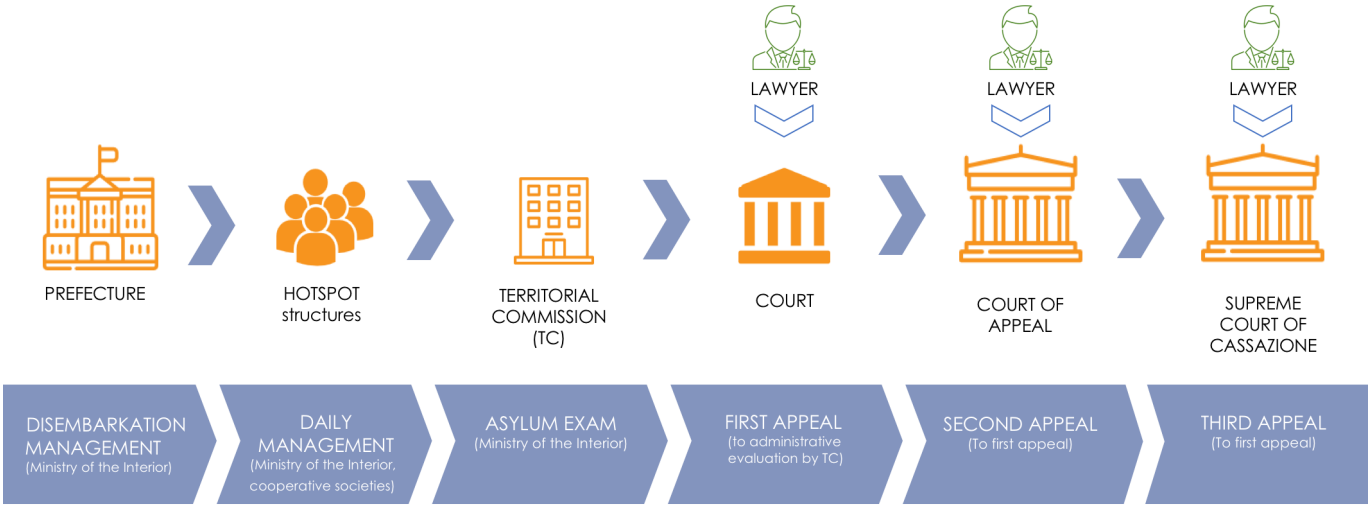

Figure 2 – Involved Players' schema

1 https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm

The administrative Territorial Commission for the right to asylum is competent, in first instance, to grant the applicants international protection: may be the full refugee status, the subsidiary protection, or in extreme situations, the humanitarian protection or, alternatively, deny any protection at all.

Except for those granting the refugee status, almost all the Italian Commission decisions (that means 93% of the total decisions) may be appealed to the court, as can be seen in the next graphic.

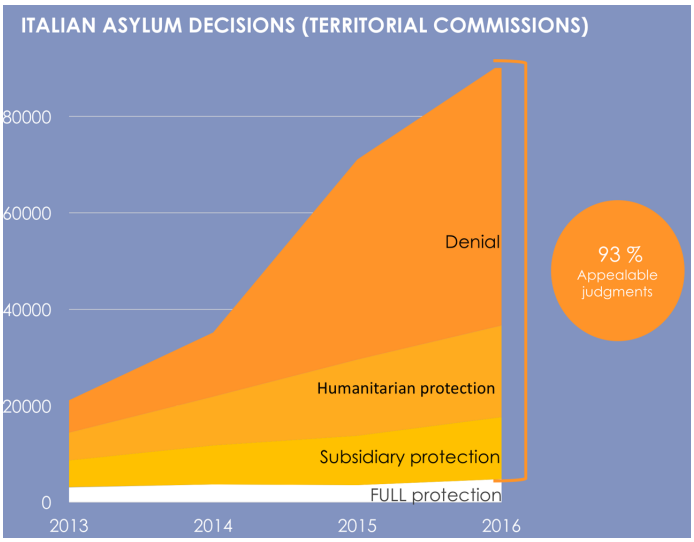

Figure 3 - appealable judgments

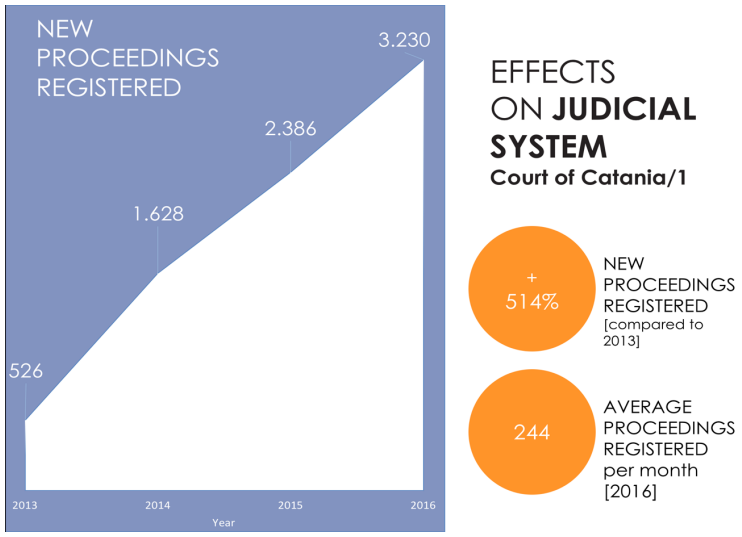

Figure 4 - new proceedings – Court of Catania

Catania: a Sicilian case

In 2016, more than 106,000 migrants, over 63% of total domestic disembarkations, from at least 15 different countries, landed in Sicily asking the international protection to national authorities[2].

In the same year, the responsible Territorial Commissions (TC) for Catania assessed 6400 official requests for recognition of international protection (data from the Italian Ministry of the Interior). According to 2016 UNHCR data, the Italian TC responded with the denial of international protection to 62% of applicants, and total recognition of 5% of requests, while the remaining 33% were assigned the reduced status (Subsidiary protection or Humanitarian protection). Where there is no full recognition of refugee status, an appeal may then be brought to the Court (further contested at the Court of Appeal until the procedural reforms "Orlando-Minniti" of 2017, and finally before the Court of Cassazione).

There has been a significant growth in the number of applications to the Court of Catania for reviewing the decisions taken by the TC, with a swift upward trend since 2014. In Catania, figures from 2016 give some significant results: while there were 3,172 procedures at the start of the year, the number increased to 6,568 by the end of 2016, with an average of 244 new proceedings registered per month.

From 2013 to 2016 the Court of Catania acknowledged a dramatic increase, by more than 50%, in the number of appeals filed against the decisions issued by the Territorial Commissions of Catania, Syracuse and Ragusa, three Sicilian cities heavily affected by the migratory flows 244 new claims are filed monthly on an average to our Court. By the end of 2016, pending procedures increased by 470% compared to 2013 [from 1,153 in 2013 to 6,568 in 2016], reaching a dizzying number of files pending before the Court of Catania[3].

In order to manage this situation, the judges and clerks, with the support of justice experts, have examined the status of the Justice Service provided by the Court of Catania, exposing weaknesses and identifying those organizational features that could increase efficiency of everyday work in their departments. The study helped to

continued

2 data by Italian Ministry of Interior: http://www.libertaciviliimmigrazione.dlci.interno.gov.it/it/documentazione/statistica
3 data by Court of Catania

highlight the problems involved in discharging appeals against the action taken by the TC for International Protection based in Catania, Syracuse and Ragusa, for which the local Court has jurisdiction. The judicial procedures under review are dealt with by the primary civil section of the Catania Court, responsible also for Family concerns (e.g. separations/divorces), for Non-Contentious Jurisdiction (e.g. Support mechanisms), and other residual matters (e.g. public procurement).

During the analysis phase, the following critical issues emerged:

- lack of specific monitoring of the flow of court "migration" cases;
- high number of deferrals of preliminary hearing, due to failure to notify the competent TC in a timely manner of the date set for the migrant's first appearance in court;
- reduced number of court appearances (< 5%) by the TC;
- Fractured sources of information about applicants' countries of origin.

Therefore, at the end of 2015, a project called *Migrantes* was launched. The project aimed to improve the management and speed up appeal timeframes against the judgements, rejecting international protection requests. This can be done by improving cooperation between those bodies managing migration issues and by reviewing the organizational and operational systems of concerned departments.

The following courses of action were established in the second phase (since 2016-2017):

- Establishment of computer systems for sending court communications/notifications to the TC, to ensure that they are informed of the date of the initial hearing in a timely manner;
- Creation of specific national ID for "migration" cases to monitor the number and status of registration into the justice database technological system;
- set up of working groups with the TC to decide upon forms of legal proceedings, with the aim of speeding up establish motives and improve access to the basic information in the body of the act;
- collaboration with the Universities of Political Science in Catania and Enna to create internships specialized in international politics. They would form part of a multidisciplinary team supporting the Judge during the procedures by contributing information from the various COI's (country of origin information) on situation in the applicant's region of origin;
- collaboration with the UNHCR to organize informative seminars and discussion forums for magistrates and interns.

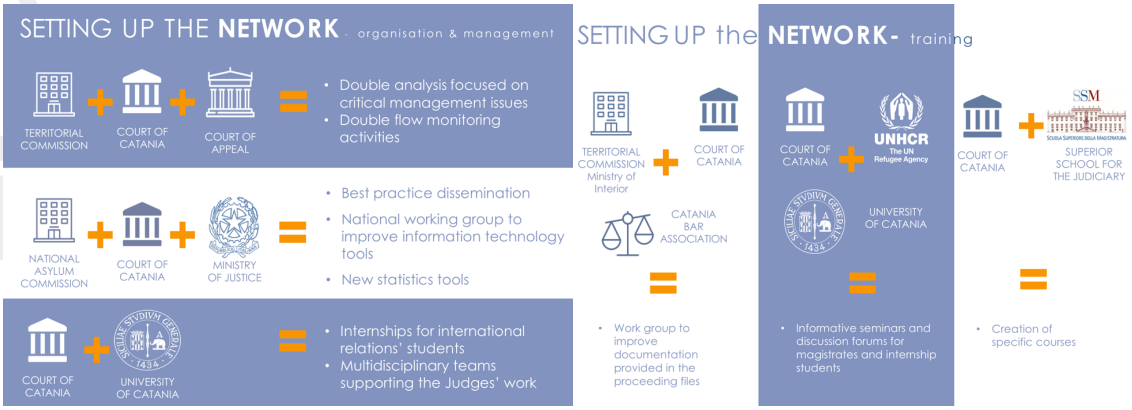

Figure 5 – Migrantes' actions

The investments in time and efforts gave visible outcomes such as:

- skills improvements and best practices are now widely recognized by all the organizational actors involved;
- concluded judicial proceedings have increased by 86% after the first year of operations;
- case disposal is reached faster thus, time employed for the final court's decision has been reduced by 66%. The clearance rate, which shows the relationship between the new cases and disposed/solved cases within a period, rose by almost 170% from 2015 until the end of 2016.

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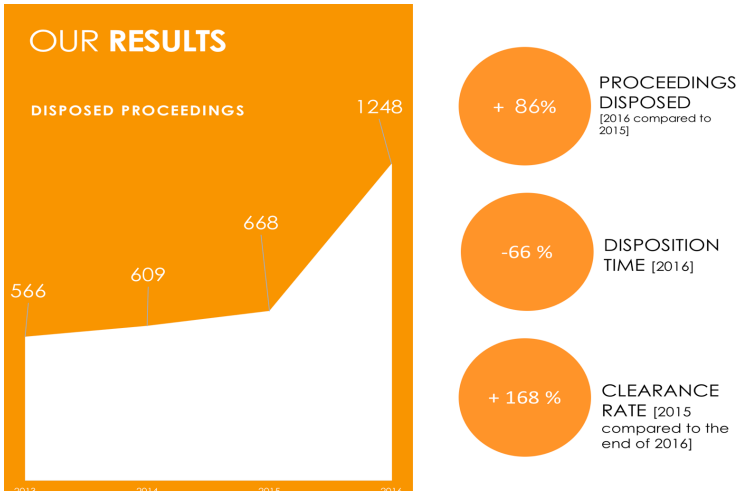

Figure 6 - results

Several other targets have been achieved thanks to *Migrantes*' multi-institutional network:

- Judicial cost of the proceedings has decreased by around 70,000 euros since the beginning of the *Migrantes* program;
- task forces of judicial advisors have been established to support the judge in his legal research. The interns, specialized in international relations, perform the stable task to search Country of origin information;
- TC are now electronically interconnected with the Court's system through the "electronic trial" infrastructure, for a smoother and simplified communication of acts and documents;
- projects' working group produced a set of guidelines to support the Italian courts interested in the on-line communication with the territorial commissions;
- the Ministry of Justice disseminated the guidelines to all the judicial offices nationwide.

Thanks to the innovative networking methodology, in 2017 *Migrantes* has been rewarded with a special mention in the "Crystal Scales of Justice" Prize[4], a competition by Council of Europe, aimed at discovering and highlighting innovative and efficient practices concerning the organisation of courts.

4 explanation of the selection by a member of the Jury: https://www.youtube.com/watch?v=2k35hrfePmc

"The experience of Guanajuato[1] on the operational improvement in the performance of criminal courts"

Mtro. Pablo López Zuloaga

Mtro. Mauricio A. Ontiveros Hornelas

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Abstract: Derived from the review of disposal time and deferral rates (54%) in different hearings in June 2017, the Council of the Judiciary Power in the State of Guanajuato, Mexico, through its Management System General Coordination, involved the Judges in the need to homogenize the criteria and guidelines for hearing follow-up and established constant interaction between Judges and Administrators, to provide the latter with the understanding of the needs of each hearing. The achieved commitment lead to a drop in the disposal time and deferral rates (14%) by April 2018.

The proper administration of justice is an essential function of the democratic state, although the constitutional mandate establishes that justice must be agile, expeditious and transparent. The reality is that the institutional capacity to respond to this mandate has been exceeded, generating the following effects: congestion of the judicial system, delayed processing, low efficiency and effectiveness of the judicial administration, and delays in the resolution of cases. These are only some of the evident effects of a limited judicial management and a weak understanding, as well as, coordination between the administration system and the entities entrusted with the inherent role of the judiciary; namely the justice imparters, which translates into a decrease of the credibility of society in the institutions responsible for its execution.

1 Federal entity of the United Mexican States.

continued

In this context, judicial administration is one of the functions of greater relevance for the correct operation of a jurisdictional body. Through this process, the most valuable resource administered in a court turns out to be the Judge's time for the purposes of the dispatch of the matters that correspond to their authority by reason of their constitutional mandate. It is not visualized in an independent but integral way, with what the own Judicial imparters perform on a daily basis to resolve the issues that correspond to their authority.

In effect, the expeditiousness in the dispatch of the matters that correspond to the Judges, as it is understood, is mandated by article 17 of the Political Constitution of the United Mexican States. It also is consecrated in different treaties or international conventions. Not only can we visualize it through the generation of policies given or derived from a desk, but in a necessary way, these operational policies or criteria of operation in the field have to be checked by the opinion of those who execute this work on a day-to-day basis.

Hence, we not only start from the constant vigilance on the efficient use of dispatch times, which corresponds not only to what is properly in the hands of the Judges in charge of that office, but the administrative entity in charge of guaranteeing them the adequate conditions so that they can dispatch without delay, those matters that are submitted to their knowledge. This gives rise to the timely issuance of the judicial decision; that is a value that must be guaranteed to the society served by this public body (Judicial Power).

Regarding the discussion that corresponds to this article, what happens in the Judicial Power of the State of Guanajuato, as it can and should happen in any other Judicial Power of the world, it is necessary to review and self-criticize the processes to optimize the times; thus, derived from the review for process improvement and thereby ensuring proper performance of the function. We proceeded to measure the duration times of the different hearings that correspond to the orality subsystems and we will present our findings in this article. It has to do with Oral hearings and the Subsystem of Criminal Prosecution, derived precisely from the reform of the Political Constitution of our country, which occurred in June 2008, of which one of its main objectives had to do with more expeditious access to justice. What was understood would be guaranteed through this scheme of prosecution by oral hearings, promoting a new culture on self-composition; that is, the solution of conflicts by those involved in those cases of minimum effect in society, those of private prosecution[2] and those that can only be processed at the request of a party, which in terms of the Political Constitution of Mexico was understood according to article 17 in its fourth paragraph as the possibility of guarantee alternative outputs to the procedure[3].

The same article 17 of which we have been speaking since the second paragraph of this document[4], speaks of the expeditiousness in the administration of justice, which is, as it is understood, the mechanism by which the access to justice of the society served by the judicial entity is more efficient. It is not possible to visualize it, only understanding that the Judicial Powers will have Judges and Magistrates[5], or, as it is understood in the

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2 Article 21, second paragraph, Political Constitution of the United Mexican States: "The exercise of criminal action before the courts corresponds to the Public Ministry. The law will determine the cases in which individuals may exercise criminal action before the judicial authority."

3 Article 17, fourth paragraph, Political Constitution of the United Mexican States: "The laws shall provide for alternative dispute resolution mechanisms. In criminal matters, they will regulate their application, ensure the repair of the damage and establish the cases in which judicial supervision will be required. "

4 Article 17, second paragraph, Political Constitution of the United Mexican States: "Every person has the right to be administered justice by courts that will be expedited to impart it within the terms and terms established by law, issuing its resolutions promptly, completely and impartial. His service will be free, leaving, consequently, the court costs. "

5 Article 83, Political Constitution for the State of Guanajuato: "The Supreme Court of Justice shall be composed of the number of Proprietary or Supernumerary Magistrates determined by the Council of the Judiciary."

federal level with Judges, Magistrates and Ministers[6], who in all cases are willing to resolve the matters submitted to their power; but also in the Judicial, is immersed the administrative body that is properly called Council of the State Judicial Power as prescribed in the second paragraph of Article 82[7] of the Constitution for the State of Guanajuato, or as it is understood at the Federal level, from the second paragraph of Article 94 of the Political Constitution of Mexico.

The Council of the Judiciary is in charge of generating the necessary conditions for the purpose of guaranteeing efficiency. That the Judges, Magistrates and, if appropriate, Ministers, can carry out their functions in an appropriate manner, which of course has nothing to do with their independence, is also guaranteed by the Council itself through its auxiliary bodies. In the case of the State of Guanajuato, through the Management System General Coordination[8], that guarantees the correct administration in the operation of hearing times to the effect that there are conditions that allow a regular flow in the dispatch of the affairs, this links specialized personnel in the administration of times, that is, properly said Administrators as such, with a function that is not natural to them. Since they do not have proper legal training, they cannot understand without intervention of the judges themselves, what happens within a hearing, and the reasons why it may be delayed. The delay is the only thing that is known to them; that is, the numbers as such, which reflect the delay or excessive duration of hearings, which does not allow these administrative entities to be able to have an order in the generation of the agendas for the dispatch of the matters.

The above derives from not being able to understand why an audience of the same nature dispatched by different judges, has a longer duration in one case, than in another, leaving aside what has to do with the complexity of the same. The issue, thus seen, then rises to a hypothesis in light of equal complexity and equal conditions and why one audience and another do not flow in the same way. The result necessarily leads to understand that the difference, on the one hand, are the judges in charge, and the parties involved during the development of the hearing itself.

This situation, reflected in numbers by this auxiliary body of the Council of the Judicial Power of the State, was raised for the purposes of improvement as such to be able to understand the discrepancy in times during similar cases, and the causes that gave reason to why similar assumptions would lead some judges to the deferral of hearings, or, to understand the reasons why in some cases, the affected parties would not attend the hearing; all of which turned out to be areas of opportunity, subject in a necessary way, to improvement. For that reason, from the administrative entity, it was understood that it was necessary that they were the ones who directly involved themselves in understanding the matter, so that without invasion of any nature to their independence, but simply with the purpose of guaranteeing an adequate operation of the criminal system in the State. In principle, they visualized those reasons by virtue of which there was more duration in one case than in another, or why things differed in one case and in another, or the causes by virtue of which, the appearance of the parties to the hearing could be guaranteed. The judges of the criminal system

continued

6 Article 94, Political Constitution of the United Mexican States: The exercise of the Judicial Power of the Federation is deposited in a Supreme Court of Justice, in an Electoral Tribunal, in Collegiate and Unitary Circuit Courts and in District Courts.- The administration, vigilance and discipline of the Judicial Power of the Federation, with the exception of the Supreme Court of Justice of the Nation, will be in charge of the Council of the Federal Judiciary in the terms that, according to the bases that this Constitution indicates, establish the laws. "

7 Article 82, second paragraph, Political Constitution for the State of Guanajuato: "The Judiciary will have a Council that will be the body of general administration, will be responsible for the judicial career, training, discipline and evaluation of public servants of the Power Judicial."

8 Article 102, Organic Law of the Judicial Power of the State of Guanajuato: "The administration of the courts that operate systems that require it, will be in charge of a General Coordination of the Management System, whose essential function will be to plan, organize, implement, control and directing a multidisciplinary management team that allows the effective development of the justice system in question throughout the territory of the State (...)."

themselves arranged different work meetings to visualize the problem and allow to homogenize the criteria for what here in the State of Guanajuato is understood as the guidelines for hearing follow-up, which is nothing else than the procedural phases in which the different hearings of this criminal scheme are developed.

Thus, with this mystique of service and with great commitment for the proper development of the process, their fellow Judges became directly involved with this problem and reached a reasonable consensus, free from any direction in which they had to exhaust the schemes or the guidelines for the follow-up of the different hearings of the criminal process, once which, with these inputs, the administrative body was provided with the necessary criteria to be able to understand the scheduling times of these hearings. This entity could then oversee the administration of the hearing times and, regulate in a better way, the agenda for the functioning of the different jurisdictional bodies in the State of Guanajuato.

In order to provide a reason in regards to what has been talked about here, we want to make understood that because of this problem, which was evidenced by national[9] and international[10] observers, and that later the Management Body, derived from the measurement made in June of 2017, could note that the global deferral rate since the start of the process in September 2011[11] was 54%[12], which represented from the point of view of the Council of the Judicial Power of the State of Guanajuato, a serious conflict for the operation of the process and of course a challenge for its optimization due to the overload that was generated with these deferrals.

In the same way it was visualized by the Management Coordination body that the duration of hearings that took place, did not have symmetry, that is, for a judge an audience of a certain nature was exhausted in a more agile way and in another with similar conditions with a different judge, it was not (since the times were longer), which complicated the judicial management body the possibility of carrying an agenda or a linear scheduling scheme, because they had to visualize the scheduling times not only depending on the type of audience and complexity, but also on the Judge who was in charge of the hearing.

It is under these assumptions, that the Council of the Judicial Power of the State of Guanajuato identified an area of opportunity in the management of resources, because when observing the high percentage of deferment of hearings, accumulation in the inventory of audiences, discrepancy in judge workloads, discrepancy in duration of hearings, low room occupation rate and scheduling of oral trials at the limit granted by law, was perceived as a full agenda while the rooms were empty.

As an initial hypothesis of the cause of the observed ineffectiveness, it was determined that trying to balance the demand of hearings with the availability of room times, judges, officials and schedules, did not consider the existence of statistical fluctuations in events that, by their nature, are dependent. The productive capacity should not be balanced, but rather the flow of the hearings. In every court there are two types of events: dependent events and statistical fluctuations. The first (dependent events) are determined by the sequence of operations that must be followed in a predetermined and strict order. The second (statistical fluctuations) appear in certain stages in which you cannot determine an exact result but only its average values.

Thus, under this scheme, on the one hand, work is done within the organizational body, giving guidelines for scheduling, and on the other hand, it is the legal operators themselves (Judges) who are responsible for the standardization of the criteria for the effects of operation, and the judges themselves who provide the administrator objective criteria to be able to have linear reference times for the scheduling of hearings, thus giving guidelines to the administrators so that they have understanding on the effective handling of the judicial

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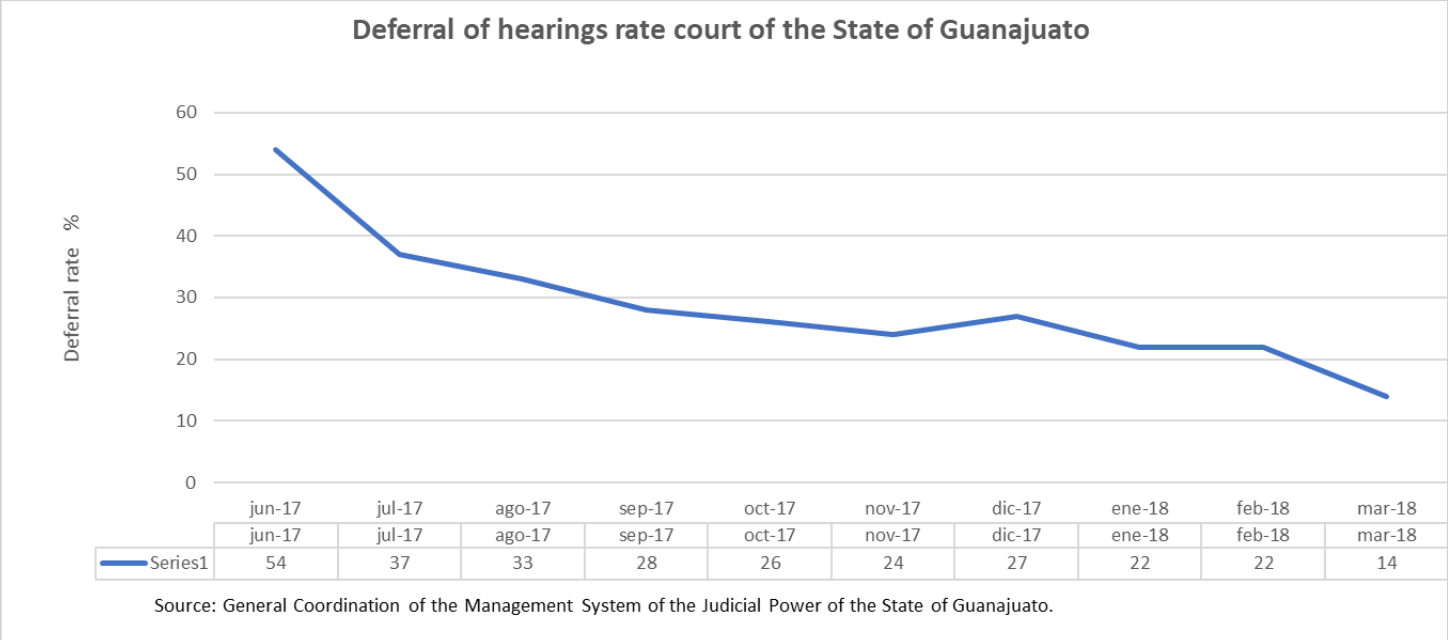
9 Center for Research for Development, A.C.

10 Friedrich Neumann Foundation, USAID.

11 First Transitory Article of the Criminal Procedure Law for the State of Guanajuato published in the Official Gazette of the State of Guanajuato on September 3, 2010 and its subsequent reform.

12 Source: General Coordination of the Management System of the Judicial Power of the State of Guanajuato.

agenda. Derived from the measurements[13] that were made from the first organizational process, and during the first workshops in which the judges participated to reach general agreements on the operation in the conduction of hearings, it was easy to identify, not only that the rate of deferrals went down, but also, that the duration of the hearings began to be planned independently of the judge in charge of the same and as of the date of writing this article a decrease of 14% of the deferral rate was documented. The length of the hearings has also been compared to the point of the symmetrical graphs of each hearing being similar.



Source: General Coordination of the Management System of the Judicial Power of the State of Guanajuato.

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13 Source: General Coordination of the Management System of the Judicial Power of the State of Guanajuato.

Administrative Support To A Chief Judge In Finland; Food For Thought of the Future Development Of Court Administration (in Finland)

By: Director General Kari Kiesilainen and Ms. Tuula Kivari

Director General Kari Kiesiläinen, Master of Laws, University of Helsinki (Finland) and Master of Legal Institutions, University of Wisconsin (USA) has written this insightful article along with his co-author, Ms. Tuula Kivari.

Director General Kiesiläinen is currently the Director General, Ministry of Justice (Finland) where he is the Head of the Department of Judicial Administration. The Department is responsible for the preconditions for the operation of the courts. In this regard, the Department aims to provide for the necessities of a fair trial and people's effective means of realising their rights. He is presently located in Helsinki, Finland.

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MINISTRY OF JUSTICE
FINLAND

In their article, Mr. Kari Kiesiläinen and Ms. Tuula Kivari discuss professional court management and its importance in an operating environment undergoing rapid changes. The more professionally court management is conducted, the more time Chief Judges can devote to strategic leadership, development and planning, and the administration of justice. In the organisation of the Finnish courts, the management support functions have lacked any comprehensive and systematic development and reviews. Therefore; it became necessary [for the Ministry of Justice to appoint a working group] to draw up a report on the eventual development of the work and job descriptions in the court administration. This report will guide and enable the professional and efficient organisation of court management and administration. In this article, the findings and proposals of the working group are described.

Working group objectives

In the organisation of the courts, the management support functions in Finland have so far lacked any comprehensive and systematic development and reviews. Instead, management support roles and work have evolved over time and taken different forms, depending on how the management of administrative matters has been organised by individual courts. The court sizes have also varied a great deal. However, the human resources, financial and general administration functions are very similar at any court, irrespective of its size.

It has therefore become necessary to harmonise both the job titles and the descriptions of the management support roles. This harmonisation will enable uniform pay and qualification requirements for employees carrying out similar tasks. The Minister of Justice (MoJ)

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Finland appointed a working group with the following objectives:

- Drawing up a report on the development of the work and job descriptions in the court administration so as to the enable professional and efficient organisation of court management and administration; and
- Making proposals for allocating resources for the administration of justice, enabling efficient administration that meets high quality standards and serves the management of the courts and performs its key tasks.

Employees working in court administration undertake a wide range of tasks. This working group focused on the management support functions. The job titles and descriptions selected for the review were Chief Secretary, Head of Administration and Administrative Secretary. In the review, one has to take account of the challenges which the changing operating environment and inflexible economic conditions present to the management and administration, such as:

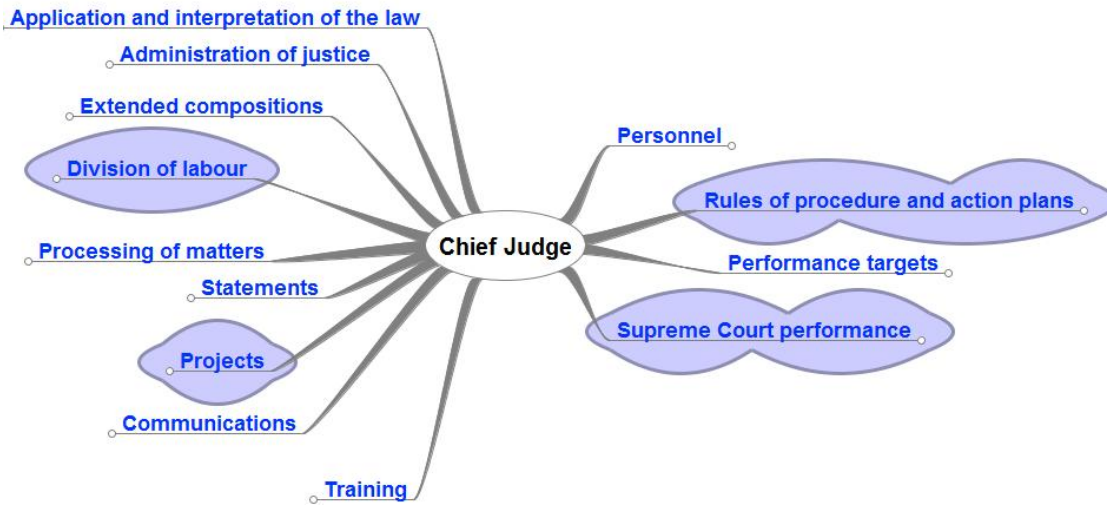
- reforms introduced as a result of the new Courts Act (entered into force in January 2017);
- potential new Courts Administration, and the structural reform of District Courts;
- changes to operating methods as a result of digitalisation (for example the new financial administration workflow system "Kieku");
- allocation of certain tasks, for instance to other organizations (the Judicial Training Board began its work in January 2017);
- future reform of the court administration's electronic processing system of administrative matters; and
- effects on the court administration of the new fixed-term offices of Chief Judges (entered into force in January 2017).

Courts and administration

The court system in Finland now has 43 courts. However, a project currently pending is seeking to reduce the number of District Courts from 27 to 20 by 2019. At the moment, the courts are still different in size; for example the largest District Court is Helsinki with 343 person years, while the smaller District Courts vary between 20 and 30 person years. In early 1990s there were 100 District Courts. One of the outcomes of these reforms has been an increase in unit size. Due to increasingly complex cases involved in the administration of justice and the increase in unit size, more attention must be paid to the management of courts and management support. Provisions on the management of courts have been laid down in the Courts Act (673/2016), which entered into force at the beginning of 2017.

Chief Judges

Courts are autonomous and independent agencies, where decision-making power is exercised by the Chief Judge who ensures that the court remains effective and who develops the court's operations. The Chief Judge has oversight over the uniform application of legal principles and interpretation of the law. The Chief Judge decides on the administrative and financial matters pertaining to the court. The Chief Judge's role covers several areas, as shown in the following figure.



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Administrative staff at the moment

A court may establish a position of Head of Administration responsible for the court's administration. So far the management support functions and positions have evolved differently across the court system, even though administrative functions are basically very similar in any court. District Courts have public posts such as Head of Administration, Chief Administrative Officer or the Administrative Secretary. Such appointments are usually made for a fixed term. The basis of their pay may differ. Furthermore, Chief Secretaries are public servants representing the employer whereas the Heads of Administration, such as those employed by the Administrative Courts, are not, for no significant reason. In other words, the courts in Finland have very different posts and roles within financial and human resources administration and general administration. Some tasks are also performed alongside other duties belonging to posts and job titles which do not describe the administrative nature of the job.

Required qualifications for administrative staff vary also. In some cases an applicable Master's degree is required for the post, but for example, in the Supreme Court the Chief Secretary is required to hold a Master of Laws. In some cases, the qualifications required for administrative posts are not laid down in an Act.

Development needs in the court administration

The reform of the administration of justice is one of the key projects included in the action plan by Prime Minister Sipilä's Government. Its objective is to ensure access to legal protection and enable those responsible for the administration of justice to focus on their core functions. In order to create an efficient, modern and competent administration of justice which can focus on its core functions, the related structures must be reformed and the digitalisation of the administration must be further strengthened. Areas identified for development include the reform of court management models and employee structures, and the simplification of administration. The objective of these measures is to optimise the number of the units in the court organisation in order to align it with the size of a court. This alignment will result in an efficient organisational structure, eliminating any disproportionate resources allocated to administration and management at the expense of the administration of justice.

The MoJ is implementing the District Court reform reducing the number of District Courts from 27 to 20. Recently the structural reform of the Courts of Appeal and Administrative Courts was implemented. The purpose of the structural reforms is to create efficient, sufficiently large-scale units.

The MoJ has prepared the establishment of the Courts Administration that would serve the entire court system, providing a centralised agency for general, financial and human resources administration. The goal here is to provide a specialised organisation supporting the courts in matters such as recruitment, collective agreements for public servants, premises, construction projects and statutory planning. Regular administrative matters which are independent of the location could be centralised under the Courts Administration

The management of certain parts of the central government financial and human resources administration has already been centralised. The electronic system (Kieku) for managing these matters was deployed in the year 2016. At the same time, the financial and human resources administration practices were harmonised. The system will enable the corporate-style administration, monitoring and analysis of central government functions. The purpose of the system is to improve effectiveness and quality.

Certain tasks of the courts are already centralised under service centres (accounting, financial statements and, for instance, the verification of travel expenses). The purpose of a new "Hilda", the administrative workflow management system for the courts, is to maintain an electronic process throughout the case life cycle, from pending to archival. Part of the Hilda project involves creating a shared information management system for the courts.

These changes to practices, along with the centralisation of certain tasks, have already changed the role of court management support and will continue to do so. The larger units will need professional and organised management of the courts to function.

continued

With the help of these reforms, the management of administrative matters will also be harmonised across the courts.

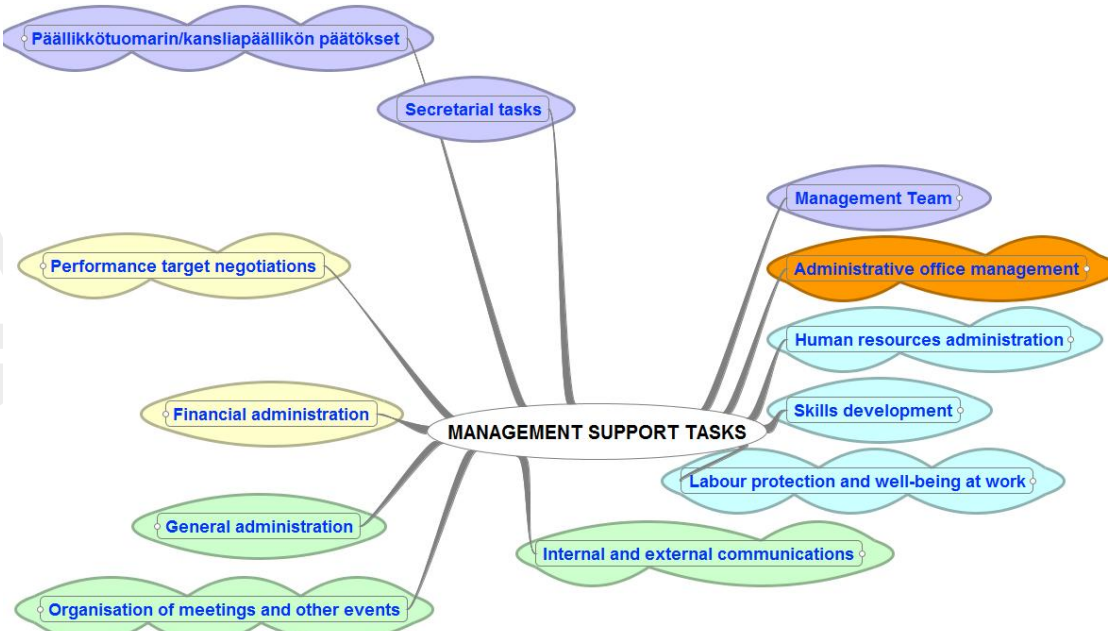
Support by administrative staff to Chief Judges in the future

The key function of the court administration is to ensure that the administration of justice is as fluent as possible. The key functions include human resources management, preparation and decision-making concerning general, financial and human resources administration, and communications. Competent and timely management of administrative functions is central to the overall efficiency of the administration of justice.

The Chief Judges should have time for strategic leadership, development and planning, and the administration of justice. In addition, the Chief Judge must focus on enabling the efficient management of administrative matters. Court administration and the administration of justice are often seen as separate areas. However, efficient operation and development are only possible if they work together seamlessly.

Professional court management is required in a modern operating environment undergoing rapid change. Chief Judges must have expertise in both the administration of justice and leadership. They must be conversant with both financial and human resources management. However, taking account of the number, complexity and broad scope of their tasks, Chief Judges cannot be expected to manage all of this independently. The demands made upon management support are therefore great. To ensure the most appropriate support that complements Chief Judges' expertise, management support and the Chief Judge should ideally have different professional skills and experience. However, experience and expertise in financial and human resources management are essential requirements.

The qualities of the management support roles include good organisational skills, a positive attitude to development, cooperative skills, and innovation. The roles include also skills in strategic planning, project management, and the performance of both routine tasks and supervisory responsibilities. Management support provides the Chief Judge with sufficient background material to enable informed court management and decision making in all areas of administration. Competent performance is only possible if the administrative branch has the appropriate expertise and skills, at least for the functions described in the following figure.



Assessment of development needs in management support

There is currently a wide range of job titles for management support roles – they need to be harmonised. The title of the first administrative officer would in the future largely depend on the size of the court.

Should the persons responsible for administrative affairs be appointed for a permanent or a fixed-term post? Fixed-term posts are favoured on general grounds. Chief Judges are appointed to management positions for a definite duration, but their independence as judges is secured. However, with regard to securing

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the continuity of operations, the management support position should be a permanent post.

In assessing the training or experience required for the best performance of management support, key competencies should be determined to complement the Chief Judge's role. Management support requires both human resources and financial management competencies. Other necessary qualities include knowledge in several specialist fields, such as premises and purchases. More attention should also be paid to induction, on the job training and personal qualities.

Chief Secretaries of the courts shall have a Master's degree. However the Courts Act does not lay down provisions on the qualifications of a Head of Administration. However, the job descriptions and responsibilities of Heads of Administration are very similar. A provision should be laid down by an Act on the appropriate Master's degree required as a qualification for the post of Head of Administration. An appropriate higher education degree could become the required qualification for Administrative Secretary, enabling candidates holding a Bachelor of Business Administration to apply for the post.

Responsibilities and tasks must be clearly divided between the Chief Judge and management support. The Courts Act lays down provisions on the powers of the Chief Judge to make decisions on administrative matters. The Chief Judge's right to refer a matter for decision by a different official is provided in the rules of procedure. Each court's rules of procedure must therefore lay down a provision on how the Chief Judge delegates decision-making powers to other officials, such as the Chief Administrative Officer or the Head of Administration.

The conclusions and proposals

Any concluded and ongoing court development projects will have an impact on the management support functions in courts. Professional court management and management support are important in an operating environment undergoing rapid changes. The more professionally court management is conducted, the more time Chief Judges can devote to strategic leadership, development and planning, and the administration of justice. Chief Judges must have expertise in both the administration of justice and leadership. However, Chief Judges need the support of a professional administration unit whose employees have the appropriate training, experience and personal qualities to complement the Chief Judges' own strengths. To ensure the most appropriate support complementing the Chief Judges' expertise, employees undertaking management support and the Chief Judge should ideally have professional skills and experience pertaining to different fields.

Job descriptions of the management support roles must be unambiguous. The tasks undertaken by management support should be defined in the court's rules of procedure, and each employee should be given an individual job description. Such descriptions must be flexible and ensure a timely response to any unexpected events during the course of routine work. An individual job description can provide list of such tasks that are essential to the role. It is the Chief Judge's responsibility to delegate tasks. However in drawing up the job descriptions, any opportunities to centralise the tasks should be considered. Administrative matters and documents can be processed electronically, even across agency boundaries, in order to increase cost efficiencies.

The personal qualities of the candidates for management support roles include good organisational skills, a positive attitude to reform and development, cooperation skills, and innovation. The candidates should demonstrate skills in strategic planning, project management, and the performance of both routine tasks and supervisory responsibilities. The candidates should be able to understand the court system and the administration of justice.

Due to the scale of the current development projects, the number of management support roles required by individual courts must be determined later, after the outcomes of certain processes have become clear, including: 1) the impact on the courts' workload resulting from the changed practices after the deployment of the financial management system Kieku, 2) progress with the current structural reforms of the court system, and 3) whether and how the new Court Administration is set up.

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In accordance with the Courts Act, a court may establish a position of Chief Secretary or Head of Administration or another similar position responsible for the court's administration. The current Courts Act already lays down provisions on management support functions. However, the courts' rules of procedure should include unambiguous provisions on responsibilities and the performance of tasks. The management support shouldbe developed according to the following guidelines:

1. Management support job and role titles should be harmonized as follows:
   a. Within the Supreme Courts, the job title of the Chief Secretary will remain unchanged.
   b. However in other courts:
      - the job title of Chief Secretary will be abandoned;
      - the job title of Chief Administrative Officer will be introduced in large units;
      - the job title of Head of Administration will be introduced in medium-sized units; and
      - the general job title of Administrative Secretary for an employee performing administrative tasks (as management support) will be introduced in small units.
2. The Chief Administrative Officer/Head of Administration and the Administrative Secretary would become public-service posts.
3. Courts which now have a Head of Administration should establish the posts of Chief Administrative Officer/Head of Administration.
4. The public post of Chief Administrative Officer/ Head of Administration/Administrative Secretary would be a permanent position.
5. The appointment would be based on open recruitment
6. The qualification requirement for a Chief Administrative Officer/Head of Administration would be the appropriate Master's degree.
7. The qualification requirement for an Administrative Secretary would be the appropriate higher education degree.
8. The pay system for management support roles should be harmonized.
9. The court's rules of procedure should state which matters the Chief Judge has delegated for decision by the Chief Administrative Officer/Head of Administration/Administrative Secretary.

The Curious Case Of Court Manager In India: From Engagement To Desertion Why Court Managers failed to contribute effectively to the court system in India?

By: Dr. Geeta Oberoi, Professor, National Judicial Academy, India

Dr. Geeta Oberoi is presently serving as a Professor in the National Judicial Academy, located in Bhopal, Madhya Pradesh, India. She is engaged in research and training activities for the national judicial education provider.

Dr. Oberoi's article discusses how the government of the day, in order to try to help the judiciary in dealing with huge pendency of cases in Indian courts, came out with an idea of engaging court managers to help courts and especially judges in their non-judicial functions. The judiciary did not respond enthusiastically and allowed this idea to die a natural death.

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1. Introducing Court Manager (CM) to the court system of India

As criticism about judiciary became vociferous owing to huge delays, arrears and pendency of cases in courts, experts during the judicial education discourse at the NJA Bhopal began to brainstorm on ideas to unclog the system. During such brainstorming sessions it emerged that largely problems were self-created as judges at all levels, right from magistracy to the level of judge of the Supreme Court of India are engaged in numerous organizational administrative tasks concerning engagement of human resources in the courts, development of court infrastructure, managing finance, communication, protocol, legal aid, legal education, etc.[1] These tasks consume more than 40 to 60 % of time of each judge be at any level in judicial hierarchy and therefore each judge in his/her tenure of judgeship can only devote remaining time to the files crying for justice from the courts. The NJA therefore suggested the then court leaders to experiment with the western model of hiring management experts for performing these non-judicial tasks so as to provide judges more time for deciding pending cases seeking justice from their courts. The government extended support to this suggestion by allocating five-year funding to help state constitutional courts (high courts as they are called) in hiring of CM.

2. Functions of CM as proposed

The government vide circular F.NO.32(30). FCD/2010 issued by the Ministry of Finance in year 2010 allocated funds for hiring of CM.[2] This circular also identified areas of functions to be allocated to CMs:

(i) Policies and Standards
(ii) Planning
(iii) Information and statistics
(iv) Court management
(v) Case management
(vi) Responsiveness management
(vii) Quality management
(viii) Human resource (HR) management
(ix) Core system management
(x) IT System management

On *policies and standards*, CM was expected to establish performance standards applicable to the court

continued

1 See http://supremecourt.gov.in/committees for details on involvement of Supreme Court justices in non-judicial functions.
2 Available at http://doj.gov.in/sites/default/files/Annexure_A-Part-I.pdf

on timeliness, efficiency, quality of court performance, infrastructure, HR, access to justice, for systems of court management and case management and evaluate compliance of individual courts with those standards.

On *planning*, CM was expected to consult stakeholders (the bar, ministerial staff, executive agencies supporting judicial functions such as prosecutors/police/process serving agencies and court users), to prepare and update Court Development Plan (CDP) and monitor this CDP and report for its compliance.

On *information and statistics*, CM was asked to prepare statistics on all aspects of functioning of the court accurately and promptly in accordance with systems established by the high court and provide them as required.

On *court management,* CM was asked to check compliance of processes and procedures of the court (for filing, scheduling, conduct of adjudication, access to information and documents and grievance redressal) with the policies and standards established by the high court for court management to safeguard quality, efficiency and timeliness, and minimize costs to litigants.

On *case management*, CM was asked to check compliance of case management system developed by high court with policies and standards established by high court and if they met legitimate needs of litigant in terms of quality, efficiency and timeliness, costs to litigants.

Further, CM was asked to ensure compliance with standards established by the high court (i) on access to justice, legal aid and user friendliness for *responsiveness management*, (ii) on quality of adjudication standards for *quality management*, (iii) on standards for *HR management*.

On *core systems management*, CM had to ensure that core systems of the court are established and function effectively (documentation management, utilities management, infrastructure and facilities management, financial systems management like audit, accounts, payments).

On *Information and Technology (IT) systems management*, CM was asked to check compliance of IT systems of the court with standards established by the high court and feed the proposed national arrears grid as and when it is set up.

3. Mismatch between proposed functions for CM and ground realities

CM could not contribute in policy making as spelt in circular F.NO.32(30).FCD/2010 as it was difficult for person not legally qualified to find applicable directives of superior courts on timeliness, efficiency, quality of court performance, infrastructure, human resources, access to justice, as well as for systems of court management and case management. Even if CM was provided these directives[3], questions still remained as to (i) how could CM develop the performance standards for judges based on these directives and check for their compliance with the directives? (ii) For whom these performance standards were to be established - for judges or for staff of the court other than judges or for registry officials who are judges deputed to the high court? (iii) How will CM know which directives are latest and which are old ones or which one are to be applied and which one to be discarded when there are conflicting judgments and directions pronounced on daily basis on all these aspects from different high courts and the Supreme Court?

On tasks outlined under the planning head, CM was asked to prepare CDP without considering their new entry into the system. Only CM retained in the system for a long period by virtue of their experience in the system will know nuances and loopholes of the system and would be in a position to develop the CDP. At present, there is no CM in any jurisdiction in India who has completed even 4 years at the job as a CM. Also, CMs were not provided access to resources or to superior court judges in consultation with whom CDP had to be prepared.

Concerning c*ompiling and preparation of judicial statistics*, government circular and high court rules on engagement of CM forgot to note that both management degree course and law degree course in India do not offer subject of statistics. Though CMs hired are helping in compilation of data, courts need to engage persons with Statistics background as CM for better preparation of judicial statistics.

continued

3 Most of these directives are in the form of internal circulars available only to recipients of those directives.

Regarding *court management*, it was unrealistic to expect from newly appointed CM to learn process and procedures of the court and evaluate their compliance with standards developed by the high court. It takes years for even law practitioners to learn these processes and procedures outlined under criminal and civil manuals and different circulars notified by the high court from time to time. Even senior law practitioners rely heavily on court clerks and chamber clerks who make their living out of these processes and procedures operating in the courts and show reluctance to share the secrets of their trade and livelihood. CM cannot, right after appointment, be expected to learn intricate and complex court processes and procedures.

On *Case management*, even in advanced jurisdictions, there is considerable reluctance to delegate case management functions to CM. The US experience indicates that few trial judges effectively utilized their CMs in case flow management.[4]

Though in common law world, the executive handles Access to Justice area, judiciary in India continues to hold dear to this function as it feels that it was because of their initiative and efforts, the government was forced to establish machinery for administering legal aid.[5] Constitutional courts are keen to retain their hold over legal aid distribution. Till the composition of the courts is changed to judges who believe in disassociating judiciary from legal aid management and distribution functions, which may take some more decades, involvement of CM in legal aid functions seems to be better option to reduce burden on trial courts. High courts of Andhra Pradesh, Madhya Pradesh and Karnataka have begun to involve CM for these functions.

Regarding *quality of adjudication*, CM can contribute to goal of efficiency[6] if involved in management of trainings for courts. However, few high courts have delegated training related responsibilities to CM, and that too, for ministerial staff.

For trial courts, *principal district judge* in every district is made responsible HR management and judge monitors recruitment, promotion, writing confidential reports, inspection of courts etc. for his/her district.[7] CM are delegated only small portion of HR management functions like preparing for exams for recruitment or checking attendance of employees.

Under the *core system management*, court record management should have been delegated to CMs for overhauling the paper system that is old, weak and vulnerable to breach of security[8] and privacy.[9] CMs can establish a system for storing these records at minimum cost with high accessibility and retrieval but, till date, their involvement is minimum because of temporary nature of their employment.

For *IT system management*, remuneration of CM is not attractive enough to get services of management graduate with specialization in IT. Secondly, under the E-Court project, all high courts have created post of Registrar (IT) who is technically qualified person engaged for managing IT issues for high court and district courts. Thirdly, CMs cannot be utilized for data entry work. For such jobs, courts can hire DEOs (Data Entry Operators) from government department or privately. Last but not the least, CM and CSA (Computer System Analyst) are two different posts with different educational backgrounds. Whereas CM is a management graduate, CSA is an engineering graduate with hardware or software or network engineering

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4 Burton W. Butler, Presiding Judges' Perceptions of Trial Court Administrators 3 Justice System Journal (1977) p. 181.

5 See text of article on this at http://www.commonlii.org/in/journals/NALSARLawRw/2013/13.pdf

6 See Carl Baar, Judicial Appointments and the Quality of Adjudication: the American Experience in a Canadian Perspective, 20(1) Revue Juridique Themis 1986, p. 1-26

7 See text at http://www.garph.co.uk/IJARMSS/Apr2014/4.pdf

8 Naranjan Singh v. Punjab and Haryana High Court through its Registrar and Another in CWP No. 14849 of 2006 decided on 17/04/2009 - court staff responsible for loss of files in the Court of Magistrate, Ludhiana.

9 Matadin Mour v. Prahlad Kr. Mour (1998)2GLR221 - The record of the copying section tampered with.

specialization.[10] It would be more helpful to engage CSA than CM in IT system management.

4. Utilization of services of CM by constitutional courts in India

Those high courts which created the post of CM, adopted functions outlined in the circular F.NO.32(30). FCD/2010 for their CMs. Some also made specific Rules on functions of the CM. These Rules further increased tasks of the CM. For instance, Bombay high court where more than 2000 trial court judges and 94 high court justices preside over different levels of courts, only 45 positions of CMs were created on contractual basis under *The Maharashtra Court Manager Recruitment and Conditions of Service Rules, 2011*[11] which prescribed functions mostly beyond intellectual or physical capacity of CM. Allahabad high court Rules[12] expected CM to implement and manage data entry initiation, monitor E-court project at the court posted and perform any other job as determined by high court or district judge or nodal officer. Gauhati, Rajasthan, Himachal Pradesh high court rules directed CM to perform any work as assigned to them.[13] Jharkhand high court rules involved CM in statistics preparation, in E-Courts Project, in monitoring of age of cases and pendency of summons, notices and processes to be served on parties.[14] Kerala high court rules involved CM for rendering secretarial assistance to registry office of the high court.[15]

Manipur high court rules[16], beside asking all tasks outlined in the government circular asked CM to help in budgeting and procurement processes. Orissa high court Rules involved CM in infrastructure management, HR management, budgeting and IT functions.[17] Punjab and Haryana high court rules involved CM in court, case, docket management, HR management, infrastructure, training, IT management, budgeting and account supervision, store management, communication and statistics.

CMs working under Andhra Pradesh high court revealed that their responsibilities were not fixed but prescribed from time to time by the high court. In their one-year tenure, they were involved in monitoring of biometric attendance and trainings for staff, coordination for budget section of the high court, record management and to provide secretarial assistance to the registrar general. Whereas CM working under Karnataka high court[18] revealed that they contributed to HR, record, infrastructure, statistics, finance, training and event management. CMs from Madhya Pradesh[19] informed that they assisted district judge in HR functions, in case management, in monitoring of old cases and implementation of E-courts project, in legal aid functions etc.

5. Diagnosis on failure of the CM project under Indian set up

(i) Discontinuance of the Government Funding and the Government Support?

There are 24 high courts which are constitutional courts for 29 states. Any judicial reform initiative has to be implemented by these high courts. The central government initially extended financial support for hiring CMs to 21 high courts but later on asked all the high courts to take such financial help from the state governments. This required high courts to place demand for grant for CM in their budgetary proposals. However, high courts have shown less interest. Out of 24 high courts, 3 high courts did not create the post of CM for their jurisdiction (Delhi, Sikkim and Jammu and Kashmir) as they were not funded by the central

continued

10 See Kerala High Court notification for employment of CSA at http://www.hckrecruitment.nic.in/app_notif.php#
11 Available at http://bombayhighcourt.nic.in/recruitment/PDF/recruitbom20111021100050.pdf
12 Available at http://www.allahabadhighcourt.in/rules/court_manager_16-04-12.pdf
13 http://hphighcourt.nic.in/pdf/CondCourtManagers31072013.pdf
14 Dated 2/2/2012 and further Registrar General order dated 7/11/2012
15 Order no. A5-99842/2011 dated 7.8.2014
16 http://hcmimphal.nic.in/Documents/recruitment_rules_CM.pdf
17 Vide office order No.4944 dated 28/06/2012
18 See http://karnatakajudiciary.kar.nic.in/recruitmentNotifications/cm-appointment-12062014.pdf
19 Sent to the State Government vide Memo No. C/752 dated 23/02/2015

posts of CM as soon as the central government asked to take funds from the state government.

(ii) Insignificant strength of CMs

For more than 20,000 trial courts functioning under 24 high courts, 462 posts of CMs could not create any impact and insignificant strength of CMs only added to confusion amongst everyone as to what work had to be allocated to them.[20]

(iii) Nature of employment offered to the CM in different jurisdictions

No one from the judiciary paid attention to broad parameters like number of CMs to be engaged, their placement in existing hierarchy of staff, their remuneration and conditions of service, their team and staff, their source of information and autonomy in performance of tasks etc. Under urgency to utilize the government grant for which time was running out, high courts engaged CMs on contractual basis with inferior salary package. As there was no institution where persons were being trained to become the CM, most jurisdictions decided to offer the position to management graduates and some jurisdictions asked also for law degree apart from degree in management discipline. None of the jurisdictions, which hired CM, gave CM the status comparable to that of regular court staff and judges. The nature of employment offered to the CMs - contractual appointment - made both the staff of the court as well as the CM operate in atmosphere of distrust, suspicion and fear of each other.[21]

(iv) Relationship between CM and judges?

Judges in India mostly equate their administrative responsibility in terms of power-cum-jurisdiction over people. Therefore, any move to subtract any assignment from them, even if trivial or administrative in nature, is viewed in terms of deduction in power-cum-jurisdiction. This mindset poses a major challenge to any outsider who wants to enter in the business of the courts at par with judges. Judges are strong believers in hierarchy business and therefore, any kind of subordinate help is welcomed but any kind of equal position – even if it is meant to reduce their burden – is resisted. Judges have not welcomed the idea of delegating administrative responsibilities to CMs.

6. Conclusion: How to create acceptability for the CM in India?

The level of receptivity to CM will spell success or failure of CM. Unless judge acknowledges the role of CM in enhancing judicial operations, CM will continue to face tremendous disaffection from staff members. Staff members being unsure about what will happen to them if they lose the trappings of the office to the CM, will continue to escalate differences and conflicts between them and the CM in such a way that the task of CM will be a constant challenge. In such challenging scenario, adequate support of senior judges can turn around table in favour of CM.

The more knowledgeable and comfortable judges are made about the CM, the more power would be given to CMs. Therefore, the need of the hour, in India, is to expose constitutional court justices to jurisdictions in the west wherein judges are operating courts in comfortable partnership with CMs. Such exposure would help them to come out of their biases against involvement of non-judicial personnel in court management. It will cut down an unfounded fear about CMs and encourage trial courts to hire CM in the same way they hire skilled secretaries and court reporters.

20 See http://www.nja.nic.in/TOC_and_PS/P-897%20PR.pdf for report from different states.

21 CMs of Jharkhand complained to the government about their service conditions and their functions.

Dialect Matters: The right to an interpreter means getting the right interpreter

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In his article Dr. Gamal argues that the right interpreter is not just the one who speaks the same language of the witness, but equally significant, the same dialect of that language.

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Appearing before a court to plead one's case is an arduous experience for anyone be it in civil or criminal matters. The difficulty turns into a nightmare when one does not speak the language of the court. In today's globalized world, the sight of a foreign language-speaking person appearing before a national court is not unusual.

The "International Covenant on Civil and Political Rights" states that a criminal defendant has the right to a free and competent interpreter. Most court administrations all over the world have a mechanism of discharging the responsibility by organizing a free interpreter, and more often than not, interpreters have some sort of academic qualifications, professional accreditations, or industry training.

However, not all languages are equal: some are spoken in just one country as in the case of Italian or Japanese, while others, are spoken in two or more countries. As a matter of fact, some languages are spoken in almost two-dozen different and independent countries, such as Arabic and Spanish. Consequently, the language exhibits features of regional variations that, for the untrained linguist, could prohibit natural and smooth communication. In the case of Arabic, for example, Arabic speakers from North Africa would find it extremely difficult to have a natural and smooth conversation with someone from the Arabian Gulf. The incomprehensibility of regional dialects in Arabic is a complex issue that neither the courts nor the interpreter accrediting authorities have the resources to address.

In Australia, the National Accreditation Authority for Translators and Interpreters (NAATI) tests Arabic interpreting in what is commonly known as Modern Standard Arabic (MSA) which is deemed as accessible to everyone in the Arabic-speaking world. MSA is indeed accessible but it is not spoken by the masses. Arabic is a diglossic language which means it has two varieties: MSA and the vernacular. The former is the variety of the language acquired at school and is used mostly in formal, technical, literary, religious or official communications. The latter, however, is the language in the street spoken by the people in their everyday parlance. This variety is more sensitive to regional contexts and reflects a great deal of the local characteristics. Even within the same Arabic-speaking country, such as Egypt or Lebanon, there are sub-varieties of Arabic that reflect the geography, the climate, the industry, as well as, the ethnicity of the population. All these factors weigh heavily on any conversation between two different speakers of Arabic.

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In an interpreted communication, and particularly before judge and jury, where a witness is being judged on their veracity, character, demeanor and the way they choose to express themselves, there is an inherent risk of undermining the witness' evidence by awkward interpreting. More often than not, an interpreter meets a witness only in court, without any briefing, and to their surprise and dismay, they discover that the witness is from a different country, where the culture is distant, and the Arabic vernacular spoken is difficult to appreciate. The qualified interpreter could easily resort to MSA but only if the witness is capable of using it. Quite often, they are not. Although the interpreter is qualified and accredited by the proper authorities they face a double task: not being briefed on the matter and having to decipher the dialect before they begin to "competently" interpret before the court.

It is a classic situation many interpreter's dread: interpreting in public, in a legal context and while ignorant of the topic and unfamiliar with the dialect. This uneasy, and indeed not unusual, encounter between witness and interpreter is characterized by: false starts, requests for clarifications, self-corrections, repetitions, hesitations, corrections by the witness, misunderstandings and naturally mistranslations. The situation could get more byzantine when an earlier response is read back, and is translated back, to the witness, only to see the witness vehemently announces: "I didn't say that" or " But, I did not use that word".

Recently, in the Australian legal system, some trials have collapsed and juries been dismissed due to interpreting issues. Such issues remain unaddressed by several stakeholders in the training, employment and engagement of legal interpreters and particularly in trials. There is a huge cost involved in aborting trials, but the notion that a fair trial is undermined by a glitch in the process of administering justice is a lot more serious. In many cases, judges have to rule on the competence of an interpreter. Linguistic competence does not just mean being fluent in a language, but also fluent in the regional variety of the language spoken in court. Dialect matters greatly as it is conducive to smooth communication. After all, the interpreter is present not only to ensure that a witness understands what the court says, but also to assist the court in hearing what the witness has to say.

Regional dialects of Spanish and Arabic are a fact of life and will not go away. The best training program in court interpreting would not eliminate the problem entirely. What is required is a fresh idea that empowers court interpreters. This begins at the training stage where the issues of dialect and the vernacular are examined in-depth. This requires tailored programming to reflect the type of darija (vernacular) used in the region. While it is undeniably expensive to address dialect issues in the training of (generalist) interpreters, this might be tackled at a much deeper level at the pre-trial stage. Courts need to be aware of languages with a high concentration of dialects such as Arabic, Chinese and Spanish. Furthermore, the vexing issue of (not) briefing legal interpreters needs to be championed by some authority in order to have a bearing on the practice of professional interpreting in court (See: June 2017 The Court Administrator - page 19). Professional interpreters utilized in virtually every line of work from police to baseball and from fashion to foreign affairs would almost unanimously agree: walking a tightrope is a very risky exercise and if your interpreter is doing the walk, at least make sure they are not blindfolded: let them know what dialect the witness speaks.

Court administrators all over the world, need to be mindful of the significance of dialect matters. The use of an incorrect dialect can undermine someone's defense or lead, ultimately, to the collapse of the whole trial with a huge cost to the community and to the way justice is seen in society.

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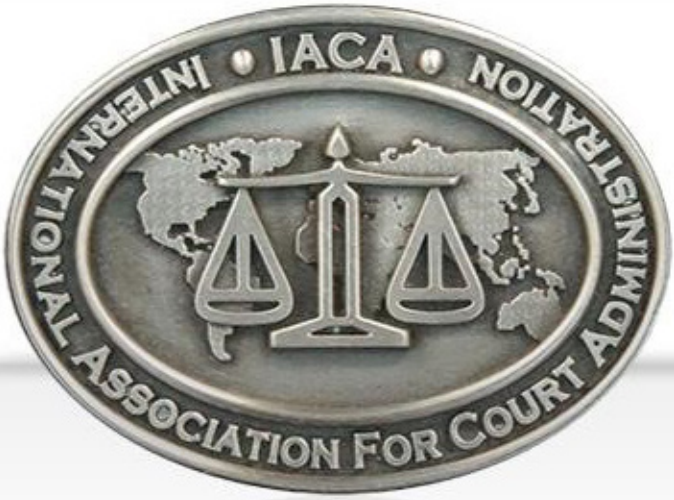

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